



# Matrimonial Proceedings and Property Act 1970

## 1970 CHAPTER 45

### PART I

#### PROVISIONS WITH RESPECT TO ANCILLARY AND OTHER RELIEF IN MATRIMONIAL CAUSES AND TO CERTAIN OTHER MATRIMONIAL PROCEEDINGS

##### *Miscellaneous and supplemental*

**23 Settlement, etc., made in compliance with order under s. 4 may be avoided on  
bankruptcy of settlor**

The fact that a settlement or transfer of property had to be made in order to comply with an order of the court under section 4 of this Act shall not prevent that settlement or transfer from being a settlement of property to which section 42(1) of the Bankruptcy Act 1914 (avoidance of certain settlements) applies.

**24 Commencement of proceedings for financial provision orders, etc.**

(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings under section 1, 2, 3 or 4 of this Act may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but—

- (a) no order under section 2 or 4 of this Act shall be made unless a decree nisi of divorce or of nullity of marriage or a decree of judicial separation, as the case may be, has been granted ;
- (b) without prejudice to the power to give a direction under section 25 of this Act, no such order made on or after granting a decree nisi of divorce or of nullity of marriage, and no settlement made in pursuance of such an order, shall take effect unless the decree has been made absolute.

(2) Rules of court may provide, in such cases as may be prescribed by the rules—

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- (a) that applications for ancillary relief shall be made in the petition or answer ; and
- (b) that applications for ancillary relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

In this subsection " ancillary relief " means relief under any of the following provisions of this Act, that is to say, sections 1, 2, 3 and 4.

## **25 Direction for instrument to be settled by conveyancing counsel**

Where the court decides to make an order under this Part of this Act requiring any payments to be secured or an order under section 4 of this Act—

- (a) it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) in the case of an order under section 2, 3 or 4 of this Act, it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

## **26 Payments, etc., under order made in favour of person suffering from mental disorder**

Where the court makes an order under this Part of this Act requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1959, of managing and administering his or her property and affairs, then, subject to any order, direction or authority made or given in relation to that person under Part VIII of the said Act of 1959, the court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

## **27 Interpretation**

(1) In this Part of this Act—

" adopted " means adopted in pursuance of—

- (a) an adoption order made under the Adoption Act 1958, any previous enactment relating to the adoption of children, the Adoption Act 1968 or any corresponding enactment of the Parliament of Northern Ireland; or
- (b) an adoption order made in the Isle of Man or any of the Channel Islands; or
- (c) subject to sections 5 and 6 of the Adoption Act 1968, an overseas adoption within the meaning of section 4 of that Act;

" child ", in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;

" child of the family ", in relation to the parties to a marriage, means—

- (a) a child of both of those parties ; and

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- (b) any other child, not being a child who has been boarded-out with those parties by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;
    - " the court " (except where the context otherwise requires) means the High Court or, where a county court has jurisdiction by virtue of the Matrimonial Causes Act 1967, a county court;
    - " custody ", in relation to a child, includes access to the child;
    - " education " includes training.
- (2) For the avoidance of doubt it is hereby declared that references in this Part of this Act to remarriage include references to a marriage which is by law void or voidable.
- (3) Any reference in this Part of this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment, including this Act.