



# Matrimonial and Family Proceedings Act 1984

## 1984 CHAPTER 42

### PART I

#### TIME RESTRICTIONS ON PRESENTATION OF PETITIONS FOR DIVORCE OR NULLITY OF MARRIAGE

#### **1 Bar on petitions for divorce within one year of marriage.**

For section 3 of the <sup>M1</sup>Matrimonial Causes Act 1973 (in this Part referred to as “the 1973 Act”) (which provides that no petition for divorce shall be presented within three years of marriage unless the leave of the court has been obtained) there shall be substituted the following section—

#### **“3 Bar on petitions for divorce within one year of marriage.**

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

#### **Marginal Citations**

**M1** 1973 c. 18.

#### **2 Extension of period for proceedings for decree of nullity in respect of voidable marriage.**

- (1) Section 13 of the 1973 Act (which imposes restrictions on the institution of proceedings for a decree of nullity in respect of a voidable marriage) shall be amended as follows.

*Status: Point in time view as at 01/10/1997.*

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(2) For subsection (2) of section 13 there shall be substituted the following subsection—

“(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) At the end of section 13 there shall be added the following subsections—

“(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.”

## PART II

### FINANCIAL RELIEF IN MATRIMONIAL PROCEEDINGS

*Provisions relating to powers of the High Court and county courts*

### 3 Orders for financial relief after divorce etc.

For section 25 of the <sup>M2</sup>Matrimonial Causes Act 1973 (in this Part referred to as “the 1973 Act”) there shall be substituted the following sections—

**“25 Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A.**

- (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 or 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

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- 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;
  - (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.

### **25A Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.**

- (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.

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- (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.”

#### Marginal Citations

M2 1973 c. 18.

#### 4 Orders for financial relief in case of neglect to maintain.

In section 27 of the 1973 Act (financial provision in case of neglect to maintain) for subsection (3) there shall be substituted the following subsection—

- “(3) Where an application under this section is made on the ground mentioned in 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.”

#### 5 Duration of orders for periodical payments and effect of remarriage.

- (1) In section 28(1) of the 1973 Act (duration of continuing financial provision orders in favour of party to a marriage), for the words from the beginning to “the following limits” there shall be substituted the words “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”.
- (2) After subsection (1) of the said section 28 there shall be inserted the following subsection—

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“(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”.

- (3) In subsection (3) of the said section 28 (effect of remarriage on financial provision orders), after the word “remarries” there shall be inserted the words “whether at any time before or after the commencement of this Act”.
- (4) In section 29(2) of the 1973 Act (duration of continuing financial provision orders in favour of children), in paragraph (a), for the words “unless the court thinks it right in the circumstances of the case to specify a later date” there shall be substituted the words “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”.

## **6 Variation and discharge of orders for periodical payments.**

- (1) Section 31 of the 1973 Act (variation and discharge of orders) shall be amended as follows.
- (2) In subsection (1) after the words “subject to the provisions of this section” there shall be inserted the words “and of section 28(1A) above”.
- (3) For subsection (7) there shall be substituted the following subsection—

“(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;
- (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.”

- (4) After subsection (9) there shall be inserted the following subsection—

“(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.”

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## 7 Consent orders for financial provision or property adjustment.

The following section shall be inserted after section 33 of the 1973 Act—

*“ Consent orders*

### **33A Consent orders for financial provision or property adjustment.**

- (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.”

## 8 Restrictions imposed in divorce proceedings etc., on applications under Inheritance (Provision for Family and Dependants) Act 1975.

- (1) For subsection (1) of section 15 of the <sup>M3</sup>Inheritance (Provision for Family and Dependants) Act 1975 (under which the court on the grant of a decree of divorce, nullity or judicial separation has power, if the parties to the marriage agree, to order that one party shall not on the death of the other party be entitled to apply for an order under section 2 of that Act) there shall be substituted the following subsection—

“(1) On the grant of a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter the court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.

In this subsection “the court” means the High Court or, where a county court has jurisdiction by virtue of Part V of the Matrimonial and Family Proceedings Act 1984, a county court.”

- (2) In section 25(1) of that Act (interpretation), in the definition of “the court” after the word “means” there shall be inserted the words “unless the context otherwise requires”.

### **Marginal Citations**

M3 1975 c. 63.

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*Provisions relating to the powers of magistrates' courts*

**9 Orders for financial relief made by magistrates' courts in matrimonial proceedings.**

- (1) For section 3 of the <sup>M4</sup>Domestic Proceedings and Magistrates' Courts Act 1978 there shall be substituted the following section—

**“3 Matters to which court is to have regard in exercising its powers under s.2.**

- (1) Where an application is made for an order under section 2 of this Act, it shall be the duty of the court, in deciding whether to exercise its powers under that section 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 its powers under subsection (1)(a) or (b) of section 2, 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 parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
  - (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.
- (3) As regards the exercise of its powers under subsection (1)(c) or (d) of section 2, 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 standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
  - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
  - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2) above.

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- (4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child’s maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
  - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
  - (c) to the liability of any other person to maintain the child.”
- (2) In section 5(2) of that Act (duration of periodical payments orders in favour of children), in paragraph (a), for the words “unless the court thinks it right in the circumstances of the case to specify a later date” there shall be substituted the words “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”.
- (3) In section 20(11) of that Act (variation and revocation of orders for periodical payments) for the words “including any change” there shall be substituted the words “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”.

#### Marginal Citations

M4 1978 c. 22.

