

## SCHEDULES

### SCHEDULE 8

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### PART I

##### AMENDMENTS CONNECTED WITH PART II

##### *The Family Law Act 1986 (c. 55)*

- 37 (1) The Family Law Act 1986 is amended as follows.
- (2) For section 2(1) and (2) (jurisdiction to make orders under section 1) substitute—
- “(1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child unless—
- (a) the case falls within section 2A below; or
  - (b) in any other case, the condition in section 3 below is satisfied.”
- (3) For section 2A(1) (jurisdiction in or in connection with matrimonial proceedings), substitute—
- “(1) Subject to subsections (2) to (4) below, a case falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made—
- (a) at a time when—
    - (i) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage of the parents of the child concerned has been received by the court; and
    - (ii) it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or
  - (b) at a time when an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.
- (1A) A case also falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made in or in connection with any proceedings for the nullity of the marriage of the parents of the child concerned and—
- (a) those proceedings are continuing; or
  - (b) the order is made—
    - (i) immediately on the dismissal, after the beginning of the trial, of the proceedings; and
    - (ii) on an application made before the dismissal.”

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*Status: This is the original version (as it was originally enacted).*

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- (4) In section 2A(2), for the words from the beginning to “judicial separation” substitute “A case does not fall within this section if a separation order under the Family Law Act 1996 is in force in relation to the marriage of the parents of the child concerned if.”.
- (5) In section 2A(3), for “in which the other proceedings there referred to” substitute “in Scotland, Northern Ireland or a specified dependent territory in which the proceedings for divorce or nullity”.
- (6) In section 2A(4)—
- (a) for “in or in connection with matrimonial proceedings” substitute “by virtue of the case falling within this section”; and
  - (b) for “in or in connection with those proceedings” substitute “by virtue of section 2(1)(a) of this Act”.
- (7) In section 3 (child habitually resident or present in England and Wales), for “section 2(2)” substitute “section 2(1)(b)”.
- (8) In section 6 (duration and variation of Part I orders), for subsections (3A) and (3B) substitute—
- “(3A) Subsection (3) above does not apply if the Part I order was made in a case falling within section 2A of this Act.”
- (9) In section 38 (restriction on removal of wards of court from the jurisdiction), insert after subsection (3)—
- “(4) The reference in subsection (2) above to a time when proceedings for divorce or judicial separation are continuing in respect of a marriage in another part of the United Kingdom includes, in relation to any case in which England and Wales would be another part of the United Kingdom, any time when—
- (a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to that marriage has been received by the court and it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or
  - (b) an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.”
- (10) In section 42(2) (times when divorce etc. proceedings are to be treated as continuing for the purposes of certain restrictions on the removal of children from the jurisdiction), for the words from “unless” to the end substitute “be treated as continuing (irrespective of whether a divorce order, separation order or decree of nullity has been made)—
- (a) from the time when a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage is received by the court in England and Wales until such time as the court may designate or, if earlier, until the time when—
    - (i) the child concerned attains the age of eighteen; or
    - (ii) it ceases, by virtue of section 5(3) or 7(9) of that Act (lapse of divorce or separation process) to be possible for an application for a divorce order, or for a separation order, to be made by reference to that statement; and

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- (b) from the time when a petition for nullity is presented in relation to the marriage in England and Wales or a petition for divorce, judicial separation or nullity is presented in relation to the marriage in Northern Ireland or a specified dependent territory, until the time when—
    - (i) the child concerned attains the age of eighteen; or
    - (ii) if earlier, proceedings on the petition are dismissed.”
- (11) In section 51(4) (definitions), after the definition of “the relevant date” insert—
- ““judicial separation” includes a separation order under the Family Law Act 1996;”.