

SCHEDULES

SCHEDULE 1

Section 1.

HIGH COURT BUSINESS ASSIGNED TO FAMILY DIVISION

Business at first instance

Proceedings consisting of a matrimonial cause, or any matter arising out of or connected with such a cause; proceedings for a decree of presumption of death and dissolution of marriage ; and any other proceedings with respect to which rules of court may be made by virtue of section 7(1) of the Matrimonial Causes Act 1967.

Proceedings for a declaration—

- (a) under section 39 of the Matrimonial Causes Act 1965, as to a person's legitimacy, or the validity of a marriage, or a person's right to be deemed a British subject; or
- (b) with respect to a person's matrimonial status.

Proceedings in relation to the wardship of minors.

Proceedings under the Adoption Acts 1958 and 1968.

Proceedings under the Guardianship of Infants Act 1886 and 1925 and otherwise in relation to the guardianship of minors, except proceedings for the appointment of a guardian of a minor's estate alone.

Proceedings under section 3 of the Marriage Act 1949 for obtaining the court's consent to the marriage of a minor.

Proceedings under section 17 of the Married Women's Property Act 1882 (determination of title to property in dispute between spouses).

Proceedings in which a parent or guardian of a minor applies for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the minor.

Proceedings under the following enactments:—

- (a) the Maintenance Orders (Facilities for Enforcement) Act 1920 (enforcement in England and Wales of orders made overseas for periodical payments to a man's wife or dependant);
- (b) Part II of the Maintenance Orders Act 1950 (enforcement in England and Wales of certain maintenance and other orders made in Scotland or Northern Ireland);
- (c) the Maintenance Orders Act 1958 (registration and enforcement of certain maintenance and other orders);
- (d) Part II of this Act.

Proceedings under section 1 of the Matrimonial Homes Act 1967 (means whereby a spouse can continue in occupation of, or obtain entry to, a dwelling-house which is, or has been, the matrimonial home).

Status: This is the original version (as it was originally enacted).

Appellate business

Proceedings on appeal under—

- (a) section 10 of the Guardianship of Infants Act 1886 (appeal to High Court from order of county court under that Act);
- (b) section 7(3) of the Guardianship of Infants Act 1925 (corresponding appeal from a magistrates' court);
- (c) section 11 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (appeal from certain decisions of a magistrates' court under that Act).

Proceedings on appeal from a magistrates' court under section 10 of the Adoption Act 1958 against the making of, or refusal to make, an adoption order.

Proceedings on appeal from a magistrates' court under section 4(7) of the Maintenance Orders Act 1958 against the variation of, or refusal to vary, an order registered in accordance with the provisions of that Act.

Proceedings on appeal under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court) from an order or decision of a magistrates' court under section 54(3) of the Magistrates' Courts Act 1952 where the order or decision was made to enforce an order of such a court under the Guardianship of Infants Acts 1886 and 1925 or the Matrimonial Proceedings (Magistrates' Courts) Act 1960.

Proceedings on appeal by case stated against an order or determination of a court of quarter sessions, or a magistrates' court, made or given in affiliation proceedings. Proceedings on appeal by case stated against an order or determination of a magistrates' court with regard to the enforcement of—

- (a) an order for the payment of money made by virtue of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 ;
- (b) an order for the payment of money registered in a magistrates' court under the Maintenance Orders Act 1958 or registered in a court in England and Wales under Part II of the Maintenance Orders Act 1950 or the Maintenance Orders (Facilities for Enforcement) Act 1920 or confirmed by a magistrates' court under the last-mentioned Act.

Proceedings on appeal by case stated against an order or determination of a magistrates' court under section 24 of the Matrimonial Causes Act 1965 (alteration of maintenance agreement between spouses).

SCHEDULE 2

Section 1.

AMENDMENT OF ENACTMENTS CONSEQUENTIAL ON SECTION 1

THE COURT OF PROBATE ACT (IRELAND) 1859 (22 and 23 Vict. c. 31)

- 1 In section 25 of the Court of Probate Act (Ireland) 1859 (certificate of principal probate registrar in England required before English grants are resealed), after the words "principal probate registrar" insert the words " or, under the hand of a registrar of the Family Division of the High Court in England, that bond has been given to the principal registrar of that Division ".

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

THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920 (c. 33)

- 2 In section 1 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (provisions for registration and enforcement of maintenance orders made overseas), in subsection (2), for the words " Probate, Divorce and Admiralty Division" substitute the words " Family Division ".

THE ADMINISTRATION OF ESTATES ACT 1925 (c. 23)

- 3 In section 23 of the Administration of Estates Act 1925 (grant of representation in the case of settled land), in subsections (3) and (4), for the words " Principal Probate Registry " substitute the words " principal registry of the Family Division of the High Court ".
- 4 In section 47A of the said Act of 1925 (life interest of surviving spouse on an intestacy), in subsection (7), for the words " principal probate registrar" substitute the words " principal registrar of the Family Division of the High Court ".
- 5 In section 55 of the said Act of 1925 (interpretation), for paragraph (xv) substitute—
“(xv) ' Probate Judge ' means the President of the Family Division of the High Court”.

THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT 1925 (c. 49)

References to Probate Division and its President

- 6 In the following provisions of the Supreme Court of Judicature (Consolidation) Act 1925, for the words "Probate, Divorce and Admiralty Division" or "Probate Division ", in each place where they occur, substitute the words " Family Division " :—
- section 2 (constitution of High Court), subsection (1);
 - section 3 (qualification to sit as judge), subsection (1);
 - section 4 (divisions of High Court), subsections (1)(iii) and (2);
 - section 6 (constitution of Court of Appeal), subsection (2);
 - section 9 (qualification of judges), subsection (3);
 - section 16 (precedence of judges), subsections (2) and (2a);
 - section 70 (commissioners of assize), subsections (3) and (5);
 - section 99 (rules of court), subsections (4) and (6);
 - section 100 (rules about non-contentious probate business), subsection (1);
 - section 108 (district probate registries), subsections (2), (3) and (5);
 - section 109 (clerks of district probate registries), subsections (1) and (2);
 - section 113 (power to abolish offices);
 - section 115 (tenure of officers of Supreme Court), subsection (3);
 - section 116 (appointment of deputies for court officers), subsection (4);
 - section 128A (district probate registrar), subsections (2) and (3);
 - section 152 (duties of district probate registrars), subsection (2), (3), (5) and (6) ;
 - section 156 (calendars of grants), subsection (2);
 - section 157 (copies of will to be delivered to Revenue);
 - section 172 (depositories of wills of living persons);
 - section 174 (seals for use in probate registries), subsection (1);
 - section 220 (documents filed in, or in custody of, central office), subsection (3);

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Schedule 2 (district probate registries), paragraph 2 ;

Schedule 3, Part I (officers to whom special provisions as to appointment, retirement and pension apply).

Other amendments in Parts I to V

- 7 In section 5 of the said Act of 1925 (power to alter divisions by Order in Council), in subsection (1), for the words " on a report or recommendation of the council of judges of the Supreme Court assembled in pursuance of the provisions of Part X of this Act", substitute the words " on a recommendation of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor ".
- 8 In section 56 of the said Act of 1925 (allocation of business to divisions)—
- (a) in subsection (1)(b), for the words " The wardship of infants and the care of infants' estates " substitute—
 - “The appointment of a guardian of a minor's estate alone”;
 - (b) after subsection (1)(b) insert—
 - “(bb) all causes and matters involving the exercise of the High Court's probate jurisdiction otherwise than in respect of non-contentious or common form probate business”;
 - (c) after subsection (2)(a) insert—
 - “(aa) all causes and matters involving the exercise of the High Court's Admiralty jurisdiction, or its jurisdiction as a prize court”;
 - (d) for subsection (3) substitute—
 - “(3) To the Family Division—
 - (a) all causes and matters involving the exercise of the High Court's jurisdiction in proceedings specified in Schedule 1 to the Administration of Justice Act 1970;
 - (b) all causes and matters which under, or by virtue or in pursuance of, any other enactment for the time being in force are assigned to the Family Division.”
- 9 For section 107 of the said Act of 1925 (principal probate registry) substitute—
- “**107** The principal registry of the Family Division, for the purpose of non-contentious or common form probate business, shall remain in London, unless Her Majesty by Order in Council appoints some other place for it.”
- 10 In section 112 of the said Act of 1925 (classification of Supreme Court clerks), in subsection (1), for the words "the principal" substitute the words " the principal registry of the Family Division ".
- 11 In Schedule 3 to the said Act of 1925, Part I (officers to whom special provisions as to appointment, retirement and pension apply), after the words "Assistant Master of the Supreme Court (King's Bench Division)" insert the words " Admiralty Registrar ".

Amendments of references in Part VII to principal probate registry and registrar

- 12 In the following provisions of the said Act of 1925, for the words " the principal probate registry", in each place where they occur, substitute the words " the principal registry of the Family Division " :—
- section 126 (qualification for appointment to certain offices), subsection (3);

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- section 150 (application for grants);
section 151 (grants in district probate registries), subsection (3);
section 152 (duties of district probate registrars), subsections (1), (2), (3), (4) and (5);
section 154 (caveats), subsections (1) and (2);
section 156 (records of grants), subsection (1);
section 168 (resealing of Scottish confirmations), subsections (1), (2) and (3);
section 169 (resealing of Northern Irish grants), subsections (1), (2) and (3);
section 170 (deposit of wills, etc.) ;
section 171 (official copies of wills), paragraphs (b) and (c) ;
section 174 (seals for use in probate registries), subsection (1).
- 13 In section 157 of the said Act of 1925 (copies of wills to be delivered to Commissioners of Inland Revenue), for the words " every probate registry " substitute the words " the principal registry of the Family Division and every district probate registry ".
- 14 In the following provisions of the said Act of 1925, for the words " the principal probate registrar ", in each place where they occur, substitute the words " the principal registrar of the Family Division " :—
section 167 (administration bonds), subsection (2);
section 168 (re-sealing of Scottish confirmations), subsection (3);
section 169 (re-sealing of Northern Irish grants), subsection (2);
section 171 (official copies of wills), paragraph (c).
- 15 In section 167 of the said Act of 1925 (administration bonds), in subsection (1), for the words from " senior " to " principal probate registrar", where last occurring, substitute the words " principal registrar of the Family Division and, subject to the provisions of this section, if that registrar " ; and in subsection (4), for the words " the principal probate registrar " substitute the words " the principal registrar of the Family Division or, before the coming into force of section 1 of the Administration of Justice Act 1970, the principal probate registrar ".

THE INHERITANCE (FAMILY PROVISION) ACT 1938 (c. 45)

- 16 In section 3 of the Inheritance (Family Provision) Act 1938 (effect and form of order as to provision to be made for dependant of deceased person), in subsection (3), for the words " principal probate registry " substitute the words " principal registry of the Family Division ".

THE ADMINISTRATION OF JUSTICE (PENSIONS) ACT 1950 (14 & 15 Geo. 6 c. 11)

- 17 In Schedule 1 to the Administration of Justice (Pensions) Act 1950 (list of judges and others whose pensions are affected by Part I of the Act), in the left-hand column—
(a) after the words " Assistant Master of the Supreme Court (King's Bench Division)" insert " Admiralty Registrar " .
(b) for the words " Registrar, Probate Division " substitute the words " Registrar, Probate or Family Division " .

