



Family Law Act 1996

1996 CHAPTER 27

PART I

PRINCIPLES OF PARTS II AND III

1 The general principles underlying Parts II and III

The court and any person, in exercising functions under or in consequence of Parts II and III, shall have regard to the following general principles—

- (a) that the institution of marriage is to be supported;
- (b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
- (c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end—
 - (i) with minimum distress to the parties and to the children affected;
 - (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and
 - (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
- (d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.

PART II

DIVORCE AND SEPARATION

Court orders

2 Divorce and separation

- (1) The court may—
 - (a) by making an order (to be known as a divorce order), dissolve a marriage; or
 - (b) by making an order (to be known as a separation order), provide for the separation of the parties to a marriage.
- (2) Any such order comes into force on being made.
- (3) A separation order remains in force—
 - (a) while the marriage continues; or
 - (b) until cancelled by the court on the joint application of the parties.

3 Circumstances in which orders are made

- (1) If an application for a divorce order or for a separation order is made to the court under this section by one or both of the parties to a marriage, the court shall make the order applied for if (but only if)—
 - (a) the marriage has broken down irretrievably;
 - (b) the requirements of section 8 about information meetings are satisfied;
 - (c) the requirements of section 9 about the parties' arrangements for the future are satisfied; and
 - (d) the application has not been withdrawn.
- (2) A divorce order may not be made if an order preventing divorce is in force under section 10.
- (3) If the court is considering an application for a divorce order and an application for a separation order in respect of the same marriage it shall proceed as if it were considering only the application for a divorce order unless—
 - (a) an order preventing divorce is in force with respect to the marriage;
 - (b) the court makes an order preventing divorce; or
 - (c) section 7(6) or (13) applies.

4 Conversion of separation order into divorce order

- (1) A separation order which is made before the second anniversary of the marriage may not be converted into a divorce order under this section until after that anniversary.
- (2) A separation order may not be converted into a divorce order under this section at any time while—
 - (a) an order preventing divorce is in force under section 10; or
 - (b) subsection (4) applies.
- (3) Otherwise, if a separation order is in force and an application for a divorce order—

- (a) is made under this section by either or both of the parties to the marriage, and
- (b) is not withdrawn,

the court shall grant the application once the requirements of section 11 have been satisfied.

(4) Subject to subsection (5), this subsection applies if—

- (a) there is a child of the family who is under the age of sixteen when the application under this section is made; or
- (b) the application under this section is made by one party and the other party applies to the court, before the end of such period as may be prescribed by rules of court, for time for further reflection.

(5) Subsection (4)—

- (a) does not apply if, at the time when the application under this section is made, there is an occupation order or a non-molestation order in force in favour of the applicant, or of a child of the family, made against the other party;
- (b) does not apply if the court is satisfied that delaying the making of a divorce order would be significantly detrimental to the welfare of any child of the family;
- (c) ceases to apply—
 - (i) at the end of the period of six months beginning with the end of the period for reflection and consideration by reference to which the separation order was made; or
 - (ii) if earlier, on there ceasing to be any children of the family to whom subsection (4)(a) applied.

Marital breakdown

5 Marital breakdown

(1) A marriage is to be taken to have broken down irretrievably if (but only if)—

- (a) a statement has been made by one (or both) of the parties that the maker of the statement (or each of them) believes that the marriage has broken down;
- (b) the statement complies with the requirements of section 6;
- (c) the period for reflection and consideration fixed by section 7 has ended; and
- (d) the application under section 3 is accompanied by a declaration by the party making the application that—
 - (i) having reflected on the breakdown, and
 - (ii) having considered the requirements of this Part as to the parties' arrangements for the future,

the applicant believes that the marriage cannot be saved.

(2) The statement and the application under section 3 do not have to be made by the same party.

(3) An application may not be made under section 3 by reference to a particular statement if—

- (a) the parties have jointly given notice (in accordance with rules of court) withdrawing the statement; or

Status: This is the original version (as it was originally enacted).

- (b) a period of one year (“the specified period”) has passed since the end of the period for reflection and consideration.
- (4) Any period during which an order preventing divorce is in force is not to count towards the specified period mentioned in subsection (3)(b).
- (5) Subsection (6) applies if, before the end of the specified period, the parties jointly give notice to the court that they are attempting reconciliation but require additional time.
- (6) The specified period—
 - (a) stops running on the day on which the notice is received by the court; but
 - (b) resumes running on the day on which either of the parties gives notice to the court that the attempted reconciliation has been unsuccessful.
- (7) If the specified period is interrupted by a continuous period of more than 18 months, any application by either of the parties for a divorce order or for a separation order must be by reference to a new statement received by the court at any time after the end of the 18 months.
- (8) The Lord Chancellor may by order amend subsection (3)(b) by varying the specified period.

6 Statement of marital breakdown

- (1) A statement under section 5(1)(a) is to be known as a statement of marital breakdown; but in this Part it is generally referred to as “a statement”.
- (2) If a statement is made by one party it must also state that that party—
 - (a) is aware of the purpose of the period for reflection and consideration as described in section 7; and
 - (b) wishes to make arrangements for the future.
- (3) If a statement is made by both parties it must also state that each of them—
 - (a) is aware of the purpose of the period for reflection and consideration as described in section 7; and
 - (b) wishes to make arrangements for the future.
- (4) A statement must be given to the court in accordance with the requirements of rules made under section 12.
- (5) A statement must also satisfy any other requirements imposed by rules made under that section.
- (6) A statement made at a time when the circumstances of the case include any of those mentioned in subsection (7) is ineffective for the purposes of this Part.
- (7) The circumstances are—
 - (a) that a statement has previously been made with respect to the marriage and it is, or will become, possible—
 - (i) for an application for a divorce order, or
 - (ii) for an application for a separation order,
 to be made by reference to the previous statement;
 - (b) that such an application has been made in relation to the marriage and has not been withdrawn;

- (c) that a separation order is in force.

Reflection and consideration

7 Period for reflection and consideration

- (1) Where a statement has been made, a period for the parties—
 - (a) to reflect on whether the marriage can be saved and to have an opportunity to effect a reconciliation, and
 - (b) to consider what arrangements should be made for the future,must pass before an application for a divorce order or for a separation order may be made by reference to that statement.
- (2) That period is to be known as the period for reflection and consideration.
- (3) The period for reflection and consideration is nine months beginning with the fourteenth day after the day on which the statement is received by the court.
- (4) Where—
 - (a) the statement has been made by one party,
 - (b) rules made under section 12 require the court to serve a copy of the statement on the other party, and
 - (c) failure to comply with the rules causes inordinate delay in service,the court may, on the application of that other party, extend the period for reflection and consideration.
- (5) An extension under subsection (4) may be for any period not exceeding the time between—
 - (a) the beginning of the period for reflection and consideration; and
 - (b) the time when service is effected.
- (6) A statement which is made before the first anniversary of the marriage to which it relates is ineffective for the purposes of any application for a divorce order.
- (7) Subsection (8) applies if, at any time during the period for reflection and consideration, the parties jointly give notice to the court that they are attempting a reconciliation but require additional time.
- (8) The period for reflection and consideration—
 - (a) stops running on the day on which the notice is received by the court; but
 - (b) resumes running on the day on which either of the parties gives notice to the court that the attempted reconciliation has been unsuccessful.
- (9) If the period for reflection and consideration is interrupted under subsection (8) by a continuous period of more than 18 months, any application by either of the parties for a divorce order or for a separation order must be by reference to a new statement received by the court at any time after the end of the 18 months.
- (10) Where an application for a divorce order is made by one party, subsection (13) applies if—
 - (a) the other party applies to the court, within the prescribed period, for time for further reflection; and

Status: This is the original version (as it was originally enacted).

