



Matrimonial Causes Act 1973

1973 CHAPTER 18

PART I

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

1 Divorce on breakdown of marriage

- (1) Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.
- (2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—
 - (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
 - (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
 - (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
 - (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred, to as "two years' separation") and the respondent consents to a decree being granted;
 - (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as "five years' separation").
- (3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

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- (4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 3(3) and 5 below, grant a decree of divorce.
- (5) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant unless the High Court by general order from time to time fixes a shorter period, or unless in any particular case the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this subsection.

2 Supplemental provisions as to facts raising presumption of breakdown

- (1) One party to a marriage shall not be entitled to rely for the purposes of section 1(2)(a) above on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.
- (2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) above does not apply, in any proceedings for divorce in which the petitioner relies on that adultery the fact that the parties have lived with each other after that time shall be disregarded in determining for the purposes of section 1(2)(a) above whether the petitioner finds it intolerable to live with the respondent.
- (3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 1(2)(b) above whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.
- (4) For the purposes of section 1(2)(c) above the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.
- (5) In considering for the purposes of section 1(2) above whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.
- (6) For the purposes of section 1(2)(d) and (e) above and this section a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

- (7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of section 1(2)(d) above the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

3 Restriction on petitions for divorce within three years of marriage

- (1) Subject to subsection (2) below, no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of the marriage (hereafter in this section referred to as " the specified period ").
- (2) A judge of the court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the judge shall have regard to the interests of any child of the family and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.
- (3) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under subsection (2) above, that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may—
- (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the specified period upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
 - (b) if it grants a decree, direct that no application to make the decree absolute shall be made during the specified period.
- (4) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

4 Divorce not precluded by previous judicial separation

- (1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Matrimonial Proceedings (Magistrates' Courts) Act 1960 or any corresponding enactments in force in Northern Ireland, the Isle of Man or any of the Channel Islands.
- (2) On a petition for divorce in such a case as is mentioned in subsection (1) above, the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.
- (3) Where a petition for divorce in such a case follows a decree of judicial separation or an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has

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been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

5 Refusal of decree in five year separation cases on grounds of grave hardship to respondent

- (1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.
- (2) Where the grant of a decree is opposed by virtue of this section, then—
 - (a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 1(2) above, and
 - (b) if apart from this section the court would grant a decree on the petition,the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that (the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.
- (3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

6 Attempts at reconciliation of parties to marriage

- (1) Provision shall be made by rules of court for requiring the solicitor acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.
- (2) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation. The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

7 Consideration by the court of certain agreements or arrangements

Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

8 Intervention of Queen's Proctor

- (1) In the case of a petition for divorce—
 - (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen's Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued ;
 - (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.
- (2) Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.
- (3) The Queen's Proctor shall be entitled to charge as part of the expenses of his office—
 - (a) the costs of any proceedings under subsection (1)(a) above;
 - (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) above are not fully satisfied by any order under that subsection, the amount of the difference ;
 - (c) if the Treasury so directs, any costs which he pays to any parties under an order made under subsection (2).

9 Proceedings after decree nisi: general powers of court

- (1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 8 above, any person (excluding a party to the proceedings other than the Queen's Proctor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—
 - (a) notwithstanding anything in section 1(5) above (but subject to sections 10(2) to (4) and 41 below) make the decree absolute ; or
 - (b) rescind the decree ; or
 - (c) require further inquiry; or
 - (d) otherwise deal with the case as it thinks fit.
- (2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above.

10 Proceedings after decree nisi: special protection for respondent in separation cases

- (1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years'

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separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in section 1(2) above, the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.

