



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL

#### **45**    **Declarations of legitimacy, etc.**

- (1) Any person who is a British subject, or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in England and Wales or in Northern Ireland or claims any real or personal estate situate in England and Wales, apply by petition to the High Court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.
- (2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the High Court, or may apply to a county court in the manner prescribed by county court rules, for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimacy Act 1926, and includes a person recognised under section 8 of that Act as legitimated.

- (3) Where an application under subsection (2) above is made to a county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court; and on such a transfer the proceeding shall be continued in the High Court as if it had been originally commenced by petition to the court.
- (4) Any person who is domiciled in England and Wales or in Northern Ireland or claims any real or personal estate situate in England and Wales may apply to the High Court for a decree declaring his right to be deemed a British subject.

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- (5) Applications to the High Court under the preceding provisions of this section may be included in the same petition, and on any application under the preceding provisions of this section the High Court or, as the case may be, the county court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person—
- (a) if it is subsequently proved to have been obtained by fraud or collusion ; or
  - (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.
- (6) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Attorney-General at least one month before the application is made, and the Attorney-General shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.
- (7) Where any application is made under this section, such persons as the court hearing the application thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.
- (8) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.
- (9) The court hearing an application under this section may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

#### **46 Additional jurisdiction in proceedings by a wife**

- (1) Without prejudice to any jurisdiction exercisable by the court apart from this section, the court shall have jurisdiction to entertain proceedings by a wife, notwithstanding that the husband is not domiciled in England and Wales.—
- (a) in the case of any proceedings under this Act (other than proceedings under section 19 or sections 34 to 36), if—
    - (i) the wife has been deserted by her husband, or
    - (ii) the husband has been deported from the United Kingdom under any law for the time being in force relating to deportation, and the husband was immediately before the desertion or deportation domiciled in England and Wales;
  - (b) in the case of proceedings for divorce or nullity of marriage, if—
    - (i) the wife 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, and
    - (ii) the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.
- (2) In any proceedings in which the court has jurisdiction by virtue of subsection (1) above the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England and Wales at the time of the proceedings.

#### **47 Matrimonial relief and declarations of validity in respect of polygamous marriages**

- (1) A court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that the marriage in question was entered into under a law which permits polygamy.
- (2) In this section " matrimonial relief " means—
  - (a) any decree under Part I of this Act;
  - (b) a financial provision order under section 27 above;
  - (c) an order under section 35 above altering a maintenance agreement;
  - (d) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for, any such decree or order is mentioned in paragraphs (a) to (c) above ;
  - (e) an order under the Matrimonial Proceedings (Magistrates' Courts) Act 1960.
- (3) In this section " a declaration concerning the validity of a marriage " means—
  - (a) a declaration that a marriage is valid or invalid; and
  - (b) any other declaration involving a determination as to the validity of a marriage ;being a declaration in a decree granted under section 45 above or a declaration made in the exercise by the High Court of its jurisdiction to grant declaratory relief in any proceedings notwithstanding that a declaration is the only substantive relief sought in those proceedings.
- (4) This section has effect whether or not either party to the marriage in question has for the time being any spouse additional to the other party; and provision may be made by rules of court—
  - (a) for requiring notice of proceedings brought by virtue of this section to be served on any such other spouse; and
  - (b) for conferring on any such other spouse the right to be heard in any such proceedings,in such cases as may be prescribed by the rules.

#### **48 Evidence**

- (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.
- (2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

#### **49 Parties to proceedings under this Act**

- (1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.

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- (2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of subsection (1) above where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.
- (3) Where in pursuance of subsection (1) above a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.
- (4) Rules of court may make provision, in cases not falling within subsection (1) above, with respect to the joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.
- (5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

## **50 Matrimonial causes rules**

- (1) The authority having power to make rules of court for the purposes of—
  - (a) this Act, the Matrimonial Causes Act 1967 (which confers jurisdiction on county courts in certain matrimonial proceedings), section 45 of the Courts Act 1971 (transfer of matrimonial proceedings between High Court and county court, etc.) and sections 26 to 28A of the Matrimonial Causes Act 1965 (maintenance of survivor from estate of deceased former spouse);
  - (b) proceedings in the High Court or a divorce county court for an order under section 7 of the Matrimonial Homes Act 1967 (transfer of protected or statutory tenancy under Rent Act 1968 on dissolution or annulment of marriage);
  - (c) certain other proceedings in the High Court, that is to say—
    - (i) proceedings in the High Court under section 17 of the Married Women's Property Act 1882, not being proceedings in the divorce registry treated by virtue of rules made under this section for the purposes of section 45 of the Courts Act 1971 as pending in a county court;
    - (ii) proceedings in the High Court under section 1 of the Matrimonial Homes Act 1967 (rights of occupation of matrimonial home for spouse not otherwise entitled);
    - (iii) proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status; or
  - (d) any enactment passed after this Act which relates to any matter dealt with in this Act, the Matrimonial Causes Act 1967 or sections 26 to 28A of the Matrimonial Causes Act 1965 ;

shall, subject to the exceptions listed in subsection (2) below, be the Lord Chancellor together with any four or more of the following persons, namely, the President of the Family Division, one puisne judge attached to that division, one registrar of the