## 10 Orders for payments which have been agreed by the parties.

For section 6 of the <sup>M5</sup>Domestic Proceedings and Magistrates’ Courts Act 1978 there shall be substituted the following section—

### “6 Orders for payments which have been agreed by the parties.

- (1) Either party to a marriage may apply to a magistrates’ court for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may, if—
  - (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
  - (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,
 order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.
- (2) In this section “financial provision” means the provision mentioned in any one or more of the following paragraphs, that is to say—
  - (a) the making of periodical payments by one party to the other,
  - (b) the payment of a lump sum by one party to the other,



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- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) A party to a marriage who has applied for an order under section 2 of this Act shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 2 of this Act, the application made for the order under section 2 shall be treated as if it had been withdrawn.
- (5) Where on an application under subsection (1) above the court decides—
  - (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
  - (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,but is of the opinion—
  - (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
  - (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.
- (6) Subject to subsection (8) below, the provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) Subject to subsection (8) below, the provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.

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- (8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4) above, an application for an order under section 2 of this Act is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 2 or any later date.
- (9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of—
- (a) the consent of the respondent to the making of the order,
  - (b) the financial resources of the respondent, and
  - (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.”

**Marginal Citations**

M5 1978 c. 22.

**11 Variation of consent orders by magistrates’ courts.**

For section 20(2) of the <sup>M6</sup>Domestic Proceedings and Magistrates’ Courts Act 1978 (under which the court can vary a consent order by ordering the payment of a lump sum if the consent order provided for the payment of a lump sum) there shall be substituted the following subsection—

- “(2) Where a magistrates’ court has made an order under section 6 of this Act for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—
- (a) to the other party to the marriage, or
  - (b) to a child of the family or to that other party for the benefit of that child.”

**Marginal Citations**

M6 1978 c. 22.

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## PART III

### FINANCIAL RELIEF IN ENGLAND AND WALES AFTER OVERSEAS DIVORCE ETC.

#### *Applications for financial relief*

#### **12 Applications for financial relief after overseas divorce etc.**

- (1) Where—
  - (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
  - (b) the divorce, annulment or legal separation is entitled to be recognised as valid in England and Wales,either party to the marriage may apply to the court in the manner prescribed by rules of court for an order for financial relief under this Part of this Act.
- (2) If after a marriage has been dissolved or annulled in an overseas country one of the parties to the marriage remarries that party shall not be entitled to make an application in relation to that marriage.
- (3) For the avoidance of doubt it is hereby declared that the reference in subsection (2) above to remarriage includes a reference to a marriage which is by law void or voidable.
- (4) In this Part of this Act except sections 19, 23, and 24 “order for financial relief” means an order under section 17 or 22 below of a description referred to in that section.

#### **13 Leave of the court required for applications for financial relief.**

- (1) No application for an order for financial relief shall be made under this Part of this Act unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.
- (2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.
- (3) Leave under this section may be granted subject to such conditions as the court thinks fit.

#### **14 Interim orders for maintenance.**

- (1) Where leave is granted under section 13 above for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child such periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.

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- (2) If it appears to the court that the court has jurisdiction to entertain the application for an order for financial relief by reason only of paragraph (c) of section 15(1) below the court shall not make an interim order under this section.
- (3) An interim order under subsection (1) above may be made subject to such conditions as the court thinks fit.

## 15 Jurisdiction of the court.

- (1) Subject to subsection (2) below, the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—
  - (a) either of the parties to the marriage was domiciled in England and Wales on the date of the application for leave under section 13 above or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
  - (b) either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
  - (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.
- (2) Where the jurisdiction of the court to entertain proceedings under this Part of this Act would fall to be determined by reference to the jurisdictional requirements imposed by virtue of Part I of the <sup>M7</sup>Civil Jurisdiction and Judgments Act 1982 (implementation of certain European conventions) then—
  - (a) satisfaction of the requirements of subsection (1) above shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
  - (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of subsection (1) above;
 and the court shall entertain or not entertain the proceedings accordingly.

### Marginal Citations

M7 1982 c. 27.

## 16 Duty of the court to consider whether England and Wales is appropriate venue for application.

- (1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
- (2) The court shall in particular have regard to the following matters—
  - (a) the connection which the parties to the marriage have with England and Wales;

*Status: Point in time view as at 01/10/1997.*

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- (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (c) the connection which those parties have with any other country outside England and Wales;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;
- (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;
- (g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;
- (h) the extent to which any order made under this Part of this Act is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

#### *Orders for financial provision and property adjustment*

### **17 Orders for financial provision and property adjustment.**

- (1) Subject to section 20 below, the court on an application by a party to a marriage for an order for financial relief under this section, may make any one or more of the orders which it could make under Part II of the 1973 Act if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in England and Wales, that is to say—
  - (a) any order mentioned in section 23(1) of the 1973 Act (financial provision orders);
  - (b) any order mentioned in section 24(1) of that Act (property adjustment orders).
- (2) Subject to section 20 below, where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order under subsection (1) above, then, on making that order or at any time thereafter, the court may make any order mentioned in section 24A(1) of the 1973 Act (orders for sale of property) which the court would have power to make if the order under subsection (1) above had been made under Part II of the 1973 Act.

### **18 Matters to which the court is to have regard in exercising its powers under s. 17.**

- (1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.

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- (2) 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.
- (3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.
- (4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in section 25(3)(a) to (e) of the 1973 Act.
- (5) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court shall also have regard to the matters mentioned in section 25(4)(a) to (c) of the 1973 Act.
- (6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

## **19 Consent orders for financial provision or property adjustment.**

- (1) Notwithstanding anything in section 18 above, 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 section 17 above; and
  - “prescribed” means prescribed by rules of court.