- (b) the requirements of section 9 (except any imposed under section 9(3)) are satisfied.
- (11) Where any application for a divorce order is made, subsection (13) also applies if there is a child of the family who is under the age of sixteen when the application is made.
- (12) Subsection (13) does not apply if—
- (a) at the time when the application for a divorce order is made, there is an occupation order or a non-molestation order in force in favour of the applicant, or of a child of the family, made against the other party; or
 - (b) the court is satisfied that delaying the making of a divorce order would be significantly detrimental to the welfare of any child of the family.
- (13) If this subsection applies, the period for reflection and consideration is extended by a period of six months, but—
- (a) only in relation to the application for a divorce order in respect of which the application under subsection (10) was made; and
 - (b) without invalidating that application for a divorce order.
- (14) A period for reflection and consideration which is extended under subsection (13), and which has not otherwise come to an end, comes to an end on there ceasing to be any children of the family to whom subsection (11) applied.

8 Attendance at information meetings

- (1) The requirements about information meetings are as follows.
- (2) A party making a statement must (except in prescribed circumstances) have attended an information meeting not less than three months before making the statement.
- (3) Different information meetings must be arranged with respect to different marriages.
- (4) In the case of a statement made by both parties, the parties may attend separate meetings or the same meeting.
- (5) Where one party has made a statement, the other party must (except in prescribed circumstances) attend an information meeting before—
- (a) making any application to the court—
 - (i) with respect to a child of the family; or
 - (ii) of a prescribed description relating to property or financial matters; or
 - (b) contesting any such application.
- (6) In this section “information meeting” means a meeting organised, in accordance with prescribed provisions for the purpose—
- (a) of providing, in accordance with prescribed provisions, relevant information to the party or parties attending about matters which may arise in connection with the provisions of, or made under, this Part or Part III; and
 - (b) of giving the party or parties attending the information meeting the opportunity of having a meeting with a marriage counsellor and of encouraging that party or those parties to attend that meeting.
- (7) An information meeting must be conducted by a person who—
- (a) is qualified and appointed in accordance with prescribed provisions; and

- (b) will have no financial or other interest in any marital proceedings between the parties.
- (8) Regulations made under this section may, in particular, make provision—
- (a) about the places and times at which information meetings are to be held;
 - (b) for written information to be given to persons attending them;
 - (c) for the giving of information to parties (otherwise than at information meetings) in cases in which the requirement to attend such meetings does not apply;
 - (d) for information of a prescribed kind to be given only with the approval of the Lord Chancellor or only by a person or by persons approved by him; and
 - (e) for information to be given, in prescribed circumstances, only with the approval of the Lord Chancellor or only by a person, or by persons, approved by him.
- (9) Regulations made under subsection (6) must, in particular, make provision with respect to the giving of information about—
- (a) marriage counselling and other marriage support services;
 - (b) the importance to be attached to the welfare, wishes and feelings of children;
 - (c) how the parties may acquire a better understanding of the ways in which children can be helped to cope with the breakdown of a marriage;
 - (d) the nature of the financial questions that may arise on divorce or separation, and services which are available to help the parties;
 - (e) protection available against violence, and how to obtain support and assistance;
 - (f) mediation;
 - (g) the availability to each of the parties of independent legal advice and representation;
 - (h) the principles of legal aid and where the parties can get advice about obtaining legal aid;
 - (i) the divorce and separation process.
- (10) Before making any regulations under subsection (6), the Lord Chancellor must consult such persons concerned with the provision of relevant information as he considers appropriate.
- (11) A meeting with a marriage counsellor arranged under this section—
- (a) must be held in accordance with prescribed provisions; and
 - (b) must be with a person qualified and appointed in accordance with prescribed provisions.
- (12) A person who would not be required to make any contribution towards mediation provided for him under Part IIIA of the Legal Aid Act 1988 shall not be required to make any contribution towards the cost of a meeting with a marriage counsellor arranged for him under this section.
- (13) In this section “prescribed” means prescribed by regulations made by the Lord Chancellor.

9 Arrangements for the future

- (1) The requirements as to the parties' arrangements for the future are as follows.

Status: This is the original version (as it was originally enacted).

- (2) One of the following must be produced to the court—
- (a) a court order (made by consent or otherwise) dealing with their financial arrangements;
 - (b) a negotiated agreement as to their financial arrangements;
 - (c) a declaration by both parties that they have made their financial arrangements;
 - (d) a declaration by one of the parties (to which no objection has been notified to the court by the other party) that—
 - (i) he has no significant assets and does not intend to make an application for financial provision;
 - (ii) he believes that the other party has no significant assets and does not intend to make an application for financial provision; and
 - (iii) there are therefore no financial arrangements to be made.
- (3) If the parties—
- (a) were married to each other in accordance with usages of a kind mentioned in section 26(1) of the Marriage Act 1949 (marriages which may be solemnized on authority of superintendent registrar's certificate), and
 - (b) are required to co-operate if the marriage is to be dissolved in accordance with those usages,
- the court may, on the application of either party, direct that there must also be produced to the court a declaration by both parties that they have taken such steps as are required to dissolve the marriage in accordance with those usages.
- (4) A direction under subsection (3)—
- (a) may be given only if the court is satisfied that in all the circumstances of the case it is just and reasonable to give it; and
 - (b) may be revoked by the court at any time.
- (5) The requirements of section 11 must have been satisfied.
- (6) Schedule 1 supplements the provisions of this section.
- (7) If the court is satisfied, on an application made by one of the parties after the end of the period for reflection and consideration, that the circumstances of the case are—
- (a) those set out in paragraph 1 of Schedule 1,
 - (b) those set out in paragraph 2 of that Schedule,
 - (c) those set out in paragraph 3 of that Schedule, or
 - (d) those set out in paragraph 4 of that Schedule,
- it may make a divorce order or a separation order even though the requirements of subsection (2) have not been satisfied.
- (8) If the parties' arrangements for the future include a division of pension assets or rights under section 25B of the 1973 Act or section 10 of the Family Law (Scotland) Act 1985, any declaration under subsection (2) must be a statutory declaration.

Orders preventing divorce

10 Hardship: orders preventing divorce

- (1) If an application for a divorce order has been made by one of the parties to a marriage, the court may, on the application of the other party, order that the marriage is not to be dissolved.
- (2) Such an order (an “order preventing divorce”) may be made only if the court is satisfied—
 - (a) that dissolution of the marriage would result in substantial financial or other hardship to the other party or to a child of the family; and
 - (b) that it would be wrong, in all the circumstances (including the conduct of the parties and the interests of any child of the family), for the marriage to be dissolved.
- (3) If an application for the cancellation of an order preventing divorce is made by one or both of the parties, the court shall cancel the order unless it is still satisfied—
 - (a) that dissolution of the marriage would result in substantial financial or other hardship to the party in whose favour the order was made or to a child of the family; and
 - (b) that it would be wrong, in all the circumstances (including the conduct of the parties and the interests of any child of the family), for the marriage to be dissolved.
- (4) If an order preventing a divorce is cancelled, the court may make a divorce order in respect of the marriage only if an application is made under section 3 or 4(3) after the cancellation.
- (5) An order preventing divorce may include conditions which must be satisfied before an application for cancellation may be made under subsection (3).
- (6) In this section “hardship” includes the loss of a chance to obtain a future benefit (as well as the loss of an existing benefit).

Welfare of children

11 Welfare of children

- (1) In any proceedings for a divorce order or a separation order, the court shall consider—
 - (a) whether there are any children of the family to whom this section applies; and
 - (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 1989 with respect to any of them.
- (2) Where, in any case to which this section applies, it appears to the court that—
 - (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children Act 1989 with respect to any such child,
 - (b) it is not in a position to exercise the power, or (as the case may be) those powers, without giving further consideration to the case, and

Status: This is the original version (as it was originally enacted).

- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section, it may direct that the divorce order or separation order is not to be made until the court orders otherwise.
- (3) In deciding whether the circumstances are as mentioned in subsection (2)(a), the court shall treat the welfare of the child as paramount.
- (4) In making that decision, the court shall also have particular regard, on the evidence before it, to—
- (a) the wishes and feelings of the child considered in the light of his age and understanding and the circumstances in which those wishes were expressed;
 - (b) the conduct of the parties in relation to the upbringing of the child;
 - (c) the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by—
 - (i) his having regular contact with those who have parental responsibility for him and with other members of his family; and
 - (ii) the maintenance of as good a continuing relationship with his parents as is possible; and
 - (d) any risk to the child attributable to—
 - (i) where the person with whom the child will reside is living or proposes to live;
 - (ii) any person with whom that person is living or with whom he proposes to live; or
 - (iii) any other arrangements for his care and upbringing.
- (5) This section applies to—
- (a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
 - (b) any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply.

Supplementary

12 Lord Chancellor's rules

- (1) The Lord Chancellor may make rules—
- (a) as to the form in which a statement is to be made and what information must accompany it;
 - (b) requiring the person making the statement to state whether or not, since satisfying the requirements of section 8, he has made any attempt at reconciliation;
 - (c) as to the way in which a statement is to be given to the court;
 - (d) requiring a copy of a statement made by one party to be served by the court on the other party;
 - (e) as to circumstances in which such service may be dispensed with or may be effected otherwise than by delivery to the party;

- (f) requiring a party who has made a statement to provide the court with information about the arrangements that need to be made in consequence of the breakdown;
 - (g) as to the time, manner and (where attendance in person is required) place at which such information is to be given;
 - (h) where a statement has been made, requiring either or both of the parties—
 - (i) to prepare and produce such other documents, and
 - (ii) to attend in person at such places and for such purposes, as may be specified;
 - (i) as to the information and assistance which is to be given to the parties and the way in which it is to be given;
 - (j) requiring the parties to be given, in such manner as may be specified, copies of such statements and other documents as may be specified.
- (2) The Lord Chancellor may make rules requiring a person who is the legal representative of a party to a marriage with respect to which a statement has been, or is proposed to be, made—
- (a) to inform that party, at such time or times as may be specified—
 - (i) about the availability to the parties of marriage support services;
 - (ii) about the availability to them of mediation; and
 - (iii) where there are children of the family, that in relation to the arrangements to be made for any child the parties should consider the child's welfare, wishes and feelings;
 - (b) to give that party, at such time or times as may be specified, names and addresses of persons qualified to help—
 - (i) to effect a reconciliation; or
 - (ii) in connection with mediation; and
 - (c) to certify, at such time or times as may be specified—
 - (i) whether he has complied with the provision made in the rules by virtue of paragraphs (a) and (b);
 - (ii) whether he has discussed with that party any of the matters mentioned in paragraph (a) or the possibility of reconciliation; and
 - (iii) which, if any, of those matters they have discussed.
- (3) In subsections (1) and (2) “specified” means determined under or described in the rules.
- (4) This section does not affect any power to make rules of court for the purposes of this Act.

Resolution of disputes

13 Directions with respect to mediation

- (1) After the court has received a statement, it may give a direction requiring each party to attend a meeting arranged in accordance with the direction for the purpose—
- (a) of enabling an explanation to be given of the facilities available to the parties for mediation in relation to disputes between them; and
 - (b) of providing an opportunity for each party to agree to take advantage of those facilities.

Status: This is the original version (as it was originally enacted).

- (2) A direction may be given at any time, including in the course of proceedings connected with the breakdown of the marriage (as to which see section 25).
- (3) A direction may be given on the application of either of the parties or on the initiative of the court.
- (4) The parties are to be required to attend the same meeting unless—
 - (a) one of them asks, or both of them ask, for separate meetings; or
 - (b) the court considers separate meetings to be more appropriate.
- (5) A direction shall—
 - (a) specify a person chosen by the court (with that person's agreement) to arrange and conduct the meeting or meetings; and
 - (b) require such person as may be specified in the direction to produce to the court, at such time as the court may direct, a report stating—
 - (i) whether the parties have complied with the direction; and
 - (ii) if they have, whether they have agreed to take part in any mediation.

14 Adjournments

- (1) The court's power to adjourn any proceedings connected with the breakdown of a marriage includes power to adjourn—
 - (a) for the purpose of allowing the parties to comply with a direction under section 13; or
 - (b) for the purpose of enabling disputes to be resolved amicably.
- (2) In determining whether to adjourn for either purpose, the court shall have regard in particular to the need to protect the interests of any child of the family.
- (3) If the court adjourns any proceedings connected with the breakdown of a marriage for either purpose, the period of the adjournment must not exceed the maximum period prescribed by rules of court.
- (4) Unless the only purpose of the adjournment is to allow the parties to comply with a direction under section 13, the court shall order one or both of them to produce to the court a report as to—
 - (a) whether they have taken part in mediation during the adjournment;
 - (b) whether, as a result, any agreement has been reached between them;
 - (c) the extent to which any dispute between them has been resolved as a result of any such agreement;
 - (d) the need for further mediation; and
 - (e) how likely it is that further mediation will be successful.

Financial provision

15 Financial arrangements

- (1) Schedule 2 amends the 1973 Act.
- (2) The main object of Schedule 2 is—

- (a) to provide that, in the case of divorce or separation, an order about financial provision may be made under that Act before a divorce order or separation order is made; but
 - (b) to retain (with minor changes) the position under that Act where marriages are annulled.
- (3) Schedule 2 also makes minor and consequential amendments of the 1973 Act connected with the changes mentioned in subsection (1).

16 Division of pension rights: England and Wales

- (1) The Matrimonial Causes Act 1973 is amended as follows.
- (2) In section 25B (benefits under a pension scheme on divorce, etc.), in subsection (2), after paragraph (b), insert—
- “(c) in particular, where the court determines to make such an order, whether the order should provide for the accrued rights of the party with pension rights (“the pension rights”) to be divided between that party and the other party in such a way as to reduce the pension rights of the party with those rights and to create pension rights for the other party.”
- (3) After subsection (7) of that section, add—
- “(8) If a pensions adjustment order under subsection (2)(c) above is made, the pension rights shall be reduced and pension rights of the other party shall be created in the prescribed manner with benefits payable on prescribed conditions, except that the court shall not have the power—
 - (a) to require the trustees or managers of the scheme to provide benefits under their own scheme if they are able and willing to create the rights for the other party by making a transfer payment to another scheme and the trustees and managers of that other scheme are able and willing to accept such a payment and to create those rights; or
 - (b) to require the trustees or managers of the scheme to make a transfer to another scheme—
 - (i) if the scheme is an unfunded scheme (unless the trustees or managers are able and willing to make such a transfer payment); or
 - (ii) in prescribed circumstances.
- (9) No pensions adjustment order may be made under subsection (2)(c) above—
- (a) if the scheme is a scheme of a prescribed type, or
 - (b) in prescribed circumstances, or
 - (c) insofar as it would affect benefits of a prescribed type.”
- (4) In section 25D (pensions: supplementary), insert—
- (a) in subsection (2)—
 - (i) at the end of paragraph (a), the words “or prescribe the rights of the other party under the pension scheme,”; and
 - (ii) after paragraph (a), the following paragraph—
 - “(aa) make such consequential modifications of any enactment or subordinate legislation as appear to

Status: This is the original version (as it was originally enacted).

the Lord Chancellor necessary or expedient to give effect to the provisions of section 25B; and an order under this paragraph may make provision applying generally in relation to enactments and subordinate legislation of a description specified in the order;”;

- (b) in subsection (4), in the appropriate place in alphabetical order, the following entries—

““funded scheme” means a scheme under which the benefits are provided for by setting aside resources related to the value of the members' rights as they accrue (and“unfunded scheme” shall be construed accordingly);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978;” and

- (c) after subsection (4), the following subsection—

“(4A) Other expressions used in section 25B above shall be construed in accordance with section 124 (interpretation of Part I) of the Pensions Act 1995.”

