

SCHEDULES

SCHEDULE 3

Article 62.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

MISCELLANEOUS AND GENERAL

Interpretation

1.—(1) In this Schedule—

“the Act of 1939” means the Matrimonial Causes Act (Northern Ireland) 1939 ;

“the Act of 1951” means the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 .

(2) If different days are appointed under Article 1(2) for the commencement of different provisions of this Order, any reference in this Schedule to the commencement of this Order shall, in relation to any such provision, be construed as a reference to the commencement of that provision.

General transitional provisions and savings

2. Subject to paragraph 3, any application made or proceeding begun under any statutory provision repealed by this Order, being an application or proceeding which is pending at the commencement of this Order, shall be deemed to have been made or begun under any provision of this Order which corresponds to that statutory provision.

3. Nothing in Part II of this Order shall apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order, and notwithstanding any repeal or amendment made by this Order the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Order as they had effect immediately before the commencement of this Order.

4. Notwithstanding any repeal or amendment made by this Order, the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—

- (a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before the commencement of this Order which are pending at the commencement of this Order, and
- (b) any proceedings for relief under section 17(2) or (3), 19(4), 20(2) or 22(2) of the Act of 1939 (as extended, in the case of section 22, by section 7 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966) brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Order,

as they had effect immediately before the commencement of this Order, and nothing in Schedule 4 shall affect the operation of any other statutory provision in relation to any such proceedings.

5. Subject to the provisions of this Order (and, in particular, to Articles 16 and 51(2)) and to rules of court, in exercising its jurisdiction in relation to nullity of marriage the court may act and may give relief on principles and rules which, in the opinion of the court, are as nearly as may be conformable to those on which the ecclesiastical courts of Ireland acted and gave relief before 1st January 1871.

Specific transitional provisions and savings

6. In Article 6 any reference to a decree of judicial separation includes a reference to a decree of divorce a mensa et thoro granted before 1st October 1939.

7. Article 16(1) replaces, in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

8. In the application of Article 25(1)(*d*), (*e*) or (*f*) to any proceedings begun between 14th November 1966 and the commencement of this Order, Article 25 shall have effect as if, in paragraph (*b*) in the definition of “child of the family” in Article 2(2), for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 ; and in the corresponding application to any proceedings begun before 15th November 1966, Article 25 shall have effect as if the said paragraph (*b*) were omitted.

9. Where the party chargeable under a maintenance agreement within the meaning of Article 36 died before the date of the commencement of this Order, then—

- (a) paragraph (1) of that Article shall not apply to the agreement unless there remained undistributed on that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of his funeral, testamentary and administrative expenses, debts and liabilities, including any capital transfer tax or estate duty payable out of his estate on his death, but not including any liability arising by virtue of that paragraph; and
- (b) nothing in that paragraph shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.

10. No right or liability shall attach by virtue of Article 36(1) in respect of any sum payable under a maintenance agreement within the meaning of that Article in respect of a period before the commencement of this Order.

11. In relation to such proceedings as are mentioned in Article 45(1) which were begun between 14th November 1966 and the commencement of this Order or begun before 15th November 1966, Article 45(1) shall have effect as if, respectively, in paragraph (*b*) in the definition of “child of the family” in Article 2(2) for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966, or the said paragraph (*b*) were omitted.

12. Article 45(2) shall not apply in relation to an order made under section 4 of the Act of 1951 before the commencement of this Order and deemed by virtue of section 29 of the Interpretation Act (Northern Ireland) 1954 to be made under Article 29.

13.—(1) No proceedings for divorce shall be entertained by the court by virtue of Article 49(2) or (6) while proceedings for divorce or nullity of marriage begun before 1st January 1974 are pending (in respect of the same marriage) in England and Wales, Scotland, the Channel Islands or the Isle

of Man; and provision may be made by rules of court as to when for the purposes of this paragraph proceedings are to be treated as begun or pending in any of those places.

(2) Nothing in Article 49 affects the court's jurisdiction to entertain any proceedings begun before 1st January 1974.

14.—(1) Article 51(1) shall not apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order.

(2) Article 51(2) applies whether the marriage took place, or the proceedings were instituted, before or after the commencement of this Order.