## **20 Restriction of powers of court where jurisdiction depends on matrimonial home in England or Wales.**

- (1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in England or Wales of a dwelling-house which was a matrimonial home of the parties, the court may make under section 17 above any one or more of the following orders (but no other)—
  - (a) an order that either party to the marriage shall pay to the other such lump sum as may be specified in the order;
  - (b) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified;

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- (c) 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 so specified for the benefit of such a child, the interest of the first-mentioned party in the dwelling-house, or such part of that interest as may be so specified;
  - (d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest as may be so specified, 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;
  - (e) 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 so far as that settlement relates to an interest in the dwelling-house;
  - (f) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement so far as that interest is an interest in the dwelling-house;
  - (g) an order for the sale of the interest of a party to the marriage in the dwelling-house.
- (2) Where, in the circumstances mentioned in subsection (1) above, the court makes an order for the payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount, that is to say—
- (a) if the interest of that party in the dwelling-house is sold in pursuance of an order made under subsection (1)(g) above, the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof;
  - (b) if the interest of that party is not so sold, the amount which in the opinion of the court represents the value of that interest.
- (3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons—
- (a) the reference in subsection (1)(g) above to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
  - (b) the reference in subsection (2)(a) above to the amount of the proceeds of a sale ordered under subsection (1)(g) above shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.

## **21 Application to orders under ss. 14 and 17 of certain provisions of Part II of Matrimonial Causes Act 1973.**

The following provisions of Part II of the 1973 Act (financial relief for parties to marriage and children of family) shall apply in relation to an order made under section 14 or 17 above as they apply in relation to a like order made under that Part of that Act, that is to say—

- (a) section 23(3) (provisions as to lump sums);
- (b) section 24A(2), (4), (5) and (6) (provisions as to orders for sale);
- (c) section 28(1) and (2) (duration of continuing financial provision orders in favour of party to marriage);

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- (d) section 29 (duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour);
- (e) section 30 (direction for settlement of instrument for securing payments or effecting property adjustment), except paragraph (b);
- (f) section 31 (variation, discharge etc. of certain orders for financial relief), except subsection (2)(e) and subsection (4);
- (g) section 32 (payment of certain arrears unenforceable without the leave of the court);
- (h) section 33 (orders for repayment of sums paid under certain orders);
- (i) section 38 (orders for repayment of sums paid after cessation of order by reason of remarriage);
- (j) section 39 (settlements etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor); and
- (k) section 40 (payments etc. under order made in favour of person suffering from mental disorder).

*Orders for transfer of tenancies*

**[<sup>F1</sup>22 Powers of court in relation to certain tenancies of dwelling-houses.**

- (1) This section applies if—
- (a) an application is made by a party to a marriage for an order for financial relief; and
  - (b) one of the parties is entitled, either in his own right or jointly with the other party, to occupy a dwelling-house situated in England or Wales by virtue of a tenancy which is a relevant tenancy within the meaning of Schedule 7 to the Family Law Act 1996 (certain statutory tenancies).
- (2) The court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if—
- (a) a divorce order,
  - (b) a separation order, or
  - (c) a decree of nullity of marriage,
- had been made or granted in England and Wales in respect of the marriage.
- (3) The provisions of paragraphs 10, 11 and 14(1) in Part III of that Schedule apply in relation to any order under this section as they apply to any order under Part II of that Schedule.]

**Textual Amendments**

- F1** S. 22 substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 52** (with Sch. 9 para. 8-10); S.I. 1997/1892, **art. 3(1)(b)**



*Status: Point in time view as at 01/10/1997.*

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*Avoidance of transactions intended to prevent or reduce financial relief*

**23 Avoidance of transactions intended to defeat applications for financial relief.**

- (1) For the purposes of this section “financial relief” means relief under section 14 or 17 above and any reference to defeating a claim by a party to a marriage for financial relief is a reference to preventing financial relief from being granted or reducing the amount of relief which might be granted, or frustrating or impeding the enforcement of any order which might be or has been made under either of those provisions at the instance of that party.
- (2) Where leave is granted under section 13 above for the making by a party to a marriage of an application for an order for financial relief under section 17 above, the court may, on an application by that party—
  - (a) if it is satisfied that the other party to the marriage 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.
- (3) Where an order for financial relief under section 14 or 17 above has been made by the court at the instance of a party to a marriage, then, on an application made by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a reviewable disposition, make an order setting aside the disposition.
- (4) Where the court has jurisdiction to entertain the application for an order for financial relief by reason only of paragraph (c) of section 15(1) above, it shall not make any order under subsection (2) or (3) above in respect of any property other than the dwelling-house concerned.
- (5) Where the court makes an order under subsection (2)(b) or (3) 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).
- (6) Any disposition made by the other party to the marriage (whether before or after the commencement of the application) is a reviewable disposition for the purposes of subsections (2)(b) and (3) 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.
- (7) Where an application is made under subsection (2) or (3) above 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—
  - (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

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(b) in a case falling within subsection (3) above, that the disposition has had the consequence,

of defeating a claim by the applicant 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.

(8) 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.

(9) The preceding provisions of this section are without prejudice to any power of the High Court to grant injunctions under section 37 of the Supreme Court Act 1981.

## **24 Prevention of transactions intended to defeat prospective applications for financial relief.**

(1) Where, on an application by a party to a marriage, it appears to the court—

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in an overseas country; and
- (b) that the applicant intends to apply for leave to make an application for an order for financial relief under section 17 above as soon as he or she has been habitually resident in England and Wales for a period of one year; and
- (c) that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property,

the court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in paragraph (c) above.