17 Division of pension assets: Scotland

Section 10 of the Family Law (Scotland) Act 1985 (sharing of value of matrimonial property), is amended as follows—

- (a) in subsection (5) at the end of paragraph (b), insert “, and
(c) in the assets in respect of which either party has accrued rights to benefits under a pension scheme”; and
(b) after subsection (5) insert—

“(5A) In the case of an unfunded pension scheme, the court may not make an order which would allow assets to be removed from the scheme earlier than would otherwise have been the case.”.

18 Grounds for financial provision orders in magistrates' courts

- (1) In section 1 of the Domestic Proceedings and Magistrates' Courts Act 1978, omit paragraphs (c) and (d) (which provide for behaviour and desertion to be grounds on which an application for a financial provision order may be made).
(2) In section 7(1) of that Act (powers of magistrates' court where spouses are living apart by agreement), omit “neither party having deserted the other”.

Jurisdiction and commencement of proceedings

19 Jurisdiction in relation to divorce and separation

- (1) In this section “the court’s jurisdiction” means—
(a) the jurisdiction of the court under this Part to entertain marital proceedings; and
(b) any other jurisdiction conferred on the court under this Part, or any other enactment, in consequence of the making of a statement.

- (2) The court’s jurisdiction is exercisable only if—
 - (a) at least one of the parties was domiciled in England and Wales on the statement date;
 - (b) at least one of the parties was habitually resident in England and Wales throughout the period of one year ending with the statement date; or
 - (c) nullity proceedings are pending in relation to the marriage when the marital proceedings commence.
- (3) Subsection (4) applies if—
 - (a) a separation order is in force; or
 - (b) an order preventing divorce has been cancelled.
- (4) The court—
 - (a) continues to have jurisdiction to entertain an application made by reference to the order referred to in subsection (3); and
 - (b) may exercise any other jurisdiction which is conferred on it in consequence of such an application.
- (5) Schedule 3 amends Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (orders to stay proceedings where there are proceedings in other jurisdictions).
- (6) The court’s jurisdiction is exercisable subject to any order for a stay under Schedule 1 to that Act.
- (7) In this section—
 - “nullity proceedings” means proceedings in respect of which the court has jurisdiction under section 5(3) of the Domicile and Matrimonial Proceedings Act 1973; and
 - “statement date” means the date on which the relevant statement was received by the court.

20 Time when proceedings for divorce or separation begin

- (1) The receipt by the court of a statement is to be treated as the commencement of proceedings.
- (2) The proceedings are to be known as marital proceedings.
- (3) Marital proceedings are also—
 - (a) separation proceedings, if an application for a separation order has been made under section 3 by reference to the statement and not withdrawn;
 - (b) divorce proceedings, if an application for a divorce order has been made under section 3 by reference to the statement and not withdrawn.
- (4) Marital proceedings are to be treated as being both divorce proceedings and separation proceedings at any time when no application by reference to the statement, either for a divorce order or for a separation order, is outstanding.
- (5) Proceedings which are commenced by the making of an application under section 4(3) are also marital proceedings and divorce proceedings.
- (6) Marital proceedings come to an end—
 - (a) on the making of a separation order;

Status: This is the original version (as it was originally enacted).

- (b) on the making of a divorce order;
- (c) on the withdrawal of the statement by a notice in accordance with section 5(3)(a);
- (d) at the end of the specified period mentioned in section 5(3)(b), if no application under section 3 by reference to the statement is outstanding;
- (e) on the withdrawal of all such applications which are outstanding at the end of that period;
- (f) on the withdrawal of an application under section 4(3).

Intestacy

21 Intestacy: effect of separation

Where—

- (a) a separation order is in force, and
- (b) while the parties to the marriage remain separated, one of them dies intestate as respects any real or personal property,

that property devolves as if the other had died before the intestacy occurred.

Marriage support services

22 Funding for marriage support services

- (1) The Lord Chancellor may, with the approval of the Treasury, make grants in connection with—
 - (a) the provision of marriage support services;
 - (b) research into the causes of marital breakdown;
 - (c) research into ways of preventing marital breakdown.
- (2) Any grant under this section may be made subject to such conditions as the Lord Chancellor considers appropriate.
- (3) In exercising his power to make grants in connection with the provision of marriage support services, the Lord Chancellor is to have regard, in particular, to the desirability of services of that kind being available when they are first needed.

23 Provision of marriage counselling

- (1) The Lord Chancellor or a person appointed by him may secure the provision, in accordance with regulations made by the Lord Chancellor, of marriage counselling.
- (2) Marriage counselling may only be provided under this section at a time when a period for reflection and consideration—
 - (a) is running in relation to the marriage; or
 - (b) is interrupted under section 7(8) (but not for a continuous period of more than 18 months).
- (3) Marriage counselling may only be provided under this section for persons who would not be required to make any contribution towards the cost of mediation provided for them under Part IIIA of the Legal Aid Act 1988.

- (4) Persons for whom marriage counselling is provided under this section are not to be required to make any contribution towards the cost of the counselling.
- (5) Marriage counselling is only to be provided under this section if it appears to the marriage counsellor to be suitable in all the circumstances.
- (6) Regulations under subsection (1) may—
 - (a) make provision about the way in which marriage counselling is to be provided; and
 - (b) prescribe circumstances in which the provision of marriage counselling is to be subject to the approval of the Lord Chancellor.
- (7) A contract entered into for the purposes of subsection (1) by a person appointed under that subsection must include such provision as the Lord Chancellor may direct.
- (8) If the person appointed under subsection (1) is the Legal Aid Board, the powers conferred on the Board by or under the Legal Aid Act 1988 shall be exercisable for the purposes of this section as they are exercisable for the purposes of that Act.
- (9) In section 15 of the Legal Aid Act 1988 (availability of, and payment for, representation under Part IV of the Act), after subsection (3H) insert—
 - “(3I) A person may be refused representation for the purposes of any proceedings if—
 - (a) the proceedings are marital proceedings within the meaning of Part II of the Family Law Act 1996; and
 - (b) he is being provided with marriage counselling under section 23 of that Act in relation to the marriage.”

Interpretation

24 Interpretation of Part II etc

- (1) In this Part—
 - “the 1973 Act” means the Matrimonial Causes Act 1973;
 - “child of the family” and “the court” have the same meaning as in the 1973 Act;
 - “divorce order” has the meaning given in section 2(1)(a);
 - “divorce proceedings” is to be read with section 20;
 - “marital proceedings” has the meaning given in section 20;
 - “non-molestation order” has the meaning given by section 42(1);
 - “occupation order” has the meaning given by section 39;
 - “order preventing divorce” has the meaning given in section 10(2);
 - “party”, in relation to a marriage, means one of the parties to the marriage;
 - “period for reflection and consideration” has the meaning given in section 7;
 - “separation order” has the meaning given in section 2(1)(b);
 - “separation proceedings” is to be read with section 20;
 - “statement” means a statement of marital breakdown;
 - “statement of marital breakdown” has the meaning given in section 6(1).

Status: This is the original version (as it was originally enacted).

- (2) For the purposes of this Part, references to the withdrawal of an application are references, in relation to an application made jointly by both parties, to its withdrawal by a notice given, in accordance with rules of court—
- (a) jointly by both parties; or
 - (b) separately by each of them.
- (3) Where only one party gives such a notice of withdrawal, in relation to a joint application, the application shall be treated as if it had been made by the other party alone.