15. In Article 54(3) any reference to rules of court as defined by section 21(4) of the Interpretation Act (Northern Ireland) 1954 includes a reference to such rules as so defined by any amendment of that Act for which provision is made by any Act of the Session in which this Order is made (whether or not that amendment is yet in force).

16. In paragraph 2 of Schedule 2 in sub-paragraph (*d*) the reference to the Master (Probate and Matrimonial) or a Registrar (Probate and Matrimonial) includes a reference to, respectively, the Chief Probate Registrar or an Assistant Probate Registrar, and in sub-paragraph (*e*) the reference to a circuit registrar includes a reference to a clerk of the Crown and peace.

17. The amendment made by Schedule 4 in section 1(1) of the Matrimonial Causes (Reports) Act (Northern Ireland) 1966 shall not prevent that Act having the same application in relation to any proceedings for restitution of conjugal rights which are continued by paragraph 4 as it would have had if the amendment had not been made.

PART II

PRESERVATION FOR LIMITED PURPOSES OF CERTAIN STATUTORY PROVISIONS

Nullity

18.—(1) Subject to sub-paragraphs (2) to (5), a marriage celebrated after 30th September 1939 and before the commencement of this Order shall (without prejudice to any other grounds on which a marriage celebrated before that time is by law void or voidable) be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage—
 - (i) was of unsound mind; or
 - (ii) was subject to recurrent attacks of insanity or epilepsy; or
 - (iii) was a person requiring special care within the meaning of the Mental Health Act (Northern Ireland) 1961 ; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.^[F1] or]

^[F1](e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;]

(2) Subject to sub-paragraph (3), in relation to a marriage celebrated before 2nd April 1962 for subheads (ii) and (iii) of sub-paragraph (1)(b) there shall be substituted —

“(ii) was subject to recurrent fits of insanity or epilepsy; or

(iii) might have been ascertained, in accordance with the provisions of Part III of the Mental Health Act (Northern Ireland) 1948, to be a person requiring special care within the meaning of that Act; or”.

(3) In relation to a marriage celebrated before 1st January 1949 sub-paragraph (1)(b)(iii) shall be omitted.

(4) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(b), (c) or (d) unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts alleged; and

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree;

and where the proceedings with respect to the marriage are instituted after the commencement of this Order the application of Article 16(1) in relation to the marriage shall be without prejudice to the preceding provisions of this sub-paragraph.

[^{F1}(4A) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(e) unless it is satisfied that proceedings were instituted within six months from the date of issue of the interim gender recognition certificate.]

(5) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

F1 2004 c. 7

19. Where a decree of nullity was granted before the commencement of this Order in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled shall be deemed to be their legitimate child.

Succession on intestacy in case of judicial separation

20. Article 20(2) shall not apply in a case where the death occurred before the commencement of this Order but section 15 of the Act of 1939 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death intestate, as if her husband had then been dead) shall continue to apply in any such case.

PART III

ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ORDER OF ORDERS MADE, ETC., UNDER THE ACT OF 1939, ETC.

Cesser on remarriage of orders made, etc., under the Act of 1939 or 1951 and recovery of sums mistakenly paid thereafter

21.—(1) An order made under section 19(1) or (2) of the Act of 1939 (including either of those subsections as applied by section 19(7)) shall, notwithstanding anything in the order, cease to have

effect on the remarriage after the commencement of this Order of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

(2) An order made under section 17(2) or (3), 19(4) (including that subsection as applied by section 19(7)) or 20(2) of the Act of 1939 or section 4 of the Act of 1951 shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Order of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

22. Article 40 shall apply in relation to an order made under section 17(2) or (3), 19(1), (2) or (4) (including those subsections as applied by section 19(7)) or 20(2) of the Act of 1939 or under section 4 of the Act of 1951 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

Variation, etc., of certain orders made, etc., under the Act of 1939, etc.

23.—(1) Subject to the provisions of this paragraph, Article 33 shall apply, as it applies to the orders mentioned in paragraph (2) thereof, to—

- (a) an order made under any of the following provisions of the Act of 1939, that is to say,—
 - (i) in section 19, subsections (1), (2), (3) and (4) (including those subsections as applied by subsection (7)), but excluding subsection (4) so far as it applies to an order made in connection with a decree for restitution of conjugal rights);
 - (ii) section 20(1), where the order is made in connection with a decree for judicial separation;
 - (iii) section 22(1), in so far as it relates to the maintenance of a child, and section 22(3);
- (b) an order made under section 4 of the Act of 1951;
- (c) an order such as is mentioned in section 19(6) of the Act of 1939 made in proceedings for judicial separation or for a divorce a mensa et thoro;
- (d) an order for alimony pending suit made in proceedings for judicial separation.