- (2) The following provisions of this section apply where—
- (a) the respondent to a petition for divorce in which the petitioner alleged two years' or five years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under subsection (3) below of his financial position after the divorce ; and
 - (b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation (as the case may be) and has made no such finding as to any other fact mentioned in section 1(2) above.
- (3) The court hearing an application by the respondent under subsection (2) above shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and, subject to subsection (4) below, the court shall not make the decree absolute unless it is satisfied—
- (a) that the petitioner should not be required to make any financial provision for the respondent, or
 - (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.
- (4) The court may if it thinks fit make the decree absolute notwithstanding the requirements of subsection (3) above if—
- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay, and
 - (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

Nullity

11 Grounds on which a marriage is void

A marriage celebrated after 31st July 1971 shall be void on the following grounds only, that is to say—

- (a) that it is not a valid marriage under the provisions of the Marriages Acts 1949 to 1970 (that is to say where—
 - (i) the parties are within the prohibited degrees of relationship;
 - (ii) either party is under the age of sixteen; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
- (b) that at the time of the marriage either party was already lawfully married;
- (c) that the parties are not respectively male and female ;

- (d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales.

For the purposes of paragraph (d) of this subsection a marriage may be polygamous although at its inception neither party has any spouse additional to the other.

12 Grounds on which a marriage is voidable

A marriage celebrated after 31st July 1971 shall be voidable on the following grounds only, that is to say—

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

13 Bars to relief where marriage is voidable

- (1) The court shall not, in proceedings instituted after 31st July 1971, grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court—
 - (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
 - (b) that it would be unjust to the respondent to grant the decree.
- (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 it is satisfied that proceedings were instituted within three years from the date of the marriage.
- (3) Without prejudice to subsections (1) and (2) above, the court shall not grant a decree of nullity by virtue of section 12 above on the grounds mentioned in paragraph (e) or (f) of that section unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

14 Marriages governed by foreign law or celebrated abroad under English law

- (1) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales, nothing in section 11, 12 or 13(1) above shall—
 - (a) preclude the determination of that matter as aforesaid ; or

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(b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.

(2) In the case of a marriage which purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 or has taken place outside England and Wales and purports to be a marriage under common law, section 11 above is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside England and Wales under common law.

15 Application of ss. 1(5), 8 and 9 to nullity proceedings

Sections 1(5), 8 and 9 above shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

16 Effect of decree of nullity in case of voidable marriage

A decree of nullity granted after 31st July 1971 in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

Other matrimonial suits

17 Judicial separation

(1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 1(2) above exists, and the provisions of section 2 above shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.

(2) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 1(2) above it shall, subject to section 41 below, grant a decree of judicial separation.

(3) Sections 6 and 7 above shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial separation and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

18 Effects of judicial separation

(1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with, the respondent.

(2) If while a decree of judicial separation is in force and the separation is continuing either of the parties to the marriage dies intestate as respects all or any of his or her

real or personal property, the property as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

- (3) Notwithstanding anything in section 2(1)(a) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, a provision in force under an order made, or having effect as if made, under that section exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a decree of judicial separation for the purposes of subsection (2) above.

19 Presumption of death and dissolution of marriage

- (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, subject to subsection (2) below, present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court may, if satisfied that such reasonable grounds exist, grant a decree of presumption of death and dissolution of the marriage.
- (2) A petition may be presented in pursuance of subsection (1) above—
- (a) in any case, if the petitioner is domiciled in England and Wales; and
 - (b) in the case of a petition presented by a wife, if she is resident in England and Wales and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings.
- (3) In any proceedings under this section the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.
- (4) Sections 1(5), 8 and 9 above shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.
- (5) In determining for the purposes of this section whether a woman is domiciled in England and Wales, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living; and in any proceedings brought in pursuance of subsection (2)(b) above the issues shall be determined in accordance with the law which would be applicable thereto if both parties to the marriage were domiciled in England and Wales at the time of the proceedings.
- (6) It is hereby declared that neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the grant of a decree under this section.

General

20 Relief for respondent in divorce proceedings

If in any proceedings for divorce the respondent alleges and proves any such fact as is mentioned in subsection (2) of section 1 above (treating the respondent as the petitioner and the petitioner as the respondent for the purposes of that subsection) the court may give to the respondent the relief to which he would have been entitled if he had presented a petition seeking that relief.