25 Connected proceedings

- (1) For the purposes of this Part, proceedings are connected with the breakdown of a marriage if they fall within subsection (2) and, at the time of the proceedings—
- (a) a statement has been received by the court with respect to the marriage and it is or may become possible for an application for a divorce order or separation order to be made by reference to that statement;
 - (b) such an application in relation to the marriage has been made and not withdrawn; or
 - (c) a divorce order has been made, or a separation order is in force, in relation to the marriage.
- (2) The proceedings are any under Parts I to V of the Children Act 1989 with respect to a child of the family or any proceedings resulting from an application—
- (a) for, or for the cancellation of, an order preventing divorce in relation to the marriage;
 - (b) by either party to the marriage for an order under Part IV;
 - (c) for the exercise, in relation to a party to the marriage or child of the family, of any of the court’s powers under Part II of the 1973 Act;
 - (d) made otherwise to the court with respect to, or in connection with, any proceedings connected with the breakdown of the marriage.

PART III

LEGAL AID FOR MEDIATION IN FAMILY MATTERS

26 Legal aid for mediation in family matters

- (1) In the Legal Aid Act 1988 insert, after section 13—

“PART IIIA

MEDIATION

13A Scope of this Part

- (1) This Part applies to mediation in disputes relating to family matters.

- (2) “Family matters” means matters which are governed by English law and in relation to which any question has arisen, or may arise—
- (a) under any provision of—
 - (i) the 1973 Act;
 - (ii) the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (iii) Parts I to V of the Children Act 1989;
 - (iv) Parts II and IV of the Family Law Act 1996; or
 - (v) any other enactment prescribed;
 - (b) under any prescribed jurisdiction of a prescribed court or tribunal; or
 - (c) under any prescribed rule of law.
- (3) Regulations may restrict this Part to mediation in disputes of any prescribed description.
- (4) The power to—
- (a) make regulations under subsection (2), or
 - (b) revoke any regulations made under subsection (3),
- is exercisable only with the consent of the Treasury.”
- (2) In section 2 of the 1988 Act, after subsection (3), insert—
- “(3A) “Mediation” means mediation to which Part IIIA of this Act applies; and includes steps taken by a mediator in any case—
- (a) in determining whether to embark on mediation;
 - (b) in preparing for mediation; and
 - (c) in making any assessment under that Part.”
- (3) In section 43 of the 1988 Act, after the definition of “legal representative” insert—
- ““mediator” means a person with whom the Board contracts for the provision of mediation by any person.”

27 **Provision and availability of mediation**

After section 13A of the 1988 Act, insert—

“13B Provision and availability of mediation

- (1) The Board may secure the provision of mediation under this Part.
- (2) If mediation is provided under this Part, it is to be available to any person whose financial resources are such as, under regulations, make him eligible for mediation.
- (3) A person is not to be granted mediation in relation to any dispute unless mediation appears to the mediator suitable to the dispute and the parties and all the circumstances.
- (4) A grant of mediation under this Part may be amended, withdrawn or revoked.
- (5) The power conferred by subsection (1) shall be exercised in accordance with any directions given by the Lord Chancellor.

Status: This is the original version (as it was originally enacted).

- (6) Any contract entered into by the Board for the provision of mediation under this Part must require the mediator to comply with a code of practice.
- (7) The code must require the mediator to have arrangements designed to ensure—
 - (a) that parties participate in mediation only if willing and not influenced by fear of violence or other harm;
 - (b) that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
 - (c) that the possibility of reconciliation is kept under review throughout mediation; and
 - (d) that each party is informed about the availability of independent legal advice.
- (8) Where there are one or more children of the family, the code must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider—
 - (a) the welfare, wishes and feelings of each child; and
 - (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.
- (9) A contract entered into by the Board for the provision of mediation under this Part must also include such other provision as the Lord Chancellor may direct the Board to include.
- (10) Directions under this section may apply generally to contracts, or to contracts of any description, entered into by the Board, but shall not be made with respect to any particular contract.”

28 Payment for mediation

- (1) After section 13B of the 1988 Act, insert—

“13C Payment for mediation under this Part

- (1) Except as provided by this section, the legally assisted person is not to be required to pay for mediation provided under this Part.
- (2) Subsection (3) applies if the financial resources of a legally assisted person are such as, under regulations, make him liable to make a contribution.
- (3) The legally assisted person is to pay to the Board in respect of the costs of providing the mediation, a contribution of such amount as is determined or fixed by or under the regulations.
- (4) If the total contribution made by a person in respect of any mediation exceeds the Board’s liability on his account, the excess shall be repaid to him.
- (5) Regulations may provide that, where—
 - (a) mediation under this Part is made available to a legally assisted person, and
 - (b) property is recovered or preserved for the legally assisted person as a result of the mediation,

a sum equal to the Board's liability on the legally assisted person's account is, except so far as the regulations otherwise provide, to be a first charge on the property in favour of the Board.

- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) as to circumstances in which property is to be taken to have been, or not to have been, recovered or preserved; and
 - (b) as to circumstances in which the recovery or preservation of property is to be taken to be, or not to be, the result of any mediation.
- (7) For the purposes of subsection (5), the nature of the property and where it is situated is immaterial.
- (8) The power to make regulations under section 34(2)(f) and (8) is exercisable in relation to any charge created under subsection (5) as it is exercisable in relation to the charge created by section 16.
- (9) For the purposes of subsections (4) and (5), the Board's liability on any person's account in relation to any mediation is the aggregate amount of—
- (a) the sums paid or payable by the Board on his account for the mediation, determined in accordance with subsection (10);
 - (b) any sums paid or payable in respect of its net liability on his account, determined in accordance with subsection (11) and the regulations—
 - (i) in respect of any proceedings, and
 - (ii) for any advice or assistance under Part III in connection with the proceedings or any matter to which the proceedings relate, so far as the proceedings relate to any matter to which the mediation relates; and
 - (c) any sums paid or payable in respect of its net liability on his account, determined in accordance with the regulations, for any other advice or assistance under Part III in connection with the mediation or any matter to which the mediation relates.
- (10) For the purposes of subsection (9)(a), the sums paid or payable by the Board on any person's account for any mediation are—
- (a) sums determined under the contract between the Board and the mediator as payable by the Board on that person's account for the mediation; or
 - (b) if the contract does not differentiate between such sums and sums payable on any other person's account or for any other mediation, such part of the remuneration payable under the contract as may be specified in writing by the Board.
- (11) For the purposes of subsection (9)(b), the Board's net liability on any person's account in relation to any proceedings is its net liability on his account under section 16(9)(a) and (b) in relation to the proceedings.”

(2) In section 16(9), after paragraph (b) insert

“and

- (c) if and to the extent that regulations so provide, any sums paid or payable in respect of the Board's liability on the legally assisted

Status: This is the original version (as it was originally enacted).

person’s account in relation to any mediation in connection with any matter to which those proceedings relate.”

(3) At the end of section 16, insert—

“(11) For the purposes of subsection (9)(c) above, the Board’s liability on any person’s account in relation to any mediation is its liability on his account under section 13C(9)(a) and (c) above in relation to the mediation.”

29 Mediation and civil legal aid

In section 15 of the 1988 Act, after subsection (3E) insert—

“(3F) A person shall not be granted representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator—

- (a) to determine—
 - (i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and
 - (ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm; and
- (b) if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation.

(3G) Subsection (3F) does not apply—

- (a) in relation to proceedings under—
 - (i) Part IV of the Family Law Act 1996;
 - (ii) section 37 of the Matrimonial Causes Act 1973;
 - (iii) Part IV or V of the Children Act 1989;
- (b) in relation to proceedings of any other description that may be prescribed; or
- (c) in such circumstances as may be prescribed.