(2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made as mentioned in sub-paragraph (1) shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part III.

(3) Article 33, as it applies by virtue of sub-paragraph (1), shall have effect as if for paragraphs (4), (5) and (6) there were substituted the following paragraphs—

“(4) The court shall not exercise the powers conferred by this Article in relation to an order made under section 20(1) of the Matrimonial Causes Act (Northern Ireland) 1939 (“the Act of 1939”) in connection with the grant of a decree of judicial separation except on an application made in proceedings—

- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage in question.

(5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made under section 19(1), (2) or (4) (including those subsections as applied by section 19(7)) or section 22(1) or (3) of the Act of 1939 or section 4 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 (“the Act of 1951”).

(6) In the case of an order made under section 19(1) (including that subsection as applied by section 19(7)) or section 22(3) of the Act of 1939 or under section 4 of the Act of 1951,

requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this Article relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.” ; and in that Article, as it so applies, the reference in paragraph (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in paragraph (6).

(4) In relation to an order made before 13th February 1951 under section 19(1) of the Act of 1939 on or after granting a decree of divorce or nullity of marriage, the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any other order made by reference to that decree, being an order made under section 19(2) of the Act of 1939.

24.—(1) Paragraphs (1) and (3) of Article 33 shall apply to an order made under section 17(2) or (3) of the Act of 1939 or under section 19(4) of that Act in its application to proceedings for restitution of conjugal rights, or under section 20(2) or 22(2) of that Act, and to an order for alimony pending suit made in proceedings for restitution of conjugal rights, as they apply to the orders mentioned in paragraph (2) of Article 33.

(2) In exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

25. Article 45(7) shall apply in relation to an order for the custody or education of a child made under section 22(1) or (2) of the Act of 1939, as it applies in relation to an order made under Article 45.

*Orders made under the Acts of 1939 and 1951 to
count as orders under this Order for certain purposes*

26. The power of the court under Article 25(1) or (2)(a) or 45(1)(a) to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 22(1) of the Act of 1939.

*Application of provisions of this Order with respect to enforcement of arrears and recovery
of excessive payments to certain orders made, etc., under the Acts of 1939 and 1951*

27. Article 34 shall apply in relation to the enforcement, by proceedings begun after the commencement of this Order, of the payment of arrears due under an order made under section 17(2), 19, 20(2) or 22 (so far as it relates to the maintenance of a child) of the Act of 1939 or section 4 of the Act of 1951 or an order for alimony pending suit made in proceedings for judicial separation or restitution of conjugal rights as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that Article.

28. Article 35 shall apply to an order made or deemed to have been made under any of the provisions of the Act of 1939 mentioned in paragraph 27 as it applies to the orders mentioned in Article 35(2).

*Avoidance under this Order of transactions intended to defeat
claims for relief and relief granted under the Acts of 1939 and 1951*

29.—(1) Article 39 shall apply in relation to proceedings for relief under section 17(2) or (3), 19(4), 20(2) or 22(2) of the Act of 1939 continuing by virtue of paragraph 4(b) as it applies in relation to proceedings for relief under any of the provisions of this Order specified in Article 39(1).

(2) Without prejudice to sub-paragraph (1), Article 39 shall also apply where an order has been obtained under any of the following provisions of the Act of 1939, that is to say, sections 17, 19, 20, 22(1) (in so far as it relates to the maintenance of a child) and section 22(3) or under section 4 of the Act of 1951 as it applies where an order has been obtained under any of the provisions of this Order specified in Article 39(1).

Care and supervision of children

30. Articles 46 and 47 shall apply where the court has jurisdiction by virtue of paragraph 4(b) to make an order for the custody of a child under section 22(2) of the Act of 1939 as they apply where the court has jurisdiction to make an order for custody under Part IV of this Order, but as if the reference in Article 46(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.

PART IV

SAVING FOR INTERPRETATION ACT

31. Except where specific provision to the contrary is made in this Order, nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

Changes to legislation:

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, SCHEDULE 3.