PART II

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Financial provision and property adjustment orders

21 Financial provision and property adjustment orders

(1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 23 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 27(6) below on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say—

- (a) any order for periodical payments in favour of a party to a marriage under section 23(1)(a) or 27(6)(a) or in favour of a child of the family under section 23(1)(d), (2) or (4) or 27(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 23(1)(b) or 27(6)(b) or in favour of a child of the family under section 23(1)(e), (2) or (4) or 27(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 23(1)(c) or 27(6)(c) or in favour of a child of the family under section 23(1)(f), (2) or (4) or 27(6)(f);

and references in this Act (except in paragraphs 17(1) and 23 of Schedule 1 below) to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 24 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say—

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property ;
and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

Ancillary relief in connection with divorce proceedings, etc.

22 Maintenance pending suit

On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

23 Financial provision orders in connection with divorce proceedings, etc.

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified ;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) above—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree ; and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(3) Without prejudice to the generality of subsection (1)(c) or (f) above—

- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
- (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
- (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The power of the court under subsection (1) or (2)(a) above to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) above, it may from time

to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f) above.

- (5) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under subsection (1)(a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

24 Property adjustment orders in connection with divorce proceedings, etc.

- (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) 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 specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion ;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, 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 ;
- (c) 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 ;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

- (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
- (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

25 Matters to which court is to have regard in deciding how to exercise its powers under sections 23 and 24

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(a), (b) or (c) or 24 above in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (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 ;

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- (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 made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either 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 ;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

- (2) Without prejudice to subsection (3) below, it shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(d), (e) or (f), (2) or (4) or 24 above in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—
- (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 breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraph (a) and (b) of subsection (1) above, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

- (3) It shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(d), (e) or (f), (2) or (4) or 24 above against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)—
- (a) to whether that party had 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.

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

26 Commencement of proceedings for ancillary relief, etc.

- (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings for maintenance pending suit under section 22 above, for a financial provision order under section 23 above, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.
- (2) Rules of court may provide, in such cases as may be prescribed by the rules—
 - (a) that applications for any such relief as is mentioned in subsection (1) above shall be made in the petition or answer; and
 - (b) that applications for any such 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.

Financial provision in case of neglect to maintain

27 Financial provision orders, etc., in case of neglect by party to marriage to maintain other party or child of the family

- (1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)
 - (a) being the husband, has wilfully neglected—
 - (i) to provide reasonable maintenance for the applicant, or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
 - (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—
 - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or
 - (ii) for any child of the family to whom this section applies.
- (2) The court shall not entertain an application under this section unless it would have jurisdiction to entertain proceedings by the applicant for judicial separation.
- (3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.
- (4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—
 - (a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child, and
 - (b) what order, if any, to make under this section in favour of the child,the court shall have regard to the matters mentioned in section 25(3) above.

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

- (5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.
- (6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, the court may make such one or more of the following orders as it thinks just, that is to say—
- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
 - (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
 - (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified ;
 - (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
 - (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
 - (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;
- subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.
- (7) Without prejudice to the generality of subsection (6)(c) or (f) above, an order under this section for the payment of a lump sum—
- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
 - (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (8) For the purpose of proceedings on an application under this section adultery which has been condoned shall not be capable of being revived, and any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.

Additional provisions with respect to financial provision and property adjustment orders

28 Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage

- (1) 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, subject to the following limits, that is to say—

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and
 - (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of such a decree, the remarriage of the party in whose favour the order is made.
- (2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.
- (3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

29 Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour

- (1) Subject to subsection (3) below, no financial provision order and no order for a transfer of property under section 24(1)(a) above shall be made in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances of the case to specify a later date ; and
 - (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) Subsection (1) above, and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that—
- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

- (4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

30 Direction for settlement of instrument for securing payments or effecting property adjustment

Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order—

- (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) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

Variation, discharge and enforcement of certain orders, etc.

31 Variation, discharge, etc., of certain orders for financial relief

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order ;
 - (c) any secured periodical payments order ;
 - (d) any order made by virtue of section 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments);
 - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the grant of a decree of judicial separation.
- (3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.
- (4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above except on an application made in proceedings—
 - (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
 - (b) for the dissolution of the marriage in question.
- (5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 23 or under section 27 above).