(2) For the purposes of an application under subsection (1) above—

- (a) the reference to defeating a claim for financial relief shall be construed in accordance with subsection (1) of section 23 above (omitting the reference to any order which has been made); and
- (b) subsections (7) and (8) of section 23 above shall apply as they apply for the purposes of an application under that section.

(3) The preceding provisions of this section are without prejudice to any power of the High Court to grant injunctions under section 37 of the Supreme Court Act 1981.

*Financial provision out of estate of deceased party to marriage*

## **25 Extension of powers under Inheritance (Provision for Family and Dependants) Act 1975 in respect of former spouses.**

(1) The <sup>M8</sup>Inheritance (Provision for Family and Dependants) Act 1975 shall have effect with the following amendments, being amendments designed to give to persons whose marriages are dissolved or annulled overseas the same rights to apply for provision under that Act (as amended by section 8 of this Act) as persons whose marriages are dissolved or annulled under the 1973 Act.

*Status: Point in time view as at 01/10/1997.*

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(2) In section 25(1), for the definition of “former wife” and “former husband” there shall be substituted the following definition—

““former wife” or “former husband” means a person whose marriage with the deceased was during the lifetime of the deceased either—

- (a) dissolved or annulled by a decree of divorce or a decree of nullity of marriage granted under the law of any part of the British Islands, or
- (b) dissolved or annulled in any country or territory outside the British Islands by a divorce or annulment which is entitled to be recognised as valid by the law of England and Wales;”.

(3) After section 15 (restriction in divorce proceedings etc. of applications under the Act) there shall be inserted the following section—

**“15A Restriction imposed in proceedings under Matrimonial and Family Proceedings Act 1984 on application under this Act.**

(1) On making an order under section 17 of the Matrimonial and Family Proceedings Act 1984 (orders for financial provision and property adjustment following overseas divorces, etc.) the court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.

In this subsection “the court” means the High Court or, where a county court has jurisdiction by virtue of Part V of the Matrimonial and Family Proceedings Act 1984, a county court.

- (2) Where an order under subsection (1) above has been made with respect to a party to a marriage which has been dissolved or annulled, then, on the death of the other party to that marriage, the court shall not entertain an application under section 2 of this Act made by the first-mentioned party.
- (3) Where an order under subsection (1) above has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court shall not entertain an application under section 2 of this Act made by the first-mentioned party.”

**Marginal Citations**

M8 1975 c. 63.

*Recovery of maintenance in magistrates’ courts after overseas divorce etc.*

*Status: Point in time view as at 01/10/1997.*

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### Textual Amendments

- F2** S. 26 repealed (5.4.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 2\(2\), Sch. 3; S.I. 1993/618, art.2.](#)

## *Interpretation*

### 27 Interpretation of Part III.

In this Part of this Act—

“the 1973 Act” means the Matrimonial Causes Act 1973;

“child of the family” has the same meaning as in section 52(1) of the 1973 Act;

“the court” means the High Court or, where a county court has jurisdiction by virtue of Part V of this Act, a county court;

“dwelling-house” includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;

“order for financial relief” has the meaning given by section 12(4) above;

“overseas country” means a country or territory outside the British Islands;

“possession” includes receipt of, or the right to receive, rents and profits;

“property adjustment order” means such an order as is specified in section 24(1)(a), (b), (c) or (d) of the 1973 Act;

“rent” does not include mortgage interest;

“secured periodical payments order” means such an order as is specified in section 23(1)(b) or (e) of the 1973 Act.

## PART IV

### FINANCIAL PROVISION IN SCOTLAND AFTER OVERSEAS DIVORCE ETC.

### 28 Circumstances in which a Scottish court may entertain application for financial provision.

- (1) Where parties to a marriage have been divorced in an overseas country, then, subject to subsection (4) below, if the jurisdiction requirements and the conditions set out in subsections (2) and (3) below respectively are satisfied, the court may entertain an application by one of the parties for an order for financial provision.
- (2) The jurisdictional requirements mentioned in subsection (1) above are that—
  - (a) the applicant was domiciled or habitually resident in Scotland on the date when the application was made; and
  - (b) the other party to the marriage—
    - (i) was domiciled or habitually resident in Scotland on the date when the application was made; or
    - (ii) was domiciled or habitually resident in Scotland when the parties last lived together as husband and wife; or

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- (iii) on the date when the application was made, was an owner or tenant of, or had a beneficial interest in, property in Scotland which had at some time been a matrimonial home of the parties; and
- (c) where the court is the sheriff court, either—
  - (i) one of the parties was, on the date when the application was made, habitually resident in the sheriffdom; or
  - (ii) paragraph (b)(iii) above is satisfied in respect of property wholly or partially within the sheriffdom.
- (3) The conditions mentioned in subsection (1) above are that—
  - (a) the divorce falls to be recognised in Scotland;
  - (b) the other party to the marriage initiated the proceedings for divorce;
  - (c) the application was made within five years after the date when the divorce took effect;
  - (d) a court in Scotland would have had jurisdiction to entertain an action for divorce between the parties if such an action had been brought in Scotland immediately before the foreign divorce took effect;
  - (e) the marriage had a substantial connection with Scotland; and
  - (f) both parties are living at the time of the application.
- (4) Where the jurisdiction of the court to entertain proceedings under this Part of this Act would fall to be determined by reference to the jurisdictional requirements imposed by virtue of Part I of the <sup>M9</sup>Civil Jurisdiction and Judgments Act 1982 (implementation of certain European conventions) then—
  - (a) satisfaction of the requirements of subsection (2) above shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
  - (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of subsection (2) above;and the court shall entertain or not entertain the proceedings accordingly.

#### Marginal Citations

M9 1982 c. 27.