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THE SUPREME COURT OFFICERS (PENSIONS) ACT 1954 (c. 38)

- 18 In section 2 of the Supreme Court Officers (Pensions) Act 1954 (judges' secretaries and clerks), in subsections (2), (5) and (6), for the words " Probate, Divorce and Admiralty Division" substitute the words " Family Division ".

THE PUBLIC RECORDS ACT 1958 (c. 51)

- 19 In section 8 of the Public Records Act 1958 (deposit and custody of court records), in subsection (5), for the words " Probate Division " substitute the words " Family Division ".

THE JUDICIAL PENSIONS ACT 1959 (c. 9)

- 20 In Schedule 1 to the Judicial Pensions Act 1959 (judicial offices qualifying for pension at rates set out in section 1) for the words " Probate, Divorce and Admiralty Division" substitute the words " Probate, Divorce and Admiralty, or Family Division ".

THE COUNTY COURTS ACT 1959 (c. 22)

- 21 In section 42 of the County Courts Act 1959 (jurisdiction by agreement in certain actions) for the words " Probate, Divorce and Admiralty Division " substitute the words " Family Division or have involved the exercise of the High Court's Admiralty jurisdiction ".
- 22 At the end of section 54(2) of the said Act of 1959 (transfer of equity proceedings from High Court to county court) insert the words " other than a matter in relation to which section 63 of this Act applies ".
- 23 In section 62(1) of the said Act of 1959 (probate jurisdiction) and section 63 thereof (transfer of probate proceedings from High Court to county court), for the words " principal probate registry ", in each place where they occur, substitute the words " principal registry of the Family Division ".
- 24 In section 64 of the said Act of 1959 (effect of order of judge in probate proceedings), in paragraph (a), after the word "principal" insert the words " registry of the Family Division " ; and, in paragraph (b), for the words " principal probate registry " substitute the words " principal registry of the Family Division ".

THE JUDGES' REMUNERATION ACT 1965 (c. 61)

- 25 In Schedule 1 to the Judges' Remuneration Act 1965 (salaries of higher United Kingdom judiciary), for "Probate, Divorce and Admiralty Division " substitute " Family Division ".

THE MATRIMONIAL CAUSES ACT 1967 (c. 56)

- 26 In section 4 of the Matrimonial Causes Act 1967 (county court proceedings in High Court divorce registry), for the words " principal probate registry", in each place where they occur, substitute the words " divorce registry ".
- 27 In section 7 of the said Act of 1967 (matrimonial causes rules), in subsection (1).—
 (a) for the words " Probate, Divorce and Admiralty Division " substitute the words " Family Division "; and

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- (b) for the words " principal probate registry" substitute the words " divorce registry ".
- 28 In section 10 of the said Act of 1967 (interpretation), in subsection (1), after the definition of " divorce county court" insert—
 " divorce registry ' means the principal registry of the Family Division of the High Court".

SCHEDULE 3

Section 4.

APPLICATION OF ARBITRATION ACT 1950 TO JUDGE-ARBITRATORS

- 1 In this Schedule—
- (a) " the Act" means the Arbitration Act 1950 ;
- (b) " arbitration agreement" has the same meaning as in the Act; and
- (c) " judge-arbitrator" and " judge-umpire " mean a judge of the Commercial Court appointed as arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.
- 2 In section 1 of the Act (authority of arbitrator to be irrevocable except by leave of the court), in its application to a judge-arbitrator or judge-umpire, the Court of Appeal shall be substituted for the High Court.
- 3 The power of the High Court under section 7 of the Act (vacancy among arbitrators supplied by parties) to set aside the appointment of an arbitrator shall not be exercisable in the case of the appointment of a judge-arbitrator.
- 4 Section 8(3) of the Act (power of High Court to order umpire to enter immediately on reference as sole arbitrator) shall not apply to a judge-umpire ; but a judge-umpire may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, enter on the reference in lieu of the arbitrators and as if he were the sole arbitrator.
- 5 (1) The powers conferred on the High Court or a judge thereof by section 12(4), (5) and (6) of the Act (summoning of witnesses, interlocutory orders, etc.) shall be exercisable in the case of a reference to a judge-arbitrator or judge-umpire as in the case of any other reference to arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.
- (2) Anything done by an arbitrator or umpire in the exercise of powers conferred by this paragraph shall be done by him in his capacity as judge of the High Court and have effect as if done by that court; but nothing in this paragraph prejudices any power vested in the arbitrator or umpire in his capacity as such.
- 6 Section 13(2) and (3) of the Act (extension of time for making award; provision for ensuring that reference is conducted with reasonable dispatch) shall not apply to a reference to a judge-arbitrator or judge-umpire ; but a judge-arbitrator or judge-umpire may enlarge any time limited for making his award (whether under the Act or otherwise), whether that time has expired or not.
- 7 (1) Section 18(4) of the Act (provision enabling a party in an arbitration to obtain an order for costs) shall apply, in the case of a reference to a judge-arbitrator, with the omission of the words from " within fourteen days " to " may direct".

