



# 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.