## 29 Disposal of application in Scotland.

- (1) Subject to subsections (2) to (5) below, Scots law shall apply, with any necessary modifications, in relation to an application under section 28 above as it would apply if the application were being made in an action for divorce in Scotland.
- (2) In disposing of an application entertained by it under the said section 28, the court shall exercise its powers so as to place the parties, in so far as it is reasonable and practicable to do so, in the financial position in which they would have been if the application had been disposed of, in an action for divorce in Scotland, on the date on which the foreign divorce took effect.
- (3) In determining what is reasonable and practicable for the purposes of subsection (2) above, the court shall have regard in particular to—
  - (a) the parties' resources, present and foreseeable at the date of disposal of the application;

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- (b) any order made by a foreign court in or in connection with the divorce proceedings for the making of financial provision in whatever form, or the transfer of property, by one of the parties to the other; and
  - (c) subsection (5) below.
- (4) Except where subsection (5) below applies, the court may make an order for an interim award of a periodical allowance where—
- (a) it appears from the applicant’s averments that in the disposal of the application an order for financial provision is likely to be made; and
  - (b) the court considers that such an interim award is necessary to avoid hardship to the applicant.
- (5) Where but for section 28(2)(b)(iii) above the court would not have jurisdiction to entertain the application, the court may make an order—
- (a) relating to the former matrimonial home or its furniture and plenishings; or
  - (b) that the other party to the marriage shall pay to the applicant a capital sum not exceeding the value of that other party’s interest in the former matrimonial home and its furniture and plenishings,
- but shall not be entitled to make any other order for financial provision.

### **[<sup>F3</sup>29A Application of Part IV to annulled marriages.**

This Part of this Act shall apply to an annulment, of whatever nature, of a purported marriage, as it applies to a divorce, and references to marriage and divorce shall be construed accordingly.]

#### **Textual Amendments**

**F3** S. 29A inserted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), [Sch. 1 para. 12](#)

### **30 Interpretation of Part IV.**

- (1) In the foregoing provisions of this Part of this Act unless the context otherwise requires—
- “the court” means the Court of Session or the sheriff court;
  - “furniture and plenishings” has the meaning assigned by section 22 of the <sup>M10</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981;
  - “matrimonial home” has the meaning assigned by the said section 22;
  - “order for financial provision” means any one or more of the orders specified in [<sup>F4</sup>section 8(1) of the Family Law (Scotland) Act 1985] (financial provision) or an order under section 13 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy of matrimonial home);
  - “overseas country” means a country or territory outside the British Islands;
  - and
  - “tenant” has the meaning assigned by the said section 22.
- (2) Any reference in the foregoing provisions of this Part of this Act to a party to a marriage shall include a reference to a party to a marriage which has been terminated.

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#### Textual Amendments

- F4** Words substituted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), [Sch. 1 para. 13](#)

#### Marginal Citations

- M10** [1981 c. 59](#).

### 31 Extension of s. 31 of Maintenance Orders (Reciprocal Enforcement) Act 1972.

- (1) Section 31(4) of the <sup>M11</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972 (recovery of maintenance in Scotland from former spouse on order made in convention country) shall have effect with the following amendments.
- (2) In paragraph (i), for the words “granted in a convention country” there shall be substituted the words “obtained in a country or territory outside the United Kingdom”.
- (3) For paragraph (ii) there shall be substituted the following paragraphs—
  - “(ii) an order for the payment of maintenance for the benefit of the applicant as a divorced person has, in or by reason of, or subsequent to, the divorce proceedings, been made by a court in a convention country;
  - (ia) in a case where the order mentioned in paragraph (ii) above was made by a court of a different country from that in which the divorce was obtained, either the applicant or the said former spouse was resident in that different country at the time the application for the order so mentioned was made; and”.

#### Marginal Citations

- M11** [1972 c. 18](#).

## PART V

### FAMILY BUSINESS: DISTRIBUTION AND TRANSFER

#### *Preliminary*

### 32 What is family business.

In this Part of this Act—

“family business” means business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under section 61 of (and Schedule 1 to) the <sup>M12</sup>Supreme Court Act 1981;

“family proceedings” means proceedings which are family business;

“matrimonial cause” means an action for divorce, nullity or marriage, [<sup>F5</sup>or judicial separation];

*Status: Point in time view as at 01/10/1997.*

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and “the 1973 Act” means the <sup>M13</sup>Matrimonial Causes Act 1973.

#### Textual Amendments

**F5** Words substituted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(5), [Sch. 1 para. 27](#)

#### Marginal Citations

**M12** [1981 c. 54.](#)

**M13** [1973 c. 18.](#)

### *Jurisdiction of county courts in matrimonial causes and matters*

#### **33 Jurisdiction of county courts in matrimonial causes.**

- (1) The Lord Chancellor may by order designate any county court as a divorce county court and any court so designated shall have jurisdiction to hear and determine any matrimonial cause, except that it shall have jurisdiction to try such a cause only if it is also designated in the order as a court of trial.

In this Part of this Act “divorce county court” means a county court so designated.

- (2) The jurisdiction conferred by this section on a divorce county court shall be exercisable throughout England and Wales, but rules of court may provide for a matrimonial cause pending in one such court to be heard and determined in another or partly in that and partly in another.
- (3) Every matrimonial cause shall be commenced in a divorce county court and shall be heard and determined in that or another such court unless or except to the extent it is transferred to the High Court under section 39 below or section 41 of the <sup>M14</sup>County Courts Act 1984 (transfer to High Court by order of High Court).
- (4) The Lord Chancellor may by order designate a divorce county court as a court for the exercise of jurisdiction in matrimonial matters arising under Part III of this Act.
- (5) The power to make an order under subsection (1) or (4) above shall be exercisable by statutory instrument.