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- (2) The power of the High Court to make declarations and orders for the purposes of section 18(5) of the Act (charging order for solicitor's costs) shall be exercisable in the case of an arbitration by a judge-arbitrator or judge-umpire as in the case of any other arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.
- (3) A declaration or order made by an arbitrator or umpire in the exercise of the power conferred by the last foregoing sub-paragraph shall be made by him in his capacity as judge of the High Court and have effect as if made by that court.
- 8 (1) Section 19 of the Act (power of High Court to order delivery of award on payment of arbitrators' fees into court) shall not apply with respect to the award of a judge-arbitrator or judge-umpire.
- (2) A judge-umpire may withhold his award until the fees payable to the arbitrators have been paid into the High Court.
- (3) Arbitrators' fees paid into court under this paragraph shall be paid out in accordance with rules of court, subject to the right of any party to the reference to apply (in accordance with the rules) for any fee to be taxed, not being a fee which has been fixed by written agreement between him and the arbitrator.
- (4) A taxation under this paragraph may be reviewed in the same manner as a taxation of the costs of an award.
- (5) On a taxation under this paragraph, or on a review thereof, an arbitrator shall be entitled to appear and be heard.
- 9 (1) In sections 21(1) and (2), 22 and 23 of the Act (special case, remission and setting aside of awards, etc.), in their application to a judge-arbitrator or judge-umpire, and to a reference to him and to his award thereon, the Court of Appeal shall be substituted for the High Court.
- (2) A decision of the Court of Appeal on a case stated by a judge-arbitrator or judge-umpire under section 21 of the Act (as amended by this paragraph) shall be deemed to be a judgment of that court for the purposes of section 3 of the Appellate Jurisdiction Act 1876 (appeal to House of Lords) ; but no appeal shall lie from any such decision without the leave of the Court of Appeal or the House of Lords.
- 10 (1) Section 24(2) of the Act (removal of issue of fraud for trial in the High Court) shall not apply to an agreement under or by virtue of which a judge-arbitrator or judge-umpire has been appointed ; nor shall leave be given by the High Court under that subsection to revoke the authority of a judge-arbitrator or judge-umpire.
- (2) Where, on a reference of a dispute to a judge-arbitrator or judge-umpire, it appears to the judge that the dispute involves the question whether a party to the dispute has been guilty of fraud, he may, so far as may be necessary to enable that question to be determined by the High Court, order that the agreement by or by virtue of which he was appointed shall cease to have effect and revoke his authority as arbitrator or umpire.
- (3) An order made by a judge-arbitrator or judge-umpire under this paragraph shall have effect as if made by the High Court.
- 11 Section 25 of the Act (powers of court on removal of arbitrator or revocation of arbitration agreement) shall be amended as follows:—

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

- (a) after the words "the High Court" where they first occur in subsection (1), where they occur for the first and second time in subsection (2), and in subsections (3) and (4), there shall be inserted the words " or the Court of Appeal "; and
 - (b) after those words where they occur for the second time in subsection (1) and for the third time in subsection (2) there shall be inserted the words " or the Court of Appeal, as the case may be ".
- 12 The leave required by section 26 of the Act (enforcement in High Court) for an award on an arbitration agreement to be enforced as mentioned in that section may, in the case of an award by a judge-arbitrator or a judge-umpire, be given by the judge-arbitrator or judge-umpire himself.

SCHEDULE 4

Sections 11, 12 and 14.

TAXES, SOCIAL INSURANCE CONTRIBUTIONS, ETC. SUBJECT TO SPECIAL ENFORCEMENT PROVISIONS IN PART II

- 1 Income tax or any other tax or liability recoverable under section 65, 66 or 68 of the Taxes Management Act 1970.
- 2 Selective employment tax under section 44 of the Finance Act 1966.
- 3 Contributions under—
section 3 (flat-rate) or section 4 (graduated) of the National Insurance Act 1965;
section 1 of the National Health Service Contributions Act 1965 ; or
section 2 of the National Insurance (Industrial Injuries) Act 1965.
- 4 Redundancy Fund contributions under section 27 of the Redundancy Payments Act 1965.

SCHEDULE 5

Sections 15 and 16.

DEDUCTIONS BY EMPLOYER UNDER ATTACHMENT OF EARNINGS ORDER

PART I

SCHEME OF DEDUCTIONS

Preliminary definitions

- 1 The following three paragraphs have effect for defining and explaining, for purposes of this Schedule, expressions used therein.
- 2 " Pay-day ", in relation to earnings paid to a debtor, means an occasion on which they are paid.
- 3 " Attachable earnings", in relation to a pay-day, are the earnings which remain payable to the debtor on that day after deduction by the employer of—
(a) income tax ;

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- (b) contributions under any of the following enactments—
 the National Insurance Act 1965,
 the National Insurance (Industrial Injuries) Act 1965, or
 the National Health Service Contributions Act 1965 ;
- (c) amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme within the meaning of the Wages Councils Act 1959.

4

On any pay-day—

- (a) "the normal deduction" is arrived at by applying the normal deduction rate (as specified in the relevant attachment of earnings order) with respect to the period since the last pay-day or, if it is the first pay-day of the debtor's employment with the employer, since the employment began; and
- (b) " the protected earnings" are arrived at by applying the protected earnings rate (as so specified) with respect to the said period.

Employer's deduction (judgment debts and administration orders)

5

In the case of an attachment of earnings order made to secure the payment of a judgment debt or payments under an administration order, the employer shall on any pay-day—

- (a) if the attachable earnings exceed the protected earnings, deduct from the attachable earnings the amount of the excess or the normal deduction rate, whichever is the less ;
- (b) make no deduction if the attachable earnings are equal to, or less than, the protected earnings.

Employer's deduction (other cases)

6

- (1) The following provision shall have effect in the case of an attachment of earnings order to which paragraph 5 above does not apply.
- (2) If on a pay-day the attachable earnings exceed the sum of—
 - (a) the protected earnings ; and
 - (b) so much of any amount by which the attachable earnings on any previous pay-day fell short of the protected earnings as has not been made good by virtue of this sub-paragraph on another previous pay-day,
 then, in so far as the excess allows, the employer shall deduct from the attachable earnings the amount specified in the following sub-paragraph.
- (3) The said amount is the sum of—
 - (a) the normal deduction ; and
 - (b) so much of the normal deduction on any previous pay-day as was not deducted on that day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.
- (4) No deduction shall be made on any pay-day when the attachable earnings are equal to, or less than, the protected earnings.

