



Divorce Reform Act 1969

CHAPTER 55

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ELIZABETH II



1969 CHAPTER 55

An Act to amend the grounds for divorce and judicial separation; to facilitate reconciliation in matrimonial causes; and for purposes connected with the matters aforesaid. [22nd October 1969]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. After the commencement of this Act the sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably. Breakdown of marriage to be sole ground for divorce.

2.—(1) 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— Proof of breakdown.

- (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 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.

(2) 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.

1965 c. 72

(3) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (1) of this section, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 4 of this Act and section 5(5) of the Matrimonial Causes Act 1965, grant a decree nisi of divorce.

(4) For the purpose of subsection (1)(c) of this section 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) For the purposes of this Act a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of subsection (1)(d) of this section 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.

Provisions
designed to
encourage
reconciliation.

3.—(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.

(3) Where the parties to the marriage have lived with each other for any period or periods after it became known to the

petitioner that the respondent had, since the celebration of the marriage, committed adultery, then,—

- (a) if the length of that period or of those periods together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of section 2(1)(a) of this Act whether the petitioner finds it intolerable to live with the respondent; but
- (b) if the length of that period or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of the said section 2(1)(a).

(4) Where 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 2(1)(b) of this Act 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.

(5) In considering for the purposes of section 2(1) of this Act 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) 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.

4.—(1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in paragraph (e) of section 2(1) of this Act may oppose the grant of a decree nisi 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.

Decree to be refused in certain circumstances.

(2) Where the grant of a decree nisi is opposed by virtue of this section, then,—

- (a) if the court is satisfied that the only fact mentioned in the said section 2(1) on which the petitioner is entitled

to rely in support of his petition is that mentioned in the said paragraph (e), and

(b) if apart from this section it would grant a decree nisi, 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 the court is 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.

Power to
rescind decree
nisi in certain
cases.

5. Where the court on granting a decree of divorce held that the only fact mentioned in section 2(1) of this Act on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph (d), it 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 consent to the grant of a decree.

Financial
protection
for respondent
in certain
cases.

6.—(1) The following provisions of this section shall have effect where—

(a) the respondent to a petition for divorce in which the petitioner alleged any such fact as is mentioned in paragraph (d) or (e) of section 2(1) of this Act has applied to the court under this section for it to consider for the purposes of subsection (2) hereof the financial position of the respondent after the divorce; and

(b) a decree nisi of divorce has been granted on the petition and the court has held that the only fact mentioned in the said section 2(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in the said paragraph (d) or (e).

(2) The court hearing an application by the respondent under this section 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 notwithstanding anything in the foregoing provisions of this Act but subject to subsection (3) of this section, the

court shall not make absolute the decree of divorce 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.

(3) The court may if it thinks fit proceed without observing the requirements of subsection (2) of this section 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.

7.—(1) 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. Rules may enable certain agreements or arrangements to be referred to the court.

(2) In section 3 of the Matrimonial Causes Act 1967 (consideration of agreements or arrangements by divorce county courts) after the word “ 1965 ” there shall be inserted the words “ or of section 7 of the Divorce Reform Act 1969 ”. 1967 c. 56.

8.—(1) After the commencement of this Act the existence of any such fact as is mentioned in section 2(1) of this Act shall be a ground on which either party to a marriage may present a petition for judicial separation; and the ground of failure to comply with a decree for restitution of conjugal rights and 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 shall cease to be a ground on which such a petition may be presented. Judicial separation. 1857 c. 85.

(2) Accordingly for subsection (1) of section 12 of the Matrimonial Causes Act 1965 there shall be substituted the following subsection:— 1965 c. 72.

“ (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 2(1) of the

Divorce Reform Act 1969 exists, and sections 2(2), (4), (5) and (6), 3 and 7 of that Act and paragraph 2 of Schedule 1 to this Act shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.”

1965 c. 72.

(3) The court hearing a petition for judicial separation 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 2(1) of this Act, it shall, subject to section 33 of the Matrimonial Causes Act 1965 (restrictions on decrees for dissolution or separation affecting children), grant a decree of judicial separation.

Consequential amendments, repeals and saving.

9.—(1) The provisions of the Matrimonial Causes Act 1965 specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the foregoing provisions of this Act.

(2) Each of the provisions of the Matrimonial Causes Act 1965 specified in column 1 of Schedule 2 to this Act is, to the extent specified in relation to it in column 2 of that Schedule, hereby repealed.

1925 c. 49.

(3) Without prejudice to any provision of this Act or of the Matrimonial Causes Act 1965, as amended by this Act, which empowers or requires the court to dismiss a petition for divorce or judicial separation or to dismiss an application for a decree nisi of divorce to be made absolute, nothing in section 32 of the Supreme Court of Judicature (Consolidation) Act 1925 (rules as to exercise of jurisdiction) or in any rule of law shall be taken as empowering or requiring the court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree nisi or on the ground of any conduct on the part of the petitioner.