(3H) So far as proceedings relate to family matters, the Board, in determining under subsection (3)(a) whether, in relation to the proceedings, it is reasonable that a person should be granted representation under this Part—

- (a) must have regard to whether and to what extent recourse to mediation would be a suitable alternative to taking the proceedings; and
- (b) must for that purpose have regard to the outcome of the meeting held under subsection (3F) and to any assessment made for the purposes of section 13B(3).”

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE

Rights to occupy matrimonial home

30 Rights concerning matrimonial home where one spouse has no estate, etc

(1) This section applies if—

Status: This is the original version (as it was originally enacted).

- (a) one spouse is entitled to occupy a dwelling-house by virtue of—
 - (i) a beneficial estate or interest or contract; or
 - (ii) any enactment giving that spouse the right to remain in occupation;and
 - (b) the other spouse is not so entitled.
- (2) Subject to the provisions of this Part, the spouse not so entitled has the following rights (“matrimonial home rights”)—
- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33;
 - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.
- (3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by the other spouse.
- (4) A spouse’s occupation by virtue of this section—
- (a) is to be treated, for the purposes of the Rent (Agriculture) Act 1976 and the Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation by the other spouse as the other spouse’s residence, and
 - (b) if the spouse occupies the dwelling-house as that spouse’s only or principal home, is to be treated, for the purposes of the Housing Act 1985 and Part I of the Housing Act 1988, as occupation by the other spouse as the other spouse’s only or principal home.
- (5) If a spouse (“the first spouse”)—
- (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
 - (b) makes any payment in or towards satisfaction of any liability of the other spouse (“the second spouse”) in respect of mortgage payments affecting the dwelling-house,
- the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.
- (6) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to the other spouse.
- (7) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.
- (8) A spouse’s matrimonial home rights continue—
- (a) only so long as the marriage subsists, except to the extent that an order under section 33(5) otherwise provides; and

Status: This is the original version (as it was originally enacted).

- (b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.
- (9) It is hereby declared that a spouse—
- (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
 - (b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,
- is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

31 Effect of matrimonial home rights as charge on dwelling-house

- (1) Subsections (2) and (3) apply if, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.
- (2) The other spouse's matrimonial home rights are a charge on the estate or interest.
- (3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—
 - (a) the date on which the spouse so entitled acquires the estate or interest;
 - (b) the date of the marriage; and
 - (c) 1st January 1968 (the commencement date of the Matrimonial Homes Act 1967).
- (4) Subsections (5) and (6) apply if, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust.
- (5) The rights are a charge also on the estate or interest of the trustees for the other spouse.
- (6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- (7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).
- (8) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—
 - (a) the death of the other spouse, or
 - (b) the termination (otherwise than by death) of the marriage,unless the court directs otherwise by an order made under section 33(5).
- (9) If—
 - (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and

- (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,
the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.
- (10) If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the Land Registration Act 1925 or any enactment replaced by that Act—
- (a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and
- (b) a spouse’s matrimonial home rights are not an overriding interest within the meaning of that Act affecting the dwelling-house even though the spouse is in actual occupation of the dwelling-house.
- (11) A spouse’s matrimonial home rights (whether or not constituting a charge) do not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.
- (12) If—
- (a) a spouse’s matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and
- (b) that estate is the subject of a mortgage,
then if, after the date of the creation of the mortgage (“the first mortgage”), the charge is registered under section 2 of the Land Charges Act 1972, the charge is, for the purposes of section 94 of the Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.
- (13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

32 Further provisions relating to matrimonial home rights

Schedule 4 re-enacts with consequential amendments and minor modifications provisions of the Matrimonial Homes Act 1983.

Occupation orders

33 Occupation orders where applicant has estate or interest etc. or has matrimonial home rights

- (1) If—
- (a) a person (“the person entitled”)—
- (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or

Status: This is the original version (as it was originally enacted).

- (ii) has matrimonial home rights in relation to a dwelling-house, and
 - (b) the dwelling-house—
 - (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
 - (ii) was at any time intended by the person entitled and any such other person to be their home,
- the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).
- (2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
 - (3) An order under this section may—
 - (a) enforce the applicant’s entitlement to remain in occupation as against the other person (“the respondent”);
 - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (c) regulate the occupation of the dwelling-house by either or both parties;
 - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
 - (e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;
 - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (g) exclude the respondent from a defined area in which the dwelling-house is included.
 - (4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.
 - (5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by—
 - (a) the death of the other spouse; or
 - (b) the termination (otherwise than by death) of the marriage.
 - (6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—
 - (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
 - (d) the conduct of the parties in relation to each other and otherwise.
 - (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—

- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
 - (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.
- (8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
 - (b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.
- (10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

34 Effect of order under s. 33 where rights are charge on dwelling-house

- (1) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse—
- (a) an order under section 33 against the other spouse has, except so far as a contrary intention appears, the same effect against persons deriving title under the other spouse or under the trustees and affected by the charge, and
 - (b) sections 33(1), (3), (4) and (10) and 30(3) to (6) apply in relation to any person deriving title under the other spouse or under the trustees and affected by the charge as they apply in relation to the other spouse.
- (2) The court may make an order under section 33 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

35 One former spouse with no existing right to occupy

- (1) This section applies if—
- (a) one former spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;
 - (b) the other former spouse is not so entitled; and
 - (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.
- (2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
 - (b) prohibiting the respondent from evicting or excluding the applicant during that period.

Status: This is the original version (as it was originally enacted).

- (4) If the applicant is not in occupation, an order under this section must contain provision—
- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
 - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
- (a) regulate the occupation of the dwelling-house by either or both of the parties;
 - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise;
 - (e) the length of time that has elapsed since the parties ceased to live together;
 - (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
 - (g) the existence of any pending proceedings between the parties—
 - (i) for an order under section 23A or 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.);
 - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
 - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and

Status: This is the original version (as it was originally enacted).

- (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses; and
 - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.
- (11) A former spouse who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 33.
- (13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- (a) as if he were the spouse entitled to occupy the dwelling-house by virtue of that section; and
 - (b) as if the respondent were the other spouse.

36 One cohabitant or former cohabitant with no existing right to occupy

- (1) This section applies if—
- (a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;
 - (b) the other cohabitant or former cohabitant is not so entitled; and
 - (c) that dwelling-house is the home in which they live together as husband and wife or a home in which they at any time so lived together or intended so to live together.
- (2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
 - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and

Status: This is the original version (as it was originally enacted).

- (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
- (a) regulate the occupation of the dwelling-house by either or both of the parties;
 - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise;
 - (e) the nature of the parties' relationship;
 - (f) the length of time during which they have lived together as husband and wife;
 - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
 - (h) the length of time that has elapsed since the parties ceased to live together; and
 - (i) the existence of any pending proceedings between the parties—
 - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
 - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the matters mentioned in subsection (6)(a) to (d); and
 - (b) the questions mentioned in subsection (8).
- (8) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties; and
 - (b) ceases to have effect on the death of either of them.

Status: This is the original version (as it was originally enacted).

- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.
- (11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.
- (13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
 - (a) as if he were a spouse entitled to occupy the dwelling-house by virtue of that section; and
 - (b) as if the respondent were the other spouse.

37 Neither spouse entitled to occupy

- (1) This section applies if—
 - (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but
 - (b) neither of them is entitled to remain in occupation—
 - (i) by virtue of a beneficial estate or interest or contract; or
 - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
 - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the spouses;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.
- (5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

Status: This is the original version (as it was originally enacted).

38 Neither cohabitant or former cohabitant entitled to occupy

- (1) This section applies if—
 - (a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they live or lived together as husband and wife; but
 - (b) neither of them is entitled to remain in occupation—
 - (i) by virtue of a beneficial estate or interest or contract; or
 - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
 - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the parties;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) (“a subsection (3) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
 - (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise; and
 - (e) the questions mentioned in subsection (5).
- (5) The questions are—
 - (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

39 Supplementary provisions

- (1) In this Part an “occupation order” means an order under section 33, 35, 36, 37 or 38.

