



Family Law Act 1996

1996 CHAPTER 27

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 - (d) the application has not been withdrawn.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.

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- (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 - (b) is not withdrawn,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
 - (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

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- (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
 - (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.

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- (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.
- (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.

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- (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
 - (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.
- (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—

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- (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

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- (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 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;”;
 - (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”;
- (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.”.

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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;
 - (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.

Status: This is the original version (as it was originally enacted).

- (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).

(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;

Status: This is the original version (as it was originally enacted).

- (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.