#### Subordinate Legislation Made

**P1** S. 33: power previously exercised by [S.I. 1988/2165](#) and [S.I. 1989/106](#).

**P2** S. 33(1): power conferred by s. 33(1) exercised by [S.I.1991/1809](#).

#### Marginal Citations

**M14** [1984 c. 28.](#)

#### **34 Jurisdiction of divorce county courts as respects financial relief and protection of children.**

- (1) Subject to subsections (2) and (3) below, a divorce county court shall have the following jurisdiction, namely—



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- (a) jurisdiction to exercise any power exercisable under Part II or Part III of the 1973 Act in connection with any petition, decree or order pending in or made by such a court and to exercise any power under section 27 or 35 of that Act;
  - (b) if designated by an order under section 33(4) above, jurisdiction to exercise any power under Part III of this Act.
- (2) Any proceedings for the exercise of a power which a divorce county court has jurisdiction to exercise by virtue of subsection (1)(a) or (b) above shall be commenced in such divorce county court as may be prescribed by rules of court.
- (3) A divorce county court shall not by virtue of subsection (1)(a) above have jurisdiction to exercise any power under section 32, 33, 36 or 38 of the 1973 Act; but nothing in this section shall prejudice the exercise by a county court of any jurisdiction conferred on county courts by any of those sections.
- (4) Nothing in this section shall affect the jurisdiction of a magistrates' court under section 35 of the 1973 Act.

### **35 Consideration of agreements or arrangements.**

Any provision to be made by rules of court for the purposes of section 7 of the 1973 Act with respect to any power exercisable by the court on an application made before the presentation of a petition shall confer jurisdiction to exercise the power on divorce county courts.

### **36 Assignment of Circuit judges to matrimonial proceedings.**

The jurisdiction conferred by the preceding provisions of this Part of this Act on divorce county courts, so far as it is exercisable by judges of such courts, shall be exercised by such Circuit judges as the Lord Chancellor may direct.

#### *Distribution and transfer of family business and proceedings*

### **37 Directions as to distribution and transfer of family business and proceedings.**

The President of the Family Division may, with the concurrence of the Lord Chancellor, give directions with respect to the distribution and transfer between the High Court and county courts of family business and family proceedings.

### **38 Transfer of family proceedings from High Court to county court.**

- (1) At any stage in any family proceedings in the High Court the High Court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to a county court.
- (2) The following family proceedings are transferable to a county court under this section, namely—
  - (a) all family proceedings commenced in the High Court which are within the jurisdiction of a county court or divorce county court;
  - (b) wardship proceedings, except applications for an order that a minor be made, or cease to be, a ward of court [F6] or any other proceedings which relate to

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- the exercise of the inherent jurisdiction of the High Court with respect to minors]; and
- (c) all family proceedings transferred from a county court to the High Court under section 39 below or section 41 of the <sup>M15</sup>County Courts Act 1984 (transfer to High Court by order of High Court); [<sup>F7</sup>and
  - (d) all matrimonial causes and matters transferred from a county court otherwise than as mentioned in paragraph (e) above.]
- (3) Proceedings transferred under this section shall be transferred to such county court or, in the case of a matrimonial cause or matter within the jurisdiction of a divorce county court only, such divorce county court as the High Court directs.
- (4) The transfer shall not affect any right of appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed, or order made, in that Court before the transfer.
- (5) Where proceedings are transferred to a county court under this section, the county court—
- (a) if it has no jurisdiction apart from this paragraph, shall have jurisdiction to hear and determine those proceedings;
  - (b) shall have jurisdiction to award any relief which could have been awarded by the High Court.

#### Textual Amendments

- F6** Words in s. 38(2)(b) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 51](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)
- F7** By [Matrimonial Proceedings \(Transfers\) Act 1988 \(c. 18, SIF 49:3\)](#), [s. 1\(1\)](#) it is provided that s. 38 shall have effect as if the word “and” and subsection (d) were added at the end of the list in subsection (2) of the proceedings transferable under that section.

#### Modifications etc. (not altering text)

- C1** S. 38 restricted by [S.I. 1965/1776](#), Order 90, rule 2B (as inserted by [S.I. 1986/632](#), [rule 27](#))
- C2** S. 38 excluded (14.10.1991) by [S.I. 1991/1677](#), [art.5](#).
- C3** S. 38: power to exclude conferred (28.7.1997) by [1996 c. 27, s. 57\(7\)](#); [S.I. 1997/1892](#), [art. 2](#)
- C4** S. 38 excluded (1.10.1997) by [S.I. 1997/1896](#), [art. 6](#)

#### Marginal Citations

- M15** [1984 c. 28](#).

### 39 Transfer of family proceedings to High Court from county court.

- (1) At any stage in any family proceedings in a county court, the county court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to the High Court.
- (2) The following family proceedings are transferable to the High Court under this section, namely—
- (a) all family proceedings commenced in a county court or divorce county court; and

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- (b) all family proceedings transferred from the High Court to a county court or divorce county court under section 38 above.