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divorce registry, two Circuit judges, one registrar appointed under the County Courts Act 1959, two practising barristers being members of the General Council of the Bar and two practising solicitors of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society and also of a local law society.

All the members of the authority, other than the Lord Chancellor himself and the President of the Family Division, shall be appointed by the Lord Chancellor for such time as he may think fit.

- (2) The following shall be excepted from the purposes mentioned in subsection (1) above—
- (a) proceedings in a county court in the exercise of a jurisdiction exercisable by any county court whether or not it is a divorce county court, that is to say, proceedings in a county court under section 32, 33, 36, 38 or 45 above or under section 26 or 27 of the Matrimonial Causes Act 1965 ;
  - (b) section 47 above, in so far as it relates to proceedings in a county court under section 45 above or to proceedings for an order under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 ;
  - (c) any enactment passed after this Act in so far as it relates to proceedings in a county court in the exercise of any such jurisdiction as is mentioned in paragraph (a) above or to any aspect of section 47 above which is excepted by paragraph (b) above.
- (3) Rules of court made under this section may apply, with or without modification, any rules of court made under the Supreme Court of Judicature (Consolidation) Act 1925, the County Courts Act 1959 or any other enactment and—
- (a) may modify or exclude the application of any such rules or of any provision of the County Courts Act 1959;
  - (b) may provide for the enforcement in the High Court of orders made in a divorce county court;

and, without prejudice to the generality of the preceding provisions, may make with respect to proceedings in a divorce county court any provision regarding the Official Solicitor or any solicitor of the Supreme Court which could be made by rules of court with respect to proceedings in the High Court.

- (4) The power to make rules of court by virtue of subsection (1) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section " divorce county court" means a county court designated under section 1 of the Matrimonial Causes Act 1967 and " divorce registry " means the principal registry of the Family Division of the High Court.

## **51 Fees in matrimonial proceedings**

The fees to be taken in any proceedings to which rules under section 50 above apply shall be such as the Lord Chancellor with the concurrence of the Treasury may from time to time by order made by statutory instrument prescribe.

## **52 Interpretation**

- (1) In this Act—
- " adopted " means adopted in pursuance of—

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- (a) an adoption order made under the Adoption Act 1958, any previous enactment relating to the adoption of children, the Adoption Act 1968 or any corresponding enactment of the Parliament of Northern Ireland; or
- (b) an adoption order made in the Isle of Man or any of the Channel Islands; or
- (c) subject to sections 5 and 6 of the Adoption Act 1968, an overseas adoption within the meaning of section 4 of that Act;

" child ", in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;

" child of the family ", in relation to the parties to a marriage, means—

- (a) a child of both of those parties; and
- (b) any other child, not being a child who has been boarded-out with those parties by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;

" the court " (except where the context otherwise requires) means the High Court or, where a county court has jurisdiction by virtue of the Matrimonial Causes Act 1967, a county court;

" custody ", in relation to a child, includes access to the child;

" education " includes training.

(2) In this Act—

- (a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 21 above; and
- (b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 22 and section 27(5) above.

(3) For the avoidance of doubt it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.

(4) Except where the contrary intention is indicated, references in this Act to any enactment include references to that enactment as amended, extended or applied by or under any subsequent enactment, including this Act.

### **53 Transitional provisions and savings**

Schedule 1 to this Act shall have effect for the purpose of—

- (a) the transition to the provisions of this Act from the law in force before the commencement of this Act;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Act or by enactments repealed and replaced by this Act; and
- (c) the assimilation in certain respects to orders under this Act of orders made, or deemed to have been made, under the Matrimonial Causes Act 1965.

### **54 Consequential amendments and repeals**

(1) Subject to the provisions of Schedule 1 to this Act—

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- (a) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act or on enactments repealed by this Act; and
  - (b) the enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The amendment of any enactment by Schedule 2 to this Act shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

## **55 Citation, commencement and extent**

- (1) This Act may be cited as the Matrimonial Causes Act 1973.
- (2) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) Subject to the provisions of paragraphs 3(2) and 7(3) of Schedule 2 below, this Act does not extend to Scotland or Northern Ireland.