



# 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

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.