Saving for petitions presented before commencement of Act.

10. This Act (including the repeals and amendments made by it) shall not have effect in relation to any petition for divorce or judicial separation presented before the commencement of this Act.

Short title, construction, commencement and extent.

11.—(1) This Act may be cited as the Divorce Reform Act 1969.

(2) This Act shall be construed as one with the Matrimonial Causes Act 1965.

(3) This Act shall come into operation on 1st January 1971.

(4) This Act does not extend to Scotland or Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 9(1).

CONSEQUENTIAL AMENDMENTS OF THE MATRIMONIAL
CAUSES ACT 1965

1965 c. 72.

1. In section 3(1) after the word "petitioner" there shall be inserted the words "or respondent".
2. In section 4(1) and (2) for the words "on the ground of adultery" there shall be substituted the words "in which adultery is alleged" and in section 4(1) for the words "on that ground" there shall be substituted the words "and alleging adultery".
3. In section 5(6) for the words from "opposes" to "desertion" there shall be substituted the words "alleges against the petitioner and proves any such fact as is mentioned in section 2(1) of the Divorce Reform Act 1969".
4. In section 15(b) for the words "on the ground of her husband's insanity" there shall be substituted the words "and alleging any such fact as is mentioned in section 2(1)(e) of the Divorce Reform Act 1969 where the court is satisfied on proof of such facts as may be prescribed by rules of court that her husband is insane".
5. In section 16(3) for the words from the beginning to "insanity" there shall be substituted the words "Where on a petition for divorce presented by a wife the court granted her a decree and held that the only fact mentioned in section 2(1) of the Divorce Reform Act 1969 on which she was entitled to rely was that mentioned in paragraph (e), then if the court is satisfied on proof of such facts as may be prescribed by rules of court that the husband is insane".
6. In section 17(2) for the words from the beginning to "she" there shall be substituted the words "Where on a petition for divorce presented by the husband he satisfies the court of any such fact as is mentioned in section 2(1)(a), (b) or (c) of the Divorce Reform Act 1969 and the court grants him a decree of divorce, then if it appears to the court that the wife" and for the words "innocent party" there shall be substituted the word "husband".
7. In section 20(1)(b) for the words "on the ground of her husband's insanity" there shall be substituted the words "and the court held that the only fact mentioned in section 2(1) of the Divorce Reform Act 1969 on which she was entitled to rely was that mentioned in paragraph (e) and the court is satisfied on proof of such facts as may be prescribed by rules of court that the husband is insane".
8. In section 26(6), as amended by the Family Provision Act 1966, 1966 c. 35. in the definition of "court", after the word "court", where first occurring, there shall be inserted the words "means the High Court and".
9. In section 30(2)—
 - (a) in paragraph (a) for the words "on the ground of her husband's insanity" there shall be substituted the words

SCH. 1

“ and the court is satisfied on proof of such facts as may be prescribed by rules of court that her husband is insane ”;

(b) in paragraph (b) the word “ divorce ” and the words “ or judicial separation ” shall be omitted ; and

(c) after paragraph (a) there shall be inserted the following paragraph :—

“ (aa) a petition for divorce or judicial separation is presented by a husband and the court is satisfied on proof of such facts as may be prescribed by rules of court that his wife is insane ; or ”.

10. In section 34(3) for the words “ on the ground of the husband’s insanity ” there shall be substituted the words “ in favour of a wife where the court held that the only fact mentioned in section 2(1) of the Divorce Reform Act 1969 on which she was entitled to rely was that mentioned in paragraph (e) and the court is satisfied on proof of such facts as may be prescribed by rules of court that the husband is insane.”

11. In section 46(2) after the definition of “ adopted ” there shall be inserted the following definition :—

“ ‘ the court ’ (except in sections 26, 27, 28 and 28A) means the High Court or, where a county court has jurisdiction by virtue of the Matrimonial Causes Act 1967, a county court ; and ”.

1967 c. 56.

12. In Schedule 1, in paragraph 2 after the word “ Act ” there shall be inserted the words “ or of section 2(1)(c) of the Divorce Reform Act 1969.”

Section 9(2).

1965 c. 72.

SCHEDULE 2

REPEALS IN THE MATRIMONIAL CAUSES ACT 1965

<i>Provision</i>	<i>Extent of Repeal</i>
Section 1 ...	The whole section.
Section 5 ...	Subsections (1), (2), (3) and (4).
Section 6 ...	In subsection (1), except as applied by section 10 or 14 of the said Act of 1965, paragraph (c).
Section 7 ...	In subsection (1), except as applied by the said section 10 or 14, the words from “ either ” to “ collusion or ”.
Section 30 ...	In subsection (2)(b), the word “ divorce ” and the words “ or judicial separation ”.
Section 42 ...	Subsections (1) and (3) so far as they apply in relation to proceedings for divorce or judicial separation. In subsection (2), the words “ this Act and ”.

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