- (2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.
- (3) If—
 - (a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and
 - (b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,the court may make an order under that other section.
- (4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

40 Additional provisions that may be included in certain occupation orders

- (1) The court may on, or at any time after, making an occupation order under section 33, 35 or 36—
 - (a) impose on either party obligations as to—
 - (i) the repair and maintenance of the dwelling-house; or
 - (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;
 - (b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;
 - (c) grant either party possession or use of furniture or other contents of the dwelling-house;
 - (d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;
 - (e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.
- (2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including—
 - (a) the financial needs and financial resources of the parties; and
 - (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.
- (3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

41 Additional considerations if parties are cohabitants or former cohabitants

- (1) This section applies if the parties are cohabitants or former cohabitants.

Status: This is the original version (as it was originally enacted).

- (2) Where the court is required to consider the nature of the parties' relationship, it is to have regard to the fact that they have not given each other the commitment involved in marriage.

Non-molestation orders

42 Non-molestation orders

- (1) In this Part a “non-molestation order” means an order containing either or both of the following provisions—
- (a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;
 - (b) provision prohibiting the respondent from molesting a relevant child.
- (2) The court may make a non-molestation order—
- (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
 - (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
- (3) In subsection (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
- (4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
- (a) of the applicant or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and
 - (b) of any relevant child.
- (6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (7) A non-molestation order may be made for a specified period or until further order.
- (8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

Further provisions relating to occupation and non-molestation orders

43 Leave of court required for applications by children under sixteen

- (1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.

- (2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

44 Evidence of agreement to marry

- (1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.
- (2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—
- (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

45 Ex parte orders

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
 - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
 - (i) where the court is a magistrates' court, in effecting service of proceedings; or
 - (ii) in any other case, in effecting substituted service.
- (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.
- (4) If, at a full hearing, the court makes an occupation order (“the full order”), then—
- (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
 - (b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.
- (5) In this section—
- “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;

Status: This is the original version (as it was originally enacted).

“initial order” means an occupation order made by virtue of subsection (1);
and

“relevant section” means section 33(10), 35(10), 36(10), 37(5) or 38(6).

46 Undertakings

- (1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.
- (4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.
- (5) This section has effect without prejudice to the powers of the High Court and the county court apart from this section.

47 Arrest for breach of order

- (1) In this section “a relevant order” means an occupation order or a non-molestation order.
- (2) If—
 - (a) the court makes a relevant order; and
 - (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,
it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.
- (3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it—
 - (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
 - (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.
- (4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.
- (5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.
- (6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.
- (7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—

Status: This is the original version (as it was originally enacted).

- (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
- (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

- (8) If the court has made a relevant order but—
 - (a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or
 - (b) has attached that power only to certain provisions of the order,then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.
- (9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless—
 - (a) the application is substantiated on oath; and
 - (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.
- (10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.
- (11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 of the Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and a county court to remand a person by virtue of this section.
- (12) If a person remanded under this section is granted bail (whether in the High Court or a county court under Schedule 5 or in a magistrates' court under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

48 Remand for medical examination and report

- (1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.
- (3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.
- (4) If there is reason to suspect that a person who has been arrested—
 - (a) under section 47(6), or
 - (b) under a warrant issued on an application made under section 47(8),is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order under section 35 of the Mental Health

Status: This is the original version (as it was originally enacted).

Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section.

49 Variation and discharge of orders

- (1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
 - (a) the respondent, or
 - (b) the person on whose application the order was made.
- (2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.
- (3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 33 against the other spouse may also be varied or discharged by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.
- (4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

Enforcement powers of magistrates' courts

50 Power of magistrates' court to suspend execution of committal order

- (1) If, under section 63(3) of the Magistrates' Courts Act 1980, a magistrates' court has power to commit a person to custody for breach of a relevant requirement, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.
- (2) In subsection (1) "a relevant requirement" means—
 - (a) an occupation order or non-molestation order;
 - (b) an exclusion requirement included by virtue of section 38A of the Children Act 1989 in an interim care order made under section 38 of that Act; or
 - (c) an exclusion requirement included by virtue of section 44A of the Children Act 1989 in an emergency protection order under section 44 of that Act.

51 Power of magistrates' court to order hospital admission or guardianship

- (1) A magistrates' court has the same power to make a hospital order or guardianship order under section 37 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of a relevant requirement as a magistrates' court has under those sections in the case of a person convicted of an offence punishable on summary conviction with imprisonment.
- (2) In subsection (1) "a relevant requirement" has the meaning given by section 50(2).

Interim care orders and emergency protection orders

52 Amendments of Children Act 1989

Schedule 6 makes amendments of the provisions of the Children Act 1989 relating to interim care orders and emergency protection orders.

Transfer of tenancies

53 Transfer of certain tenancies

Schedule 7 makes provision in relation to the transfer of certain tenancies on divorce etc. or on separation of cohabitants.

Dwelling-house subject to mortgage

54 Dwelling-house subject to mortgage

- (1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.
- (2) Subsection (1) applies whether or not the mortgagee is in possession.
- (3) Where a person (“A”) is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of—
 - (a) any matrimonial home rights conferred by section 30, or
 - (b) any rights conferred by an order under section 35 or 36,have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.
- (4) Subsection (3) does not apply, in the case of matrimonial home rights, if under section 31 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.
- (5) In this section “connected person”, in relation to any person, means that person’s spouse, former spouse, cohabitant or former cohabitant.

55 Actions by mortgagees: joining connected persons as parties

- (1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.
- (2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).
- (3) The circumstances are that—
 - (a) the connected person is enabled by section 30(3) or (6) (or by section 30(3) or (6) as applied by section 35(13) or 36(13)), to meet the mortgagor’s liabilities under the mortgage;

Status: This is the original version (as it was originally enacted).

- (b) he has applied to the court before the action is finally disposed of in that court; and
- (c) the court sees no special reason against his being made a party to the action and is satisfied—
 - (i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor’s liabilities or obligations as might affect the outcome of the proceedings; or
 - (ii) that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.

(4) In this section “connected person” has the same meaning as in section 54.

56 Actions by mortgagees: service of notice on certain persons

- (1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is—
- (a) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or
 - (b) in the case of registered land, a subsisting registration of—
 - (i) a notice under section 31(10);
 - (ii) a notice under section 2(8) of the Matrimonial Homes Act 1983; or
 - (iii) a notice or caution under section 2(7) of the Matrimonial Homes Act 1967.
- (2) If the person on whose behalf—
- (a) the land charge is registered, or
 - (b) the notice or caution is entered,
- is not a party to the action, the mortgagee must serve notice of the action on him.
- (3) If—
- (a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (1) (a) or (b),
 - (b) a certificate of the result of the search has been issued, and
 - (c) the action is commenced within the priority period,
- the relevant time is the date of the certificate.
- (4) In any other case the relevant time is the time when the action is commenced.
- (5) The priority period is, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.

Jurisdiction and procedure etc.

57 Jurisdiction of courts

- (1) For the purposes of this Part “the court” means the High Court, a county court or a magistrates' court.
- (2) Subsection (1) is subject to the provision made by or under the following provisions of this section, to section 59 and to any express provision as to the jurisdiction of any court made by any other provision of this Part.
- (3) The Lord Chancellor may by order specify proceedings under this Part which may only be commenced in—
 - (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the order.
- (4) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Part may only be commenced in—
 - (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the order.
- (5) The Lord Chancellor may by order provide that in specified circumstances the whole, or any specified part of any specified proceedings under this Part is to be transferred to—
 - (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the order.
- (6) An order under subsection (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.
- (7) An order under subsection (5) may make such provision as the Lord Chancellor thinks appropriate for excluding specified proceedings from the operation of section 38 or 39 of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings) or any other enactment which would otherwise govern the transfer of those proceedings, or any part of them.
- (8) For the purposes of subsections (3), (4) and (5), there are three levels of court—
 - (a) the High Court;
 - (b) any county court; and
 - (c) any magistrates' court.
- (9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for specified purposes of this Part, or of any provision made under this Part.
- (10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.

