



# Matrimonial Causes Act 1965

## 1965 CHAPTER 72

### PART I

#### DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

##### *Divorce*

### 1 Grounds for petition

- (1) Subject to the next following section, a petition for divorce may be presented to the High Court (hereafter in this Act referred to as "the court")—
- (a) by the husband or the wife on the ground that the respondent—
    - (i) has since the celebration of the marriage committed adultery; or
    - (ii) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition ; or
    - (iii) has since the celebration of the marriage treated the petitioner with cruelty; or
    - (iv) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition ;
  - (b) by the wife on the ground that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestiality.
- (2) In calculating for the purposes of subsection (1)(a)(ii) of this section the period for which the respondent has deserted the petitioner without cause, and in considering whether the desertion has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to reconciliation ; and, for the purposes of a petition for divorce, 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 that intention continued at that time.

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- (3) For the purposes of subsection (1)(a)(iv) of this section, a person of unsound mind shall be deemed to be under care and treatment while, and only while—
- (a) he is liable to be detained in a hospital, mental nursing home or place of safety under the Mental Health Act 1959 or in a hospital or place of safety under the Mental Health (Scotland) Act 1960 ;
  - (b) he is detained in pursuance of an order for his detention or treatment as a person of unsound mind or a person suffering from mental illness made under any law for the time being in force in Northern Ireland, the Isle of Man or any of the Channel Islands (including any such law relating to criminal lunatics) or is receiving treatment as a voluntary patient under any law so in force;
  - (c) he is receiving treatment for mental illness as a resident in—
    - (i) a hospital or other institution provided, approved, licensed, registered or exempted from registration by any Minister or other authority in the United Kingdom, the Isle of Man or the Channel Islands; or
    - (ii) a hospital or other institution in any other country, being a hospital or institution in which his treatment is comparable with the treatment provided in any such hospital or institution as is mentioned in subparagraph (i) of this paragraph ;
 and, in determining for the purposes of the said subsection (1)(a)(iv) whether any period of care and treatment has been continuous, any interruption of the period for twenty-eight days or less shall be disregarded.
- (4) A certificate by a Secretary of State that a person was receiving treatment for mental illness during any period as a resident in any naval, military or air force hospital under the direction of the Defence Council shall for the purposes of paragraph (c) of the last foregoing subsection be conclusive evidence of the facts certified.

## **2 Restriction on petitions within three years of marriage**

- (1) Subject to the next following subsection, 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 relevant child and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.
- (3) 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.

## **3 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 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 the foregoing subsection, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion or other ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.
- (3) For the purposes of a petition for divorce in such a case, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or for such an order as aforesaid having the effect of a decree of judicial separation shall, if the parties have not resumed co-habitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

#### **4 Alleged adulterer as a party**

- (1) On a petition for divorce presented by the husband on the ground of adultery, or in the answer of a husband praying for divorce on that ground, the husband shall make the alleged adulterer a co-respondent unless excused by the court on special grounds from doing so.
- (2) On a petition for divorce presented by the wife on the ground of adultery the court may, if it thinks fit, direct that the alleged adulteress be made a respondent.
- (3) Where an alleged adulterer is made a co-respondent on such a petition as is mentioned in subsection (1) of this section or an alleged adulteress is made a respondent on such a petition as is mentioned in the last foregoing subsection, the court may, after the close of the evidence on the part of the petitioner, direct that the co-respondent or, as the case may be, the respondent be dismissed from the suit if the court is of opinion that there is not sufficient evidence against him or her.

#### **5 Hearing of petition**

- (1) On a petition for divorce it shall be the duty of the court—
  - (a) to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties; and
  - (b) to inquire into any countercharge made against the petitioner.
- (2) Provision may be made by rules of court for enabling the court, on application made either before or after the presentation of the petition, to take into consideration for the purposes of this section any agreement or arrangement made or proposed to be made between the parties and to give such directions in the matter as the court thinks fit; but nothing in this subsection affects any duty of the parties to disclose to the court any agreement or arrangement made between the parties in contemplation of or in connection with the proceedings.
- (3) If the court is satisfied on the evidence that the case for the petition has been proved and—
  - (a) where the ground of the petition is adultery, that the petitioner has not in any manner been accessory to or connived at or condoned the adultery ;
  - (b) where the ground of the petition is cruelty, that the petitioner has not in any manner condoned the cruelty,

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the court shall, subject to subsections (4) and (5) of this section, grant a decree of divorce; and if the court is not satisfied with respect to any of the matters aforesaid, it shall dismiss the petition.

