

SCHEDULES

SCHEDULE 1

Section 45.

TRANSITIONAL PROVISIONS

- 1 Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals)—
 - (a) nothing in any repeal made by this Act shall affect any, order or rule made, direction given or thing done, or deemed to have been made, given or done, under any enactment repealed by this Act, and every such order, rule, direction or thing shall, if in force at the commencement of this Act, continue in force and, so far as it could have been made, given or done under this Act, be deemed to have been made, given or done under the corresponding provisions of this Act; and
 - (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.
- 2 Any agreement between the petitioner and the respondent to live separate and apart, whether or not made in writing, shall be disregarded for the purposes of section 1(1)(a)(ii) of this Act if the agreement was entered into before 1st January 1938 and either—
 - (a) at the time when the agreement was made the respondent had deserted the petitioner without cause ; or
 - (b) the court is satisfied that the circumstances in which the agreement was made and the parties proceeded to live separate and apart were such as, but for the agreement, to amount to desertion of the petitioner by the respondent without cause.
- 3 Without prejudice to the provisions of section 38 of the said Act of 1889 and notwithstanding anything in section 1(3) of this Act, a person of unsound mind shall be deemed to have been under care and treatment for the purposes of subsection (1)(a)(iv) of section 1 of this Act while—
 - (a) at any time before 1st November 1960 he was—
 - (i) detained in pursuance of an order or inquisition under the Lunacy and Mental Treatment Acts 1890 to 1930 or of an order or warrant under the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act 1884 or the Yarmouth Naval Hospital Act 1931, or
 - (ii) detained as a Broadmoor patient or in pursuance of an order made under the Criminal Lunatics Act 1884, or
 - (iii) receiving treatment as a voluntary patient under the Mental Treatment Act 1930 :

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- (b) at any time before 1st June 1962 he was detained in pursuance of an order or warrant for his detention or custody as a lunatic under the Lunacy (Scotland) Acts 1857 to 1919.
- 4 In relation to a marriage celebrated before 1st November 1960, for sub-paragraphs (ii) and (iii) of section 9(1)(b) of this Act there shall be substituted the following sub-paragraphs—
- “(ii) was a mental defective within the meaning of the Mental Deficiency Acts 1913 to 1938, or
- (iii) was subject to recurrent fits of insanity or epilepsy; or”.
- 5 In relation to proceedings under section 23 of the Matrimonial Causes Act 1950 begun before 1st January 1959 and deemed by virtue of paragraph 1 of this Schedule to be proceedings under section 22(1) of this Act, that subsection shall have effect as if the reference to any illegitimate child of both parties to the marriage in section 22(2) of this Act were omitted.
- 6 Where the party chargeable under a maintenance agreement within the meaning of section 23 of this Act died before 17th August 1957, then—
- (a) subsection (1) of that section shall not apply to the agreement unless there remained undistributed at 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 the funeral, testamentary and administrative expenses, debts and liabilities payable thereout (other than any liability arising by virtue of that subsection); and
- (b) nothing in that subsection 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.
- 7 No right or liability shall attach by virtue of section 23(1) of this Act in respect of any sum payable under a maintenance agreement within the meaning of that section in respect of a period before 17th August 1957.
- 8 Any rules of court made before 31st July 1963 shall be deemed to have been validly made if they could have been made after the commencement of this Act under section 29(1) of this Act or that subsection as applied by section 34(6) of this Act; but nothing in this paragraph affects any order for ancillary relief (as defined by section 5(4) of the Matrimonial Causes Act 1963) made after 19th December 1962 and before 31st July 1963.
- 9 In relation to an order made before 16th December 1949 which, by virtue of paragraph 1 of this Schedule is deemed to have been made under section 16(1)(a) of this Act or the said paragraph (a) as applied by section 19 of this Act, the powers conferred by section 31 of this Act shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by the discharge, variation or suspension of any order made, or deemed as aforesaid to have been made, under section 16(1)(b) of this Act, or that paragraph as so applied, as the case may be.
- 10 In relation to such proceedings as are mentioned in section 34(1) of this Act which were begun before 1st January 1959, that subsection shall have effect as if paragraph (b) were omitted; and, in relation to any such proceedings and in the application of section 34(3) of this Act to any proceedings so begun, subsections

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(1) and (3) of that section shall have effect respectively as if paragraph (b) in section 46(2) of this Act were omitted.

- 11 Section 35(1) of this Act shall not apply in relation to an order made under section 23(1) of the Matrimonial Causes Act 1950 before 1st January 1959 and deemed by virtue of paragraph 1 of this Schedule to be made under section 22(1) of this Act.