**Modifications etc. (not altering text)**

- C5 S. 39 excluded by S.I. 1991/1677, art.5.  
C6 S. 39: power to exclude conferred (28.7.1997) by 1996 c. 27, s. 57(7), S.I. 1997/1892, art. 2  
C7 S. 39 excluded (1.10.1997) by S.I. 1997/1896, art. 6

*Rules of court and fees*

**40 Family proceedings rules.**

- (1) Subject to subsection (2) below, the power to make rules of court for the purposes of family proceedings in the High Court or county courts shall be exercisable by the Lord Chancellor together with any four or more of the following persons, namely—
- (a) the President of the Family Division,
  - (b) one puisne judge attached to that Division,
  - [<sup>F8</sup>(c) one district judge of the principal registry of that Division,
  - (d) two Circuit judges,
  - (e) one district judge appointed under the County Courts Act 1984,
  - (f) two persons who have a Supreme Court qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990), and
  - (g) 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.]
- (2) Subsection (1) above is without prejudice to the powers of the following authorities to make rules in respect of the matters referred to below and rules in respect of those matters shall continue to be made by those authorities and shall not be made by the authority constituted by subsection (1) above.

The rules and rule-making authorities are—

- (a) adoption rules made by the Lord Chancellor under section 9(3) of the <sup>M16</sup>Adoption Act 1958, section 12(1) of the <sup>M17</sup>Adoption Act 1968 or section 66(1) of the <sup>M18</sup>Adoption Act 1976;
  - (b) probate rules made by the President of the Family Division with the concurrence of the Lord Chancellor under section 127 of the <sup>M19</sup>Supreme Court Act 1981.
- (3) The persons to act in pursuance of subsection (1) above with the Lord Chancellor, other than the President of the Family Division, shall be appointed by the Lord Chancellor for such time as he may think fit.

- [<sup>F9</sup>(3A) Rules made under this section may make different provision for different cases or different areas, including different provision—
- (a) for a specific court, or
  - (b) for specific proceedings, or a specific jurisdiction,
- specified in the rules.]

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- (4) Rules made under this section may, in relation to county court rules, do anything which, as special rules, they are authorised by section 84 of the Supreme Court Act 1981 to do in relation to Supreme Court Rules and may—
- (a) modify or exclude the application of any provision of the County Courts Act 1984; and
  - (b) provide for the enforcement in the High Court of orders made in a divorce county court.
- (5) Rules of court under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and the <sup>M20</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing such rules as if the rules had been made by a Minister of the Crown.

#### Textual Amendments

- F8** S. 40(1)(c)–(g) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(3), **Sch. 18 para. 50**
- F9** S. 40(3A) inserted (14.3.1997) by 1997 c. 12, s. 10, **Sch. 2 para. 3(a)**; S.I. 1997/841, **art. 2**

#### Commencement Information

- I1** S. 40 wholly in force at 14.10.1991 see s. 47(1)(e); S.I. 1991/1211, **art. 2(a)**.

#### Marginal Citations

- M16** 1958 c. 5.  
**M17** 1968 c. 53.  
**M18** 1976 c. 36.  
**M19** 1981 c. 54.  
**M20** 1946 c. 36.

## 41 Fees in family proceedings.

The fees to be taken in any family proceedings in the High Court or any county court shall be such as the Lord Chancellor with the concurrence of the Treasury may prescribe from time to time by order made by statutory instrument.

#### Commencement Information

- I2** S. 41 wholly in force at 14.10.1991 see s. 47(1)(e); S.I. 1991/1211, **art. 2(a)**.

### *County court proceedings in principal registry*

## 42 County court proceedings in principal registry of Family Division.

- (1) Sections 33 to 35 above shall not prevent the commencement of any proceedings in the principal registry except where rules of court under section 34(2) above otherwise provide; and the following provisions of this section shall have effect for the purposes of enabling proceedings to be dealt with in that registry as in a divorce county court.
- (2) The jurisdiction in matrimonial causes or matters conferred by sections 33, 34 and 35 above on divorce county courts shall be exercised in the principal registry—

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- (a) so far as it is exercisable by judges of such courts, at such sittings and in such places as the Lord Chancellor may direct; and
  - (b) so far as it is exercisable by registrars of such courts, by such registrars or by registrars and other officers of the principal registry according as rules of court may provide;
- and rules of court may make provision for treating, for any purposes specified in the rules, matrimonial causes and matters pending in the registry with respect to which that jurisdiction is exercisable as pending in a divorce county court and for the application of section 74(3) of the <sup>M21</sup>Solicitors Act 1974 (costs) with respect to proceedings so treated.
- (3) Where, by virtue of rules under subsection (2) above, a matrimonial cause is pending in the registry as in a divorce county court, any ancillary or related proceedings which could be taken in a divorce county court and which are not of a description excluded by the rules from the operation of this subsection may be taken and dealt with in the registry as in a divorce county court.
  - (4) The principal registry shall be treated as a divorce county court—
    - (a) for the purposes of any provision to be made by rules of court under section 33(2) above;
    - (b) for the purpose of any provision to be made under section 34(2) above prescribing the county court in which any proceedings are to be commenced; and
    - (c) for the purposes of any transfer of family proceedings under section 38 or 39 above between the High Court and a divorce county court.
  - [<sup>F10</sup>(4A) Where a district judge of the principal registry is exercising jurisdiction in any matrimonial cause or matter which could be exercised by a district judge of a county court, he shall have the same powers in relation to those proceedings as if he were a district judge of a county court and the proceedings were in a county court.]
  - (5) Rules of court shall make provision for securing, with respect to family proceedings dealt with under this section, that, as nearly as may be, the same consequences shall follow—
    - (a) as regards service of process, as if proceedings commenced in the principal registry had been commenced in a divorce county court; and
    - (b) as regards enforcement of orders, as if orders made in that registry in the exercise of the family jurisdiction conferred by sections 33, 34 and 35 above on divorce county courts were orders made by such a court.
  - (6) In this section “the principal registry” means the principal registry of the Family Division of the High Court and, for the purposes of subsection (3) above, proceedings are “ancillary” to a matrimonial cause if they are connected with the cause and are “related” to a matrimonial cause if they are for protecting or otherwise relate to any rights, or the exercise of any rights, of the parties to the marriage as husband and wife or any children of the family.