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

- (6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order may be made by the person entitled to payments under the order 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.
- (7) In exercising the powers conferred by this section 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 and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.
- (8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (9) In considering for the purposes of subsection (6) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

32 Payment of certain arrears unenforceable without the leave of the court

- (1) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.
- (2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

33 Orders for repayment in certain cases of sums paid under certain orders

- (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—
 - (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
 - (b) the changed circumstances resulting from the death of the person so liable,

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the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order ; and
 - (c) any secured periodical payments order.
- (3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.
- (4) An application under this section may be made in proceedings in the High Court or a county court for—
 - (a) the variation or discharge of the order to which this section applies, or
 - (b) leave to enforce, or the enforcement of, the payment of arrears under that order;but when not made in such proceedings shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (5) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (6) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Maintenance agreements

34 Validity of maintenance agreements

- (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—
 - (a) that provision shall be void ; but
 - (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 35 and 36 below), be binding on the parties to the agreement.
- (2) In this section and in section 35 below—

" maintenance agreement " means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being—

 - (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

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

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

" financial arrangements " means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

35 Alteration of agreements by court during lives of parties

(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (3) below, either party may apply to the court or to a magistrates' court for an order under this section.

(2) If the court to which the application is made is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to subsections (3), (4) and (5) below, that court may by order make such alterations in the agreement—

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 25(3) above; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A magistrates' court shall not entertain an application under subsection (1) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which the court acts, and shall not have power to make any order on such an application except—

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate

of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—

- (a) where the payments will not be secured, the term shall be so denned as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made ;
 - (b) where the payments will be secured, the term shall be so denned as not to extend beyond the death or remarriage of that party.
- (5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 29(2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.
- (6) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

36 Alteration of agreements by court after death of one party

- (1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 35 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of section 7 of the Family Provision Act 1966 (which confers jurisdiction on county courts in proceedings under the Inheritance (Family Provision) Act 1938 or section 26 of the Matrimonial Causes Act 1965 if the value of the deceased's net estate does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under section 26 of the Matrimonial Causes Act 1965 (application for maintenance out of deceased's estate by former spouse) in relation to the deceased's estate.
- (4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

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

- (5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.
- (7) Subsection (3) of section 7 of the Family Provision Act 1966 (transfer to county court of proceedings commenced in the High Court) and paragraphs (a) and (b) of subsection (5) of that section (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to any such proceedings as are referred to in subsection (1) of that section.

Miscellaneous and supplemental

37 Avoidance of transactions intended to prevent or reduce financial relief

- (1) For the purposes of this section " financial relief " means relief under any of the provisions of sections 22, 23, 24, 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.
- (2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—
 - (a) if it is satisfied that the other party to the proceedings 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 ;
 - (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.
- (3) Where the court makes an order under subsection (2)(b) or (c) 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).

- (4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of subsection (2)(b) and (c) 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.
- (5) Where an application is made under this section 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
 - (b) in a case falling within subsection (2)(c) above, that the disposition has had the consequence,of defeating the applicant's claim 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.
- (6) 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.
- (7) This section does not apply to a disposition made before 1st January 1968.

38 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage

- (1) Where—
 - (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as " a payments order ") has ceased to have effect by reason of the remarriage of that party, and
 - (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.
- (2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

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

- (3) An application under this section may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a county court; and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (4) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) The clerk of a magistrates' court to whom any payments under a payments order are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable—
- (a) in the case of the clerk, for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
 - (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,
- if, but only if, the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.
- (7) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates' court to whom a person makes payments in compliance with the order.

39 Settlement, etc., made in compliance with a property adjustment order 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 a property adjustment order 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.

40 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 that Act, 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.

PART III

PROTECTION, CUSTODY, ETC., OF CHILDREN

41 Restriction on decrees for dissolution, annulment or separation affecting children

- (1) The Court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—
 - (a) that for the purposes of this section there are no children of the family to whom this section applies ; or
 - (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
 - (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.
- (2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) above unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.
- (3) If the court makes absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.
- (4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.
- (5) This section applies to the following children of the family, that is to say—
 - (a) any minor child of the family who at the date of the order under subsection (1) above is—
 - (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
 - (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

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and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to him.