PART II

PRIORITY AS BETWEEN ORDERS

- 7 Where the employer is required to comply with two or more attachment of earnings orders in respect of the same debtor, all or none of which orders are made to secure either the payment of judgment debts or payments under an administration order, then on any pay-day the employer shall, for the purpose of complying with Part I of this Schedule.—
- (a) deal with the orders according to the respective dates on which they were made, disregarding any later order until an earlier one has been dealt with ;
 - (b) deal with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier order.
- 8 Where the employer is required to comply with two or more attachment of earnings orders, and one or more (but not all) of those orders are made to secure either the payment of judgment debts or payments under an administration order, then on any pay-day the employer shall, for the purpose of complying with Part I of this Schedule—
- (a) deal first with any order which is not made to secure the payment of a judgment debt or payments under an administration order, (complying with paragraph 7 above if there are two or more such orders); and
 - (b) deal thereafter with any order which is made to secure the payment of a judgment debt or payments under an administration order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with an order having priority by virtue of sub-paragraph (a) of this paragraph ; and
 - (c) if there are two or more orders to which sub-paragraph (b) of this paragraph applies, comply with paragraph 7 above in respect of those orders.

SCHEDULE 6

Section 26.

ENACTMENTS PROVIDING BENEFITS WHICH ARE NOT TO BE TREATED AS DEBTOR'S EARNINGS

The National Insurance Act 1965.

The National Insurance (Industrial Injuries) Act 1965.

The Family Allowances Act 1965.

The Ministry of Social Security Act 1966.

The Industrial Injuries and Diseases (Old Cases) Act 1967.

SCHEDULE 7

Section 27.

PROVISIONS OF MAINTENANCE ORDERS ACT 1958 AS AMENDED

PART I

AMENDMENTS OF SECTIONS 9 AND 20

- 1 In this Part of this Schedule " the Act" means the Maintenance Orders Act 1958.
- 2 In section 9(2) of the Act—
- (a) after " order " (where that word first occurs) insert " made to secure maintenance payments "; and
 - (b) after " order " (where that word first occurs after paragraph (e)) insert " so made ".
- 3 In section 9(4) and (5) of the Act, for " defendant" (wherever that word occurs) substitute " debtor ".
- 4 In section 9(4) of the Act—
- (a) for the words from the beginning to " a county court" substitute " Where, in the case of an attachment of earnings order made by the High Court or a county court to secure maintenance payments, it appears to the collecting officer of the court ".
 - (b) for the words from " which made that order " to the end of paragraph (ii) substitute " shall make the appropriate variation order, unless the debtor requests it to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request ".
- 5 In section 9(5) of the Act—
- (a) for the words from the beginning to " a magistrates' court" substitute " Where, in the case of an attachment of earnings order made by a magistrates' court to secure maintenance payments, it appears to the collecting officer ".
 - (b) for the words from " proceed under the following paragraph " to the end of the subsection substitute " discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request ".
- 6 In section 20 of the Act—
- (a) in subsection (1), after " anything in this Act" insert " or Part II of the Administration of Justice Act 1970 " and for paragraph (b) substitute—
 - “(b) apply for an attachment of earnings order to secure payments under the maintenance order or (except as required by section 9(5) of this Act) an order discharging or varying such an attachment of earnings order ; or
 - (c) apply for a determination under section 22 of the Administration of Justice Act 1970”;
 - (b) at the beginning of subsection (2) insert " Subject to rules of court made by virtue of section 18(3)(c) of the Administration of Justice Act 1970 ".
 - (c) in subsection (3), after " magistrates' court" (where those words occur for the second time) insert " to secure maintenance payments ".
 - (d) for subsection (4)(a) substitute—

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- “(a) the power to make an order in pursuance of a complaint by the debtor for an attachment of earnings order, or the discharge or variation of such an order, shall be deemed to be a power to make an order against the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court)”;
- (e) in subsection(4)(b), for " paragraph (b) of section seven of this Act " substitute " section 14(4)(b) of the Administration of Justice Act 1970 " and for " defendant " substitute " debtor " ; and
- (f) for subsection (5) substitute—
 - “(5) An application to a magistrates' court for a determination under section 22 of the Administration of Justice Act 1970 shall be made by complaint; and on making a determination under that section a magistrates' court may in its discretion make such order as it thinks just and reasonable for the payment by any of the persons mentioned in subsection (2) of that section of the whole or any part of the costs of the determination (but subject to subsection (1)(ii) of this section); and costs ordered to be paid under this subsection shall—
 - (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, be deemed to be—
 - (i) if the attachment of earnings order was made to secure maintenance payments, a sum due under the related maintenance order, and
 - (ii) otherwise, a sum due to the clerk of the court; and
 - (b) in any other case, be enforceable as a civil debt.”

PART II

SECTIONS 9 AND 20 AS AMENDED

- “9 (2) An attachment of earnings order made to secure maintenance payments shall cease to have effect—
- (a) upon the grant of an application under section two of this Act for the registration of the related maintenance order under Part I of this Act, notwithstanding that, in the case of an application under subsection (1) of that section, the grant may subsequently become void under subsection (2) thereof;
 - (b) where the related maintenance order is registered under the said Part I, upon the giving of notice with respect thereto under section five of this Act;
 - (c) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order, or upon the exercise for that purpose of the power conferred on a magistrates' court by subsection (2) of section sixty-five of the Magistrates' Courts Act, 1952, to postpone the issue of such a warrant;
 - (d) upon the discharge of the related maintenance order while it is not registered under Part I of this Act;

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- (e) upon the related maintenance order ceasing to be registered in a court in England, or becoming registered in a court in Scotland or Northern Ireland, under Part II of the Maintenance Orders Act, 1950 ;

and where an attachment of earnings order so made ceases to have effect as aforesaid the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed:

Provided that where the related maintenance order is discharged as mentioned in paragraph (d) of this subsection and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, direct that this subsection shall not apply.