#### Textual Amendments

**F10** S. 42(4A) inserted (1.7.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 74(7); S.I. 1991/1364, art. 2, Sch.

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**Modifications etc. (not altering text)**

**C8** S. 42 extended with modifications by S.I. 1977/344, **rule 106** (as substituted by S.I. 1986/634, **rule 21**)

**Marginal Citations**

**M21** 1974 c. 47.

*Distribution of business: proceedings under s. 17 of Married Women’s Property Act 1882*

**43 Distribution of business: proceedings under s. 17 of Married Women’s Property Act 1882.**

In section 17 of the <sup>M22</sup>Married Women’s Property Act 1882 (which provides for the summary determination of property disputes between spouses and, as extended, former spouses and former engaged couples) for the words after “in a summary way” there shall be substituted the words

“to the High Court or such county court as may be prescribed and the court may, on such an application (which may be heard in private), make such order with respect to the property as it thinks fit.

In this section “prescribed” means prescribed by rules of court and rules made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute.”.

**Marginal Citations**

**M22** 1882 c. 75.

*Magistrates’ courts’ domestic jurisdiction*

**44 [<sup>F11</sup>Family proceedings]in magistrates’ courts to include applications to alter maintenance agreements.**

In section 65(1) of the <sup>M23</sup>Magistrates’ Courts Act 1980 (which defines what proceedings are [<sup>F11</sup>family proceedings]) after paragraph (e) there shall be inserted the following paragraph—

“(ee) section 35 of the Matrimonial Causes Act 1973;”.

**Textual Amendments**

**F11** Words in s. 44 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 11 para. 10** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**

**Marginal Citations**

**M23** 1980 c. 43.

*Status: Point in time view as at 01/10/1997.*

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## PART VI

### MISCELLANEOUS AND GENERAL

**F12** 45 .....

#### Textual Amendments

**F12** S. 45 repealed (4.11.1996) by S.I. 1995/755, art. 185(2), Sch. 10 (with Sch. 8 para. 23(4)); S.R. 1996/297, art. 2(2)

#### 46 Amendments, transitional provisions and repeals.

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act or minor amendments relating to the enforcement of maintenance orders, the area of jurisdiction of magistrates' courts for purposes of altering maintenance agreements and the variation by magistrates' courts of certain existing maintenance, affiliation and other orders.
- (2) The transitional provisions contained in Schedule 2 to this Act shall have effect.
- (3) The enactments specified in Schedule 3 to this Act (which include some which are spent) are hereby repealed to the extent specified in the third column of that Schedule.

#### Commencement Information

**I3** S. 46(3) in as much as it relates to Sch. 3 wholly in force at 14.10.1991 see s. 47(1)(e); S.I. 1991/1211, art. 2(b)

#### 47 Commencement.

- (1) The provisions of this Act other than this section and section 48 below shall come into force as follows—
  - (a) with the exception of section 10, Parts I and II and paragraphs 1 and 2 of Schedule 2 shall come into force at the expiry of the period of three months beginning with the day on which this Act is passed and that section shall come into force on such day as the Lord Chancellor appoints;
  - (b) Part III shall come into force on such day as the Lord Chancellor appoints;
  - (c) Schedule 1, except paragraphs 1(b), 6, 7 and 28 shall come into force on such day or days as the Lord Chancellor appoints;
  - (d) Part IV and paragraphs 1(b), 6, 7 and 28 of Schedule 1 shall come into force on such day as the Lord Advocate appoints; and
  - (e) Part V, section 45 above and paragraph 3 of Schedule 2 and the repeals specified in Schedule 3 shall come into force on such day or days as the Lord Chancellor appoints.
- (2) The power to appoint days for the coming into force of provisions of this Act shall be exercised by order made by statutory instrument.

*Status: Point in time view as at 01/10/1997.*

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#### Subordinate Legislation Made

- P3** Power of appointment conferred by s. 47(1)(a) fully exercised: 1.10.1986 appointed for s. 10 by [S.I. 1986/1049](#), [art. 2](#)
- P4** Power of appointment conferred by s. 47(1)(b) fully exercised: 16.9.1985 appointed by [S.I. 1985/1316](#)
- P5** Power of appointment conferred by s. 47(1)(c) partly exercised: S.Is. 1984/1589; 1985/1316; 1986/635; 1986/1049
- P6** Power of appointment conferred by s. 47(1)(d) fully exercised: 1.9.1986 appointed by [S.I. 1986/1226](#)
- P7** Power of appointment conferred by s. 47(1)(e) partly exercised: [S.I. 1984/1589](#); 1986/635. [S. 47\(1\)\(e\)](#) power partly exercised: 14.10.1991 appointed for specified provisions by [S.I.1991/1211](#)

#### 48 Short title and extent.

- (1) This Act may be cited as the Matrimonial and Family Proceedings Act 1984.
- (2) Parts I to III and V and Schedules 2 and 3 extend to England and Wales only, Part IV extends to Scotland only <sup>F13</sup> . . .
- (3) Where any enactment amended by Schedule 1 extends to any part of the United Kingdom, the amendment extends to that part.

#### Textual Amendments

- F13** Words in [s. 48\(2\)](#) repealed (4.11.1996) by [S.I. 1995/755](#), [art. 185\(2\)](#), [Sch. 10](#) (with [Sch. 8 para. 23\(4\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)



**Status:**

Point in time view as at 01/10/1997.

**Changes to legislation:**

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