- (6) In this section "welfare", in relation to a child, includes the custody and education of the child and financial provision for him.

42 Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect

- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.

- (2) Where the court makes an order under section 27 above, the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.
- (3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.
- (4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.
- (5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.
- (6) The power of the court under subsection (1)(a) or (2) above to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) above with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.
- (7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

43 Power to commit children to care of local authority

- (1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may if it thinks fit make an order committing the care of the child to the council of a county other than a metropolitan county, or of a metropolitan district or London borough or the Common Council of the City of London (hereafter in this section referred to as " the local authority "); and thereupon Part II of the Children Act 1948 (which relates to the treatment of children in the care of a local authority) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section 1 of that Act.
- (2) The authority specified in an order under this section shall be the local authority for the area in which the child was, in the opinion of the court, resident before the order was made to commit the child to the care of a local authority, and the court shall before making an order under this section hear any representations from the local authority, including any representations as to the making of a financial provision order in favour of the child.
- (3) While an order made by virtue of this section is in force with respect to a child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- (4) An order made by virtue of this section shall cease to have effect as respects any child when he becomes eighteen, and the court shall not make an order committing a child to the care of a local authority under this section after he has become seventeen.
- (5) In the application of Part II of the Children Act 1948 by virtue of this section—
 - (a) the exercise by the local authority of their powers under sections 12 to 14 of that Act (which among other things relate to the accommodation and welfare of a child in the care of a local authority) shall be subject to any directions given by the court; and
 - (b) section 17 of that Act (which relates to arrangements for the emigration of such a child) shall not apply.
- (6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being, and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding ten pounds.
- (7) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.
- (8) So long as by virtue of paragraph 13 of Schedule 4 to the Children and Young Persons Act 1969 sections 15 and 16 of the Children Act 1948 continue to apply in relation to a local authority, subsection (5)(a) above shall have effect in relation to that authority as if for the reference to sections 12 to 14 of the last-mentioned Act there were substituted a reference to sections 12 to 16 of that Act.
- (9) Subject to the following provisions of this subsection, until 1st April 1974 subsection (1) above shall have effect as if for the words " other than a metropolitan county, or of a metropolitan district" there were substituted the words " county borough "

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An order (or orders) made under section 273(2) of the Local Government Act 1972 (orders bringing provisions of that Act into force before 1st April 1974) may appoint an earlier date (or, as the case may be, different dates for different purposes or areas) on which subsection (1) above shall cease to have effect as mentioned above.

44 Power to provide for supervision of children

- (1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority.
- (2) Where the court makes an order under this section for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State ; and where the order is for supervision by a local authority, that authority shall be the council of a county other than a metropolitan county, or of a metropolitan district or London borough selected by the court and specified in the order or, if the Common Council of the City of London is so selected and specified, that Council.
- (3) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under section 43 above is in the care of a local authority.
- (4) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any financial provision order in the child's favour or any order made with respect to his custody or education under this Part of this Act shall, subject to any rules of court, be exercisable at the instance of that court itself.
- (5) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.
- (6) Subject to the following provisions of this subsection, until 1st April 1974 subsection (2) above shall have effect as if for the words " other than a metropolitan county, or of a metropolitan district" there were substituted the words " county borough " .

An order (or orders) made under section 273(2) of the Local Government Act 1972 may appoint an earlier date (or, as the case may be, different dates for different purposes or areas) on which subsection (2) above shall cease to have effect as mentioned above.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

45 Declarations of legitimacy, etc.

- (1) Any person who is a British subject, or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage, may,

if he is domiciled in England and Wales or in Northern Ireland or claims any real or personal estate situate in England and Wales, apply by petition to the High Court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

- (2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the High Court, or may apply to a county court in the manner prescribed by county court rules, for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimacy Act 1926, and includes a person recognised under section 8 of that Act as legitimated.

