

## SCHEDULES

### SCHEDULE 1

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART I

##### MISCELLANEOUS AND GENERAL

###### *General transitional provisions and savings*

- 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any order or rule made, direction given or thing done, or deemed to have been made, given or done, under any enactment repealed by this Act, and every such order, rule, direction or thing shall, if in force at the commencement of this Act, continue in force and, so far as it could have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  - (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.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 Without prejudice to paragraph 1 above, but subject to paragraph 3 below, any application made or proceeding begun, or deemed to have been made or begun, under any enactment repealed by this Act, being an application or proceeding which is pending at the commencement of this Act, shall be deemed to have been made or begun under the corresponding provision of this Act.
- 3 Nothing in Part I of this Act shall apply in relation to any petition for divorce or judicial separation presented before 1st January 1971 and notwithstanding any repeal or amendment made by this Act the Matrimonial Causes Act 1965 (hereafter in this Schedule referred to as the Act of 1965) 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 Act as they had effect immediately before the commencement of this Act.
- 4 Notwithstanding any repeal or amendment made by this Act, the Act of 1965 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 1st January 1971 which are pending at the commencement of this Act, and

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(b) any proceedings for relief under section 21 or 34(l)(c) of the Act of 1965 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 Act,

as they had effect immediately before the commencement of this Act; and nothing in Schedule 2 below shall affect the operation of any other enactment in relation to any such proceedings.

5 Nothing in any repeal made by this Act shall affect any order made, or deemed to have been made, under the Act of 1965 which was continued in force by paragraph 1 of Schedule 1 to the Matrimonial Proceedings and Property Act 1970 notwithstanding the repeal by the last-mentioned Act of the provision of the Act of 1965 under which the order had effect, and every such order shall, if in force at the commencement of this Act, continue in force subject to the provisions of this Act.

6 Nothing in sections 11 to 14 or 16 of this Act affects any law or custom relating to the marriage of members of the Royal Family.

7 Nothing in section 50(1)(a) or (c) above affects—

(a) any rules of court made under the Supreme Court of Judicature (Consolidation) Act 1925 for the purposes of proceedings under section 39 of the Act of 1965 and having effect by virtue of paragraph 1(b) above in relation to proceedings under section 45 above ;

(b) any rules of court so made for the purposes of proceedings under section 17 of the Married Women's Property Act 1882 or under section 1 of the Matrimonial Homes Act 1967 ; or

(c) any rules of court so made for the purposes of the exercise by the High Court of its jurisdiction to grant declaratory relief in proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status;

but rules of court made under section 50 may revoke any rules of court made under the said Act of 1925 in so far as they apply for any such purposes.

*Transitional provisions derived from the Act of 1965*

8 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(2) (c) above (including that paragraph as it applies, by virtue of section 17 above, to proceedings for judicial separation) 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.

9 Where the party chargeable under a maintenance agreement within the meaning of section 34 above died before 17th August 1957, then—

(a) subsection (1) of that section 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

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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.

- 10 No right or liability shall attach by virtue of section 34(1) above 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.