- (4) Where, in the case of an attachment of earnings order made by the High Court or a county court to secure maintenance payments, it appears to the collecting officer of the court that—

- (a) the aggregate of the payments made for the purposes of the related maintenance order by the debtor (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order; and
- (b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and
- (c) no proceedings for the variation or discharge of the attachment of earnings order are pending,

the said officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the debtor, and the court shall make the appropriate variation order, unless the debtor requests it to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request.

In this and the next following subsection " the appropriate variation order " means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to secure that that rate (or, in the case mentioned in paragraph (b) of this subsection, the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (a) of this subsection.

- (5) Where, in the case of an attachment of earnings order made by a magistrates' court to secure maintenance payments, it appears to the collecting officer that the conditions specified in paragraphs (a) to (c) of the last foregoing subsection are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court—

- (a) shall grant the application unless the debtor appears at the hearing thereof and requests the court to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request."

“20 (1) Notwithstanding anything in this Act or Part II of the Administration of Justice Act 1970, the clerk of a magistrates' court who is entitled to receive payments under a maintenance order for transmission to another person shall not—

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- (a) apply for the registration of the maintenance order under Part I of this Act or give notice in relation to the order in pursuance of subsection (1) of section five thereof; or
- (b) apply for an attachment of earnings order to secure payments under the maintenance order or (except as required by section 9(5) of this Act) an order discharging or varying such an attachment of earnings order ; or
- (c) apply for a determination under section 22 of the Administration of Justice Act 1970,

unless he is requested in writing to do so by a person entitled to receive the payments through him ; and where the clerk is requested as aforesaid—

- (i) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so ;
- (ii) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person ;

and for the purposes of paragraph (ii) of this subsection any application made by the clerk as required by the said subsection (5) shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

- (2) Subject to rules of court made by virtue of section 18(3)(c) of the Administration of Justice Act 1970, an application to a magistrates' court by virtue of subsection (2) of section four of this Act for the variation of a maintenance order and an application to a magistrates' court for an attachment of earnings order, or an order discharging or varying an attachment of earnings order, shall be made by complaint.
- (3) It is hereby declared that a magistrates' court has jurisdiction to hear a complaint by or against a person residing outside England for the discharge or variation of an attachment of earnings order made by a magistrates' court to secure maintenance payments ; and where such a complaint is made against a person residing outside England, then—
 - (a) if he resides in Scotland or Northern Ireland, section fifteen of the Maintenance Orders Act, 1950 (which relates to the service of process on persons residing in those countries) shall have effect in relation to the complaint as it has effect in relation to the proceedings therein mentioned ; and
 - (b) if the said person resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the complaint but it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to the said person notice of the complaint and of the time and place aforesaid, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the said person had then appeared.
- (4) For the purposes of section forty-three of the Magistrates' Courts Act, 1952 (which provides for the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint)—
 - (a) the power to make an order in pursuance of a complaint by the debtor for an attachment of earnings order, or the discharge or variation of such an order, shall be deemed to be a power to make an order against the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court); and

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- (b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person (including a complaint in proceedings to which section 14(4)(b) of the Administration of Justice Act 1970 applies) shall be deemed to be a power to make an order against the debtor.
- (5) An application to a magistrates' court for a determination under section 22 of the Administration of Justice Act 1970 shall be made by complaint; and on making a determination under that section a magistrates' court may in its discretion make such order as it thinks just and reasonable for the payment by any of the persons mentioned in subsection (2) of that section of the whole or any part of the costs of the determination (but subject to subsection (1)(ii) of this section) ; and costs ordered to be paid under this subsection shall—
- (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, be deemed to be—
- (i) if the attachment of earnings order was made to secure maintenance payments, a sum due under the related maintenance order, and
- (ii) otherwise, a sum due to the clerk of the court; and
- (b) in any other case, be enforceable as a civil debt.
- (6)
- (7) A complaint for an attachment of earnings order may be heard notwithstanding that the complaint was not made within the six months allowed by section one hundred and four of the Magistrates' Courts Act, 1952.
- (8) For the avoidance of doubt it is hereby declared that a complaint may be made to enforce payment of a sum due and unpaid under a maintenance order notwithstanding that a previous complaint has been made in respect of that sum or a part thereof and whether or not an order was made in pursuance of the previous complaint.”

SCHEDULE 8

Section 28.

MAINTENANCE ORDERS FOR PURPOSES OF 1958 ACT AND PART II OF THIS ACT

- 1 An order for alimony, maintenance or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1965 (ancillary relief in actions for divorce etc.).
- 2 An order for payments to or in respect of a child being an order made, or having effect as if made, under Part III of the said Act of 1965 (maintenance of children following divorce, etc.).
- 3 An order for maintenance or other payments to or in respect of a spouse or child being an order made, or having effect as if made, under the Matrimonial Proceedings (Magistrates' Courts) Act 1960.
- 4 An order under—
- (a) section 3(2), 5(4) or 6 of the Guardianship of Infants Act 1925 (payments for maintenance of minor in care of guardian);
- (b) section 4(2) of the Family Law Reform Act 1969 (payments for maintenance of person who has been in guardianship and has come of age, but is not yet twenty-one); or

