

SCHEDULES

SCHEDULE 8

Section 66(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS CONNECTED WITH PART II

The Wills Act 1837 (c. 26)

- 1 In section 18A(1) of the Wills Act 1837 (effect of dissolution or annulment of marriage on wills), for “a decree” substitute “an order or decree”.

The Judicial Proceedings (Regulation of Reports) Act 1926 (c. 61)

- 2 In section 1(1)(b) of the Judicial Proceedings (Regulation of Reports) Act 1926 (restriction on reporting) after “in relation to” insert “any proceedings under Part II of the Family Law Act 1996 or otherwise in relation to”.

The Maintenance Orders Act 1950 (c. 37)

- 3 In section 16 of the Maintenance Orders Act 1950 (orders to which Part II of that Act applies)—
- (a) in subsection (2)(a)(i), for “23(1), (2) and (4)” substitute “22A, 23”; and
 - (b) in subsection (2)(c)(v), after “Matrimonial Causes Act 1973” insert “(as that Act had effect immediately before the passing of the Family Law Act 1996)”.

The Matrimonial Causes Act 1973 (c. 18)

- 4 The 1973 Act is amended as follows.
- 5 In section 8 (intervention of Queen’s Proctor)—
- (a) for “a petition for divorce” substitute “proceedings for a divorce order”;
 - (b) in subsection (1)(b), omit “or before the decree nisi is made absolute”; and
 - (c) in subsection (2), for “a decree nisi in any proceedings for divorce” substitute “the making of a divorce order”.
- 6 For section 15 (application of provisions relating to divorce to nullity proceedings) substitute—

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“15 Decrees of nullity to be decrees nisi

Every decree of nullity of marriage shall in the first instance be a decree nisi and shall not be made absolute before the end of six weeks from its grant unless—

- (a) the High Court by general order from time to time fixes a shorter period; or
- (b) in any particular case, the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this section.

15A Intervention of Queen’s Proctor

- (1) In the case of a petition for nullity of marriage—
 - (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen’s Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
 - (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Queen’s Proctor on any matter material to the due decision of the case, and the Queen’s Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.
- (2) If the Queen’s Proctor intervenes or shows cause against a decree nisi in any proceedings for nullity of marriage, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.
- (3) Subsection (3) of section 8 above applies in relation to this section as it applies in relation to that section.

15B Proceedings after decree nisi: general powers of court

- (1) Where a decree of nullity of marriage has been granted under this Act but not made absolute, then, without prejudice to section 15A above, any person (excluding a party to the proceedings other than the Queen’s Proctor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—
 - (a) notwithstanding anything in section 15 above (but subject to section 41 below) make the decree absolute; or
 - (b) rescind the decree; or
 - (c) require further inquiry; or
 - (d) otherwise deal with the case as it thinks fit.
- (2) Where a decree of nullity of marriage has been granted under this Act and no application for it to be made absolute has been made by the party to whom

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it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above.”

7 In section 19(4) (application of provisions relating to divorce to proceedings under section 19)—

- (a) for “1(5), 8 and 9” substitute “15, 15A and 15B”; and
- (b) for “divorce” in both places substitute “nullity of marriage”.

8 In section 24A(1) (orders for sale of property), for “section 23 or 24 of this Act” substitute “any of sections 22A to 24 above”.

9 (1) Section 25 (matters to which the court is to have regard) is amended as follows.

(2) In subsection (1), for “section 23, 24 or 24A” substitute “any of sections 22A to 24A”.

(3) In subsection (2)—

- (a) for “section 23(1)(a), (b) or (c)” substitute “section 22A or 23 above to make a financial provision order in favour of a party to a marriage or the exercise of its powers under section 23A,”;
- (b) in paragraph (g), after “parties” insert “, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage,”; and
- (c) in paragraph (h), omit “in the case of proceedings for divorce or nullity of marriage,”.

(4) In subsection (3), for “section 23(1)(d), (e) or (f), (2) or (4)” substitute “section 22A or 23 above to make a financial provision order in favour of a child of the family or the exercise of its powers under section 23A,”.

(5) In subsection (4), for “section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A” substitute “any of sections 22A to 24A”.

(6) After subsection (4) insert—

“(5) In relation to any power of the court to make an interim periodical payments order or an interim order for the payment of a lump sum, the preceding provisions of this section, in imposing any obligation on the court with respect to the matters to which it is to have regard, shall not require the court to do anything which would cause such a delay as would, in the opinion of the court, be inappropriate having regard—

- (a) to any immediate need for an interim order;
- (b) to the matters in relation to which it is practicable for the court to inquire before making an interim order; and
- (c) to the ability of the court to have regard to any matter and to make appropriate adjustments when subsequently making a financial provision order which is not interim.”

10 (1) Section 25A (requirement to consider need to provide for “a clean break”) is amended as follows.

(2) In subsection (1), for the words from the beginning to “the marriage” substitute—

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“If the court decides to exercise any of its powers under any of sections 22A to 24A above in favour of a party to a marriage (other than its power to make an interim periodical payments order or an interim order for the payment of a lump sum)”.

(3) In subsection (1), for “the decree” substitute “a divorce order or decree of nullity”.

(4) For subsection (3) substitute—

“(3) If the court—

(a) would have power under section 22A or 23 above to make a financial provision order in favour of a party to a marriage (“the first party”), but

(b) considers that no continuing obligation should be imposed on the other party to the marriage (“the second party”) to make or secure periodical payments in favour of the first party,

it may direct that the first party may not at any time after the direction takes effect, apply to the court for the making against the second party of any periodical payments order or secured periodical payments order and, if the first party has already applied to the court for the making of such an order, it may dismiss the application.