Status: This is the original version (as it was originally enacted).

(11) In this section “specified” means specified by an order under this section.

58 Contempt proceedings

The powers of the court in relation to contempt of court arising out of a person’s failure to comply with an order under this Part may be exercised by the relevant judicial authority.

59 Magistrates' courts

- (1) A magistrates' court shall not be competent to entertain any application, or make any order, involving any disputed question as to a party’s entitlement to occupy any property by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, unless it is unnecessary to determine the question in order to deal with the application or make the order.
- (2) A magistrates' court may decline jurisdiction in any proceedings under this Part if it considers that the case can more conveniently be dealt with by another court.
- (3) The powers of a magistrates' court under section 63(2) of the Magistrates' Courts Act 1980 to suspend or rescind orders shall not apply in relation to any order made under this Part.

60 Provision for third parties to act on behalf of victims of domestic violence

- (1) Rules of court may provide for a prescribed person, or any person in a prescribed category, (“a representative”) to act on behalf of another in relation to proceedings to which this Part applies.
- (2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.
- (3) Rules made under this section may prescribe—
 - (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
 - (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.
- (4) Any rules made under this section may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.
- (5) Any such rules may be replaced by further rules made under this section.

61 Appeals

- (1) An appeal shall lie to the High Court against—
 - (a) the making by a magistrates' court of any order under this Part, or
 - (b) any refusal by a magistrates' court to make such an order,but no appeal shall lie against any exercise by a magistrates' court of the power conferred by section 59(2).

Status: This is the original version (as it was originally enacted).

- (2) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (3) Where an order is made under subsection (2), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (4) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—
 - (a) of the enforcement of the order, and
 - (b) of any power to vary, revive or discharge orders,be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.
- (5) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under section 57(5).
- (6) Except to the extent provided for in any order made under subsection (5), no appeal may be made against any decision of a kind mentioned in that subsection.

General

62 Meaning of “cohabitants”, “relevant child” and “associated persons”

- (1) For the purposes of this Part—
 - (a) “cohabitants” are a man and a woman who, although not married to each other, are living together as husband and wife; and
 - (b) “former cohabitants” is to be read accordingly, but does not include cohabitants who have subsequently married each other.
- (2) In this Part, “relevant child”, in relation to any proceedings under this Part, means—
 - (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
 - (b) any child in relation to whom an order under the Adoption Act 1976 or the Children Act 1989 is in question in the proceedings; and
 - (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Part, a person is associated with another person if—
 - (a) they are or have been married to each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
 - (d) they are relatives;
 - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
 - (f) in relation to any child, they are both persons falling within subsection (4); or
 - (g) they are parties to the same family proceedings (other than proceedings under this Part).

Status: This is the original version (as it was originally enacted).

- (4) A person falls within this subsection in relation to a child if—
- (a) he is a parent of the child; or
 - (b) he has or has had parental responsibility for the child.
- (5) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if—
- (a) one is a natural parent of the child or a parent of such a natural parent; and
 - (b) the other is the child or any person—
 - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
 - (ii) with whom the child has at any time been placed for adoption.
- (6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

63 Interpretation of Part IV

- (1) In this Part—

“adoption order” has the meaning given by section 72(1) of the Adoption Act 1976;

“associated”, in relation to a person, is to be read with section 62(3) to (6);

“child” means a person under the age of eighteen years;

“cohabitant” and “former cohabitant” have the meaning given by section 62(1);

“the court” is to be read with section 57;

“development” means physical, intellectual, emotional, social or behavioural development;

“dwelling-house” includes (subject to subsection (4))—

(a) any building or part of a building which is occupied as a dwelling,

(b) any caravan, house-boat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it;

“family proceedings” means any proceedings—

(a) under the inherent jurisdiction of the High Court in relation to children; or

(b) under the enactments mentioned in subsection (2);

“harm”—

(a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and

(b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

“ill-treatment” includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

“matrimonial home rights” has the meaning given by section 30;

“mortgage”, “mortgagor” and “mortgagee” have the same meaning as in the Law of Property Act 1925;

Status: This is the original version (as it was originally enacted).

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by section 42(1);

“occupation order” has the meaning given by section 39;

“parental responsibility” has the same meaning as in the Children Act 1989;

“relative”, in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse or former spouse, or
- (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person’s spouse or former spouse,

and includes, in relation to a person who is living or has lived with another person as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other;

“relevant child”, in relation to any proceedings under this Part, has the meaning given by section 62(2);

“the relevant judicial authority”, in relation to any order under this Part, means—

- (a) where the order was made by the High Court, a judge of that court;
- (b) where the order was made by a county court, a judge or district judge of that or any other county court; or
- (c) where the order was made by a magistrates' court, any magistrates' court.

(2) The enactments referred to in the definition of “family proceedings” are—

- (a) Part II;
- (b) this Part;
- (c) the Matrimonial Causes Act 1973;
- (d) the Adoption Act 1976;
- (e) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (f) Part III of the Matrimonial and Family Proceedings Act 1984;
- (g) Parts I, II and IV of the Children Act 1989;
- (h) section 30 of the Human Fertilisation and Embryology Act 1990.

(3) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(4) For the purposes of sections 31, 32, 53 and 54 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of “dwelling-house” were omitted.

(5) It is hereby declared that this Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

PART V

SUPPLEMENTAL

64 Provision for separate representation for children

- (1) The Lord Chancellor may by regulations provide for the separate representation of children in proceedings in England and Wales which relate to any matter in respect of which a question has arisen, or may arise, under—
 - (a) Part II;
 - (b) Part IV;
 - (c) the 1973 Act; or
 - (d) the Domestic Proceedings and Magistrates' Courts Act 1978.
- (2) The regulations may provide for such representation only in specified circumstances.

65 Rules, regulations and orders

- (1) Any power to make rules, orders or regulations which is conferred by this Act is exercisable by statutory instrument.
- (2) Any statutory instrument made under this Act may—
 - (a) contain such incidental, supplemental, consequential and transitional provision as the Lord Chancellor considers appropriate; and
 - (b) make different provision for different purposes.
- (3) Any statutory instrument containing an order, rules or regulations made under this Act, other than an order made under section 5(8) or 67(3), shall be subject to annulment by a resolution of either House of Parliament.
- (4) No order shall be made under section 5(8) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) This section does not apply to rules of court made, or any power to make rules of court, for the purposes of this Act.

66 Consequential amendments, transitional provisions and repeals

- (1) Schedule 8 makes minor and consequential amendments.
- (2) Schedule 9 provides for the making of other modifications consequential on provisions of this Act, makes transitional provisions and provides for savings.
- (3) Schedule 10 repeals certain enactments.

67 Short title, commencement and extent

- (1) This Act may be cited as the Family Law Act 1996.
- (2) Section 65 and this section come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Lord Chancellor may by order appoint; and different days may be appointed for different purposes.

- (4) This Act, other than section 17, extends only to England and Wales, except that—
- (a) in Schedule 8—
 - (i) the amendments of section 38 of the Family Law Act 1986 extend also to Northern Ireland;
 - (ii) the amendments of the Judicial Proceedings (Regulation of Reports) Act 1926 extend also to Scotland; and
 - (iii) the amendments of the Maintenance Orders Act 1950, the Civil Jurisdiction and Judgments Act 1982, the Finance Act 1985 and sections 42 and 51 of the Family Law Act 1986 extend also to both Northern Ireland and Scotland; and
 - (b) in Schedule 10, the repeal of section 2(1)(b) of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 extends also to Scotland.