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

- (c) section 6 of the said Act of 1969 (payments for maintenance of ward of court).
- 5 An affiliation order (that is to say an order under section 4 of the Affiliation Proceedings Act 1957, section 44 of the National Assistance Act 1948, section 26 of the Children Act 1948 or section 24 of the Ministry of Social Security Act 1966).
- 6 An order under section 87 of the Children and Young Persons Act 1933, section 30 of the Children and Young Persons Act 1963 or section 23 of the Ministry of Social Security Act 1966 (various provisions for obtaining contributions from a person whose dependants are assisted or maintained out of public funds).
- 7 An order under section 43 of the National Assistance Act 1948 (recovery of costs of maintaining assisted person).
- 8 An order to which section 16 of the Maintenance Orders Act 1950 applies by virtue of subsection (2)(b) or (c) of that section (that is to say an order made by a court in Scotland or Northern Ireland and corresponding to one of those specified in the foregoing paragraphs) and which has been registered in a court in England and Wales under Part II of that Act.
- 9 A maintenance order within the meaning of the Maintenance Orders (Facilities for Enforcement) Act 1920 (Commonwealth orders enforceable in the United Kingdom) registered in, or confirmed by, a court in England and Wales under that Act.

SCHEDULE 9

Section 41.

ENFORCEMENT OF ORDERS FOR COSTS, COMPENSATION, ETC.

PART I

CASES WHERE PAYMENT ENFORCEABLE AS ON SUMMARY CONVICTION

Costs awarded by magistrates

- 1 Where a magistrates' court, on the summary trial of an information, makes an order as to costs to be paid by the accused to the prosecutor.
- 2 Where an appellant to quarter sessions against conviction or sentence by a magistrates' court abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal.

Costs awarded by assizes and quarter sessions

- 3 Where a person appeals to quarter sessions against conviction or sentence by a magistrates' court, and quarter sessions makes an order as to costs to be paid by him.
- 4 Where a person is prosecuted or tried on indictment or inquisition before a court of assize or quarter sessions and is convicted, and the court orders him to pay the whole or part of the costs incurred in or about the prosecution and conviction.
- 5 Where the accused is ordered by quarter sessions to pay costs, under powers exercisable by virtue of section 14 of the Costs in Criminal Cases Act 1952

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(committal to quarter sessions for sentence and other purposes ; appeal under Vagrancy Act 1824).

Costs awarded by Court of Appeal (criminal division) or House of Lords

- 6 Where the criminal division of the Court of Appeal dismisses an appeal or application for leave to appeal and orders the appellant or applicant to pay the whole or part of the costs of the appeal or application.
- 7 Where the criminal division of the Court of Appeal or the House of Lords dismisses an application for leave to appeal to that House (being an application made by the person who was the appellant before the criminal division) and orders him to pay the whole or part of the costs of the application.

Criminal costs awarded by High Court

- 8 Where a person is tried at bar in the Queen's Bench Division of the High Court and is convicted, and the High Court orders him to pay the whole or part of the costs incurred in or about the prosecution and conviction.

Miscellaneous orders for costs, compensation, damages etc.

- 9 Where a court makes an order for the payment of costs by an offender and does so under the Costs in Criminal Cases Act 1952 as applied by section 31(1) or (2) of the Criminal Justice Act 1967 (proceedings in which a person is dealt with for a further offence after being put on probation, conditionally discharged, bound over or given a suspended sentence).
- 10 Where under section 4 of the Forfeiture Act 1870 or section 34 of the Magistrates' Courts Act 1952 a court awards a sum of money by way of satisfaction or compensation for damage to, or loss of, property suffered through or by means of an indictable offence.
- 11 Where under section 11(2) of the Criminal Justice Act 1948 a court, on making a probation order or an order for conditional discharge, or on discharging an offender absolutely, orders the offender to pay damages for injury or compensation for loss.
- 12 Where under section 55 of the Children and Young Persons Act 1933 a court orders any fine, damages, compensation or costs, or any sum awarded by way of satisfaction or compensation to be paid by the parent or guardian of a child or young person.

PART II

CASES WHERE COSTS ENFORCEABLE SUMMARILY AS CIVIL DEBT

Costs awarded by magistrates

- 13 Where a magistrates' court, on the summary trial of an information, makes an order as to costs to be paid by the prosecutor to the accused.
- 14 Where an appellant to quarter sessions from a magistrates' court (otherwise than against conviction or sentence) abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal.

- 15 Where examining justices determine not to commit a person for trial and order the prosecutor to pay the whole or part of the costs incurred in or about the defence.

Costs awarded by assizes and quarter sessions

- 16 Where a person convicted by a magistrates' court appeals to quarter sessions against conviction or sentence, and quarter sessions makes an order as to costs to be paid by the respondent to the appellant.
- 17 Where a person appeals to quarter sessions from a magistrates' court (otherwise than against conviction or sentence) and quarter sessions makes an order as to costs to be paid by the appellant or respondent.
- 18 Where a person is prosecuted or tried on indictment or inquisition before a court of assize or quarter sessions and is acquitted, and the court orders the prosecutor to pay the whole or part of the costs incurred in or about the defence.
- 19 Where a person is committed for trial and is not ultimately tried, and the court to which he is committed orders the prosecutor to pay to him the whole or part of the costs incurred in or about the defence.
- 20 Where the prosecutor is ordered by quarter sessions to pay costs, under powers exercisable by virtue of section 14(2) or (3) of the Costs in Criminal Cases Act 1952 (committal or appeal to quarter sessions under Vagrancy Act 1824).

Criminal costs awarded by High Court

- 21 Where a person is tried at bar in the Queen's Bench Division of the High Court and is acquitted, and the High Court orders the prosecutor to pay the whole or part of the costs incurred in or about the defence.

SCHEDULE 10

Section 43.

