

SCHEDULES

SCHEDULE 3

TRANSITIONAL PROVISIONS AND SAVINGS

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

Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, PART II. (See end of Document for details)

(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.

Changes to legislation:

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