- (3) Where an application under subsection (2) above is made to a county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court; and on such a transfer the proceeding shall be continued in the High Court as if it had been originally commenced by petition to the court.
- (4) Any person who is domiciled in England and Wales or in Northern Ireland or claims any real or personal estate situate in England and Wales may apply to the High Court for a decree declaring his right to be deemed a British subject.
- (5) Applications to the High Court under the preceding provisions of this section may be included in the same petition, and on any application under the preceding provisions of this section the High Court or, as the case may be, the county court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person—
- (a) if it is subsequently proved to have been obtained by fraud or collusion ; or
 - (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.
- (6) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Attorney-General at least one month before the application is made, and the Attorney-General shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.
- (7) Where any application is made under this section, such persons as the court hearing the application thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.
- (8) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.
- (9) The court hearing an application under this section may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

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46 Additional jurisdiction in proceedings by a wife

- (1) Without prejudice to any jurisdiction exercisable by the court apart from this section, the court shall have jurisdiction to entertain proceedings by a wife, notwithstanding that the husband is not domiciled in England and Wales.—
 - (a) in the case of any proceedings under this Act (other than proceedings under section 19 or sections 34 to 36), if—
 - (i) the wife has been deserted by her husband, or
 - (ii) the husband has been deported from the United Kingdom under any law for the time being in force relating to deportation, and the husband was immediately before the desertion or deportation domiciled in England and Wales;
 - (b) in the case of proceedings for divorce or nullity of marriage, if—
 - (i) the wife is resident in England and Wales and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and
 - (ii) the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.
- (2) In any proceedings in which the court has jurisdiction by virtue of subsection (1) above the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England and Wales at the time of the proceedings.

47 Matrimonial relief and declarations of validity in respect of polygamous marriages

- (1) A court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that the marriage in question was entered into under a law which permits polygamy.
- (2) In this section " matrimonial relief " means—
 - (a) any decree under Part I of this Act;
 - (b) a financial provision order under section 27 above;
 - (c) an order under section 35 above altering a maintenance agreement;
 - (d) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for, any such decree or order as is mentioned in paragraphs (a) to (c) above ;
 - (e) an order under the Matrimonial Proceedings (Magistrates' Courts) Act 1960.
- (3) In this section " a declaration concerning the validity of a marriage " means—
 - (a) a declaration that a marriage is valid or invalid; and
 - (b) any other declaration involving a determination as to the validity of a marriage ;

being a declaration in a decree granted under section 45 above or a declaration made in the exercise by the High Court of its jurisdiction to grant declaratory relief in any proceedings notwithstanding that a declaration is the only substantive relief sought in those proceedings.
- (4) This section has effect whether or not either party to the marriage in question has for the time being any spouse additional to the other party; and provision may be made by rules of court—

- (a) for requiring notice of proceedings brought by virtue of this section to be served on any such other spouse; and
 - (b) for conferring on any such other spouse the right to be heard in any such proceedings,
- in such cases as may be prescribed by the rules.

48 Evidence

- (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.
- (2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

49 Parties to proceedings under this Act

- (1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.
- (2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of subsection (1) above where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.
- (3) Where in pursuance of subsection (1) above a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.
- (4) Rules of court may make provision, in cases not falling within subsection (1) above, with respect to the joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.
- (5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

50 Matrimonial causes rules

- (1) The authority having power to make rules of court for the purposes of—
 - (a) this Act, the Matrimonial Causes Act 1967 (which confers jurisdiction on county courts in certain matrimonial proceedings), section 45 of the Courts Act 1971 (transfer of matrimonial proceedings between High Court and

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county court, etc.) and sections 26 to 28A of the Matrimonial Causes Act 1965 (maintenance of survivor from estate of deceased former spouse);