ENFORCEMENT BY MAGISTRATES' COURT OF LEGAL AID CONTRIBUTION ORDER

General provisions as to enforcement

- 1 In this Schedule "collecting court" and "legal aid contribution order" have the same meaning as in section 43 of this Act.
- 2 The collecting court may, in relation to a legal aid contribution order, exercise the powers of section 63 of the Magistrates' Courts Act 1952 (power to dispense with immediate payment); and for the purposes of that section any provision made by the court which made the order as to time for payment, or payment by instalments, shall be treated as made by the collecting court.
- 3 Sections 74 (complaint for arrears), 75 (effect of committal on arrears) and 76 (power to remit arrears) of the Magistrates' Courts Act 1952 shall apply as if a legal aid contribution order were enforceable as an affiliation order.
- 4 Any costs awarded, under section 55 of the Magistrates' Courts Act 1952, on the hearing of a complaint for the enforcement of a legal aid contribution order shall be enforceable as a sum required to be paid by that order.

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

- 5 Sections 17 and 18 of the Maintenance Orders Act 1958 (not more than one committal for same arrears, and power to review committals) shall apply as if a legal aid contribution order were a maintenance order.
- 6 Section 68 of the Magistrates' Courts Act 1952 (application of money found on defaulter to satisfy sum adjudged) shall apply as if a legal aid contribution order were enforceable as an affiliation order.

Transfer of enforcement proceedings to different court

- 7 (1) Where it appears to the collecting court that a person subject to a legal aid contribution order is residing in a petty sessions area other than that for which the court acts, the court may make a transfer order under this paragraph, that is to say an order making payment under the legal aid contribution order enforceable in that other petty sessions area (which area shall be specified in the transfer order).
- (2) As from the date of a transfer order under this paragraph the court which made the order shall cease to be the collecting court for the purposes of the legal aid contribution order and of section 43 of this Act and this Schedule and be replaced as such by a magistrates' court acting for the petty sessions area specified in the transfer order.

SCHEDULE 11

Section 54.

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
33 & 34 Vict. c. 23.	The Forfeiture Act 1870.	In section 4, the words from " and the amount" onwards.
49 & 50 Vict. c. 27.	The Guardianship of Infants Act 1886.	In section 5 the words from " and in every case " onwards. In section 6, the words " in any division thereof ". In section 9, the words from " Any application " to " Rules of Court". In section 10, the words " before a judge of the Chancery Division " and the words from " and, subject to any " to " as he shall direct". In section 11, paragraph (a), and, in paragraph (c), the words " England or ".
4 & 5 Geo. 5. c. 59.	The Bankruptcy Act 1914	Section 107(1) to (3).

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Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5 c. 23.	The Administration of Estates Act 1925	In section 30(3), the words " the Probate, Divorce and Admiralty Division of".
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act 1925.	In section 5(1), the words " report or". In section 58, the words from "and (4) Subject to rules of court" onwards. In section 63, in paragraph (b) of the proviso to subsection (6), the words " with the concurrence of the other judges of the Division or a majority thereof, or in the case of the King's Bench Division " In section 225, the definition of " Probate Division "
23 & 24 Geo. 5. c. 12.	The Children and Young Persons Act 1933	Section 55(4).
23 & 24 Geo. 5 c. 38.	The Summary Jurisdiction (Appeals) Act 1933	Section 5(2).
11 & 12 Geo. 6 c. 58.	The Criminal Justice Act 1948	Section 11(3).
12, 13 and 14 Geo. 6. c. 87.	The Patents Act 1949.	Section 85(6).
12, 13 and 14 Geo. 6. c. 88.	The Registered Designs Act 1949.	Section 28(6).
15 & 16 Geo. 6. & 1 Eliz. 2 c. 48.	The Costs in Criminal Cases Act 1952.	Section 10(1) to (3); and in section 10(5) the words " under this section ", wherever occurring.
15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.	The Magistrates' Courts Act 1952.	In section 34, the words from " and any sum " onwards. In section 74(6)(a), the words " under the Maintenance Orders Act 1958 " Section 85(3).
6 & 7 Eliz. 2. c. 39.	The Maintenance Orders Act 1958.	Section 4(3). Sections 6 to 8. Section 9(1), (3) and (6). Sections 10 to 15.

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

Chapter	Short Title	Extent of Repeal
		In section 21(1), the definitions of " attachment of earnings order," " earnings "," employer "," excepted sums " and " maintenance order"; and section 21(5). The Schedule.
1959 c. 22.	The County Courts Act 1959.	Section 153(a). Section 154.
1964 c. 42.	The Administration of Justice Act 1964.	Section 5(2). In Schedule 3, paragraph 25(2).
1965 c. 72.	The Matrimonial Causes Act 1965.	In section 38(1), the words from " and any order " onwards.
1966 c. 20.	The Ministry of Social Security Act 1966.	In section 23(6), the words from " and the Maintenance Orders Act 1958 " onwards. In section 24(9), the words from " and the Maintenance Orders Act 1958 " onwards.
1966 c. 31.	The Criminal Appeal Act 1966.	Section 1(4) and (6)(b). Section 2(2).
1967 c. 80.	The Criminal Justice Act 1967.	Section 46. Section 79(3) to (7). In section 84, the definition of " appropriate authority ". Schedule 1.
1968 c. 19.	The Criminal Appeal Act 1968.	In Section 45(2), the words " of the Queen's Bench Division of ". In Schedule 5, the entry relating to section 10(2) of the Costs in Criminal Cases Act 1952.
1968 c. 36.	The Maintenance Orders Act 1968.	In the Schedule, the entry relating to section 4 of the Maintenance Orders Act 1958.
1969 c. 46.	The Family Law Reform Act 1969.	In section 4(5)(b), the words from " and be deemed " onwards.

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

Chapter	Short Title	Extent of Repeal
1969 c. 54.	The Children and Young Persons Act 1969.	In section 6(7) the words from " and be deemed " onwards. In section 3(6), the word " and " at the end of paragraph (b), and paragraph (c).