SCHEDULES

SCHEDULE 3

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

MISCELLANEOUS AND GENERAL

Interpretation

1.—(1) In this Schedule—

"the Act of 1939" means the Matrimonial Causes Act (Northern Ireland) 1939 ;

"the Act of 1951" means the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 .

(2) If different days are appointed under Article 1(2) for the commencement of different provisions of this Order, any reference in this Schedule to the commencement of this Order shall, in relation to any such provision, be construed as a reference to the commencement of that provision.

General transitional provisions and savings

2. Subject to paragraph 3, any application made or proceeding begun under any statutory provision repealed by this Order, being an application or proceeding which is pending at the commencement of this Order, shall be deemed to have been made or begun under any provision of this Order which corresponds to that statutory provision.

3. Nothing in Part II of this Order shall apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order, and notwithstanding any repeal or amendment made by this Order the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Order as they had effect immediately before the commencement of this Order.

4. Notwithstanding any repeal or amendment made by this Order, the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—

(a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before the commencement of this Order which are pending at the commencement of this Order, and

(b) any proceedings for relief under section 17(2) or (3), 19(4), 20(2) or 22(2) of the Act of 1939 (as extended, in the case of section 22, by section 7 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966) brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Order,

as they had effect immediately before the commencement of this Order, and nothing in Schedule 4 shall affect the operation of any other statutory provision in relation to any such proceedings.

5. Subject to the provisions of this Order (and, in particular, to Articles 16 and 51(2)) and to rules of court, in exercising its jurisdiction in relation to nullity of marriage the court may act and may give relief on principles and rules which, in the opinion of the court, are as nearly as may be conformable to those on which the ecclesiastical courts of Ireland acted and gave relief before 1st January 1871.

Specific transitional provisions and savings

6. In Article 6 any reference to a decree of judicial separation includes a reference to a decree of divorce a mensa et thoro granted before 1st October 1939.

7. Article 16(1) replaces, in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

8. In the application of Article 25(1)(*d*), (*e*) or (*f*) to any proceedings begun between 14th November 1966 and the commencement of this Order, Article 25 shall have effect as if, in paragraph (*b*) in the definition of "child of the family" in Article 2(2), for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 ; and in the corresponding application to any proceedings begun before 15th November 1966, Article 25 shall have effect as if the said paragraph (*b*) were omitted.

9. Where the party chargeable under a maintenance agreement within the meaning of Article 36 died before the date of the commencement of this Order, then—

(a) paragraph (1) of that Article shall not apply to the agreement unless there remained undistributed on that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of his funeral, testamentary and administrative expenses, debts and liabilities, including any capital transfer tax or estate duty payable out of his estate on his death, but not including any liability arising by virtue of that paragraph; and

(b) nothing in that paragraph shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.

10. No right or liability shall attach by virtue of Article 36(1) in respect of any sum payable under a maintenance agreement within the meaning of that Article in respect of a period before the commencement of this Order.

11. In relation to such proceedings as are mentioned in Article 45(1) which were begun between 14th November 1966 and the commencement of this Order or begun before 15th November 1966, Article 45(1) shall have effect as if, respectively, in paragraph (*b*) in the definition of "child of the family" in Article 2(2) for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966, or the said paragraph (*b*) were omitted.

12. Article 45(2) shall not apply in relation to an order made under section 4 of the Act of 1951 before the commencement of this Order and deemed by virtue of section 29 of the Interpretation Act (Northern Ireland) 1954 to be made under Article 29.

13.—(1) No proceedings for divorce shall be entertained by the court by virtue of Article 49(2) or (6) while proceedings for divorce or nullity of marriage begun before 1st January 1974 are pending (in respect of the same marriage) in England and Wales, Scotland, the Channel Islands or the Isle

of Man; and provision may be made by rules of court as to when for the purposes of this paragraph proceedings are to be treated as begun or pending in any of those places.

(2) Nothing in Article 49 affects the court's jurisdiction to entertain any proceedings begun before 1st January 1974.

14.—(1) Article 51(1) shall not apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order.

(2) Article 51(2) applies whether the marriage took place, or the proceedings were instituted, before or after the commencement of this Order.

15. In Article 54(3) any reference to rules of court as defined by section 21(4) of the Interpretation Act (Northern Ireland) 1954 includes a reference to such rules as so defined by any amendment of that Act for which provision is made by any Act of the Session in which this Order is made (whether or not that amendment is yet in force).

16. In paragraph 2 of Schedule 2 in sub-paragraph (*d*) the reference to the Master (Probate and Matrimonial) or a Registrar (Probate and Matrimonial) includes a reference to, respectively, the Chief Probate Registrar or an Assistant Probate Registrar, and in sub-paragraph (*e*) the reference to a circuit registrar includes a reference to a clerk of the Crown and peace.

17. The amendment made by Schedule 4 in section 1(1) of the Matrimonial Causes (Reports) Act (Northern Ireland) 1966 shall not prevent that Act having the same application in relation to any proceedings for restitution of conjugal rights which are continued by paragraph 4 as it would have had if the amendment had not been made.

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, PART I.