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## SCHEDULES

### SCHEDULE 1

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART III

##### ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ACT OF ORDERS MADE, ETC., UNDER THE ACT OF 1965, ETC.

###### *Cesser on remarriage of orders made, etc., under the Act of 1965 and recovery of sums mistakenly paid thereafter*

- 15 (1) An order made, or deemed to have been made, under section 16(1)(a) or (b) of the Act of 1965 (including either of those paragraphs as applied by section 16(3) or by section 19) shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- (2) An order for the payment of alimony made, or deemed to have been made, under section 20 of the Act of 1965, and an order made, or deemed to have been made, under section 21 or 22 of that Act shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Act of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- 16 Section 38 above shall apply in relation to an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) and by section 19), 20(1), 21 or 22 of the Act of 1965 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

###### *Variation, etc., of certain orders made, etc., under the Act of 1965*

- 17 (1) Subject to the provisions of this paragraph, section 31 above shall apply, as it applies to the orders mentioned in subsection (2) thereof, to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the following provisions of the Act of 1965, that is to say—
- (a) section 15 (except in its application to proceedings for restitution of conjugal rights);
  - (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
  - (c) section 20(1) and section 17(2) as applied by section 20(2);
  - (d) section 22;

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- (e) section 34(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 34(3).
- (2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made or deemed to have been made under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part II of this Act.
- (3) Section 31, as it applies by virtue of sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) there were substituted the following subsections—
- “(4) The court shall not exercise the powers conferred by this section in relation to an order made or deemed to have been made under section 17(2) of the Act of 1965, as applied by section 20(2) of that Act, in connection with the grant of a decree of judicial separation except on an application made in proceedings—
- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage in question.
- (5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965.
- (6) In the case of an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 22 or 34(3) of the Act of 1965 and requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this section relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out”;
- and in that section, as it so applies, the reference in subsection (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in subsection (6).
- (4) In relation to an order made before 16th December 1949 on or after granting a decree of divorce or nullity of marriage and deemed, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, to have been made under section 16(1)(a) of that Act (secured provision), the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any other order made by reference to that decree, being an order made, or deemed by virtue of that paragraph to have been made, under section 16(1)(b) of that Act (unsecured periodical payments).
- 18 (1) Subsections (1) and (3) of section 31 above shall apply to an order made or deemed to have been made under section 15 of the Act of 1965 in its application to proceedings for restitution of conjugal rights, or under section 21 or 34(1)(c) of that Act, as they apply to the orders mentioned in subsection (2) of section 31.

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(2) In exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

19 Section 42(7) above shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 34 of the Act of 1965, and in relation to an order for the custody of a child made or deemed to have been made under section 35 of that Act, as it applies in relation to an order made under section 42.

*Orders made under the Act of 1965 to count as orders under this Act for certain purposes*

20 The power of the court under section 23(1) or (2)(a) or 42(1)(a) above to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 34(1)(a) of the Act of 1965; and where the court has made an order in relation to a child under section 34(1)(b) of that Act sections 23(4) and 42(6) above shall apply respectively in relation to that child as if the order were an order made under section 23(2)(b) or section 42(1)(b), as the case may be.

21 Where the court has made an order under section 22 of the Act of 1965 the court shall have the like power to make orders under section 42 above with respect to the custody of any child of the family as it has where it makes an order under section 27 above.

*Application of provisions of this Act with respect to enforcement of arrears and recovery of excessive payments to certain orders made, etc., under the Act of 1965*

22 Section 32 above shall apply in relation to the enforcement, by proceedings begun after 1st January 1971 (whether before or after the commencement of this Act), of the payment of arrears due under an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say—

- (a) section 15;
- (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
- (c) section 20(1);
- (d) section 21;
- (e) section 22;
- (f) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);

as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

23 Section 33 above shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the provisions of the Act of 1965 mentioned in paragraph 22 above as it applies to the orders mentioned in section 33(2).

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*Avoidance under this Act of transactions intended to defeat claims for relief and relief granted under the Act of 1965*

- 24 (1) Section 37 above shall apply in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 continuing by virtue of paragraph 4(b) above as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 37(1).
- (2) Without prejudice to sub-paragraph (1) above, section 37 shall also apply where an order has been obtained under any of the following provisions of the Act of 1965, that is to say—
- (a) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
  - (b) section 17(2) (including that subsection as applied by section 20(2));
  - (c) section 20(1);
  - (d) section 21;
  - (e) section 22;
  - (f) section 24;
  - (g) section 31;
  - (h) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);
  - (i) section 35;
- as it applies where an order has been obtained under any of the provisions of this Act specified in section 37(1).

*Care and supervision of children*

- 25 (1) Sections 43 and 44 above shall apply where the court has jurisdiction by virtue of paragraph 4(b) above to make an order for the custody of a child under section 34(1)(c) of the Act of 1965 as they apply where the court has jurisdiction to make an order for custody under Part III of this Act, but as if the reference in section 43(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.
- (2) Without prejudice to the effect of paragraph 1(a) of this Schedule in relation to an order made under section 36 or 37 of the Act of 1965 which could have been made under section 43 or, as the case may be, section 44 above, any order made under section 36 or 37 of that Act by virtue of the jurisdiction of the court to make an order for the custody of a child under section 34(1)(c) of that Act shall be deemed to have been made under section 43 or 44 above, as the case may require.
- 26 Section 44(4) above shall apply in relation to the jurisdiction possessed by a court to vary an order made or deemed to have been made with respect to a child's custody, maintenance or education under Part III of the Act of 1965 as it applies in relation to the jurisdiction possessed by a court to vary any financial provision order in a child's favour and any order made with respect to a child's custody or education under Part III of this Act.

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