- (4) The court may dismiss a petition for divorce if—
- (a) it finds that the petition is presented or prosecuted in collusion with the respondent or either of the respondents; or
  - (b) it finds that the petitioner has during the marriage been guilty of adultery; or
  - (c) in its opinion the petitioner has been guilty—
    - (i) of unreasonable delay in presenting or prosecuting the petition; or
    - (ii) of cruelty towards the other party to the marriage; or
    - (iii) where the ground of the petition is adultery or cruelty, of having without reasonable excuse either deserted or wilfully separated himself or herself from the other party before the adultery or cruelty; or
    - (iv) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as conduced to the adultery or unsoundness of mind or desertion.
- (5) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under section 2(2) of this Act, 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 period of three years from the date of the marriage 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 that period.
- (6) If in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.
- (7) 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 court by general or special order from time to time fixes a shorter period.

## **6 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 Her Majesty's Proctor (hereafter in this and the next following section referred to as "the 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 deems 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 Proctor on any matter material to the due decision of the case, and the Proctor may thereupon take such steps as the Attorney General considers necessary or expedient;

- (c) if in consequence of any such information or otherwise the Proctor considers that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, under the direction of the Attorney General and after obtaining the leave of the court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.
- (2) Where the 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 Proctor shall be entitled to charge as part of the expenses of his office—
  - (a) the costs of any proceedings under subsection (1)(a) of this section;
  - (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) of this section 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 the said subsection (2).

## **7 Proceedings after decree nisi**

- (1) Where a decree nisi of divorce has been granted but not made absolute, then, without prejudice to the last foregoing section, any person (excluding a party to the proceedings other than the Proctor) may show cause why the decree should not be made absolute either by reason of its having been obtained by collusion or 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 5(7) of this Act, make the decree absolute ; or
  - (b) rescind the decree nisi; or
  - (c) require further inquiry ; or
  - (d) otherwise deal with the case as it thinks fit.
- (2) Where a decree nisi 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 the foregoing subsection.

## **8 Remarriage of divorced persons**

- (1) Where a decree of divorce has been made absolute and either—
  - (a) there is no right of appeal against the decree absolute; or
  - (b) the time for appealing against the decree absolute has expired without an appeal having been brought; or
  - (c) an appeal against the decree absolute has been dismissed,either party to the former marriage may marry again.
- (2) No clergyman of the Church of England or the Church in Wales shall be compelled—
  - (a) to solemnise the marriage of any person whose former marriage has been dissolved and whose former spouse is still living ; or

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- (b) to permit the marriage of such a person to be solemnised in the church or chapel of which he is the minister.

### *Nullity*

## **9 Additional grounds for decree of nullity**

- (1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to the next following subsection, be voidable on the ground—
  - (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
  - (b) that at the time of the marriage either party to the marriage—
    - (i) was of unsound mind, or
    - (ii) was suffering 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 and the procreation of children, or
    - (iii) was subject to recurrent attacks of insanity or epilepsy; or
  - (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
  - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) The court shall not grant a decree of nullity in a case falling within paragraph (b), (c) or (d) of the foregoing subsection unless it is satisfied that—
  - (a) the petitioner was at the time of the marriage ignorant of the facts alleged ; and
  - (b) proceedings were instituted within a year from the date of the marriage ; and
  - (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree.
- (3) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

## **10 Application of ss. 5(7), 6 and 7 to nullity proceedings**

Sections 5(7), 6 and 7 of this Act 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.

## **11 Legitimacy of children of annulled marriages**

Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

### *Other matrimonial suits*

## **12 Judicial separation**

- (1) A petition for judicial separation may be presented to the court by the husband or the wife—
  - (a) on any of the grounds specified in section 1 of this Act; or
  - (b) on the ground of failure to comply with a decree for restitution of conjugal rights; or
  - (c) on any ground on which a decree of divorce a mensa et thoro might have been pronounced immediately before the commencement of the Matrimonial Causes Act 1857;and sections 1 and 5(1) to (4) of this Act and paragraphs 2 and 3 of Schedule 1 to this Act shall apply in relation to such a petition as they apply in relation to a petition for divorce but as if the reference in section 5(3) to section 5(5) were omitted.
- (2) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.
- (3) The court may, on an application by petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the allegations in the petition are true, rescind the decree at any time on the ground that it was obtained in the absence of the applicant or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

## **13 Restitution of conjugal rights**

- (1) A petition for restitution of conjugal rights may be presented to the court by the husband or the wife; and the court, on being satisfied that—
  - (a) the allegations contained in the petition are true; and
  - (b) there is no legal ground why a decree for restitution of conjugal rights should not be granted,may grant the decree accordingly.
- (2) A decree for restitution of conjugal rights shall not be enforced by imprisonment.

## **14 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 the next following subsection, 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, make a decree of presumption of death and dissolution of the marriage.
- (2) A petition may be presented in pursuance of the foregoing subsection—
  - (a) in any case, if the petitioner is domiciled in England; and
  - (b) in the case of a petition presented by a wife, if she is resident in England 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

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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 5(7) and 6 to 8 of this Act 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, 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) of this section 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 at the time of the proceedings.