- (b) proceedings in the High Court or a divorce county court for an order under section 7 of the Matrimonial Homes Act 1967 (transfer of protected or statutory tenancy under Rent Act 1968 on dissolution or annulment of marriage);
- (c) certain other proceedings in the High Court, that is to say—
 - (i) proceedings in the High Court under section 17 of the Married Women's Property Act 1882, not being proceedings in the divorce registry treated by virtue of rules made under this section for the purposes of section 45 of the Courts Act 1971 as pending in a county court;
 - (ii) proceedings in the High Court under section 1 of the Matrimonial Homes Act 1967 (rights of occupation of matrimonial home for spouse not otherwise entitled);
 - (iii) proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status; or
- (d) any enactment passed after this Act which relates to any matter dealt with in this Act, the Matrimonial Causes Act 1967 or sections 26 to 28A of the Matrimonial Causes Act 1965 ;

shall, subject to the exceptions listed in subsection (2) below, be the Lord Chancellor together with any four or more of the following persons, namely, the President of the Family Division, one puisne judge attached to that division, one registrar of the divorce registry, two Circuit judges, one registrar appointed under the County Courts Act 1959, two practising barristers being members of the General Council of the Bar and two practising solicitors of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society and also of a local law society.

All the members of the authority, other than the Lord Chancellor himself and the President of the Family Division, shall be appointed by the Lord Chancellor for such time as he may think fit.

- (2) The following shall be excepted from the purposes mentioned in subsection (1) above—
 - (a) proceedings in a county court in the exercise of a jurisdiction exercisable by any county court whether or not it is a divorce county court, that is to say, proceedings in a county court under section 32, 33, 36, 38 or 45 above or under section 26 or 27 of the Matrimonial Causes Act 1965 ;
 - (b) section 47 above, in so far as it relates to proceedings in a county court under section 45 above or to proceedings for an order under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 ;
 - (c) any enactment passed after this Act in so far as it relates to proceedings in a county court in the exercise of any such jurisdiction as is mentioned in paragraph (a) above or to any aspect of section 47 above which is excepted by paragraph (b) above.
- (3) Rules of court made under this section may apply, with or without modification, any rules of court made under the Supreme Court of Judicature (Consolidation) Act 1925, the County Courts Act 1959 or any other enactment and—
 - (a) may modify or exclude the application of any such rules or of any provision of the County Courts Act 1959;

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(b) may provide for the enforcement in the High Court of orders made in a divorce county court;

and, without prejudice to the generality of the preceding provisions, may make with respect to proceedings in a divorce county court any provision regarding the Official Solicitor or any solicitor of the Supreme Court which could be made by rules of court with respect to proceedings in the High Court.

(4) The power to make rules of court by virtue of subsection (1) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section " divorce county court" means a county court designated under section 1 of the Matrimonial Causes Act 1967 and " divorce registry " means the principal registry of the Family Division of the High Court.

51 Fees in matrimonial proceedings

The fees to be taken in any proceedings to which rules under section 50 above apply shall be such as the Lord Chancellor with the concurrence of the Treasury may from time to time by order made by statutory instrument prescribe.

52 Interpretation

(1) In 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

(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) In this Act—

(a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 21 above; and

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- (b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 22 and section 27(5) above.
- (3) For the avoidance of doubt it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.
- (4) Except where the contrary intention is indicated, references in this Act to any enactment include references to that enactment as amended, extended or applied by or under any subsequent enactment, including this Act.

53 Transitional provisions and savings

Schedule 1 to this Act shall have effect for the purpose of—

- (a) the transition to the provisions of this Act from the law in force before the commencement of this Act;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Act or by enactments repealed and replaced by this Act; and
- (c) the assimilation in certain respects to orders under this Act of orders made, or deemed to have been made, under the Matrimonial Causes Act 1965.

54 Consequential amendments and repeals

- (1) Subject to the provisions of Schedule 1 to this Act—
 - (a) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act or on enactments repealed by this Act; and
 - (b) the enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The amendment of any enactment by Schedule 2 to this Act shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

55 Citation, commencement and extent

- (1) This Act may be cited as the Matrimonial Causes Act 1973.
- (2) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) Subject to the provisions of paragraphs 3(2) and 7(3) of Schedule 2 below, this Act does not extend to Scotland or Northern Ireland.