(3A) If the court—

(a) exercises, or has exercised, its power under section 22A at any time before making a divorce order, and

(b) gives a direction under subsection (3) above in respect of a periodical payments order or a secured periodical payments order,

it shall provide for the direction not to take effect until a divorce order is made.”

11 In each of sections 25B(2) and (3), 25C(1) and (3) and 25D(1)(a), (2)(a), (c) and (e) (benefits under a pension scheme on divorce, etc.) for “section 23” substitute “section 22A or 23”.

12 In section 26(1) (commencement of proceedings for ancillary relief), for the words from the beginning to “22 above” substitute—

“(1) If a petition for nullity of marriage has been presented, then, subject to subsection (2) below, proceedings”.

13 (1) Section 27 (financial provision orders etc.

in case of failure to provide proper maintenance) is amended as follows.

(2) In subsection (5)—

(a) after “an order requiring the respondent” insert “—

(a)”;

and

(b) at the end insert “, or

(b) to pay to the applicant such lump sum or sums as the court thinks reasonable.”

(3) For subsection (6) substitute—

“(6) Subject to the restrictions imposed by the following provisions of this Act, if on an application under this section the applicant satisfies the court of any

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ground mentioned in subsection (1) above, the court may make one or more financial provision orders against the respondent in favour of the applicant or a child of the family.”

- (4) In subsection (7), for “(6)(c) or (f)” substitute “(6)”.
- 14 (1) Section 28 (duration of continuing financial provision order in favour of a party to a marriage) is amended as follows.
- (2) In subsection (1A), for the words from the beginning to “nullity of marriage” substitute—
- “(1A) At any time when—
- (a) the court exercises, or has exercised, its power under section 22A or 23 above to make a financial provision order in favour of a party to a marriage,
 - (b) but for having exercised that power, the court would have power under one of those sections to make such an order, and
 - (c) an application for a divorce order or a petition for a decree of nullity of marriage is outstanding or has been granted in relation to the marriage.”.
- (3) Insert, after subsection (1A)—
- “(1B) If the court—
- (a) exercises, or has exercised, its power under section 22A at any time before making a divorce order, and
 - (b) gives a direction under subsection (1A) above in respect of a periodical payments order or a secured periodical payments order,
- it shall provide for the direction not to take effect until a divorce order is made.”
- (4) In subsection (2), for the words from “on or after” to “nullity of marriage” substitute “at such a time as is mentioned in subsection (1A)(c) above”.
- (5) In subsection (3)—
- (a) for “a decree” substitute “an order or decree”; and
 - (b) for “that decree” substitute “that order or decree”.
- 15 In section 29(1) (duration of a continuing financial provision order in favour of a child of the family), for “under section 24(1)(a)” substitute “such as is mentioned in section 21(2)(a)”.
- 16 (1) Section 31 (variation etc. of orders) is amended as follows.
- (2) In subsection (2)—
- (a) after “following orders” insert “under this Part of this Act”;
 - (b) for paragraph (d) substitute—
 - “(d) an order for the payment of a lump sum in a case in which the payment is to be by instalments;”;
 - (c) in paragraph (dd), for “23(1)(c)” substitute “21(1)(c)”;
 - (d) after paragraph (dd) insert—
 - “(de) any other order for the payment of a lump sum, if it is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;”;

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- (e) for paragraph (e) substitute—
 - “(e) any order under section 23A of a kind referred to in section 21(2)(b),(c) or (d) which is made on or after the making of a separation order;
 - (ea) any order under section 23A which is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;”.
- (3) In subsection (4)—
 - (a) for the words from “for a settlement” to “24(1)(c) or (d)”, substitute “referred to in subsection (2)(e)”; and
 - (b) for paragraphs (a) and (b) substitute “on an application for a divorce order in relation to the marriage”.
- (4) After subsection (4) insert—
 - “(4A) In relation to an order which falls within subsection (2)(de) or (ea) above (“the subsection (2) order”)—
 - (a) the powers conferred by this section may be exercised—
 - (i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and
 - (ii) only if, at the time when the application is made, no divorce order has been made in relation to the marriage and no separation order has been so made since the subsection (2) order was made; and
 - (b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.
 - (4B) No variation—
 - (a) of a financial provision order made under section 22A above, other than an interim order, or
 - (b) of a property adjustment order made under section 23A above,
 shall be made so as to take effect before the making of a divorce order or separation order in relation to the marriage, unless the court is satisfied that the circumstances of the case are exceptional, and that it would be just and reasonable for the variation to be so made.”
- (5) In subsection (5)—
 - (a) insert, at the beginning, “Subject to subsections (7A) to (7F) below and without prejudice to any power exercisable by virtue of subsection (2)(d), (dd) or (e) above or otherwise than by virtue of this section;” and
 - (b) for “section 23”, in each place, substitute “section 22A or 23”.
- (6) In subsection (7)(a)—
 - (a) for “on or after” to “consider” substitute “in favour of a party to a marriage, the court shall, if the marriage has been dissolved or annulled, consider”; and
 - (b) after “sufficient” insert “(in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below)”.

- (7) After subsection (7), insert—
- “(7A) Subsection (7B) below applies where, after the dissolution of a marriage, the court—
- (a) discharges a periodical payments order or secured periodical payments order made in favour of a party to the marriage; or
 - (b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.
- (7B) The court has power, in addition to any power it has apart from this subsection, to make supplemental provision consisting of any of—
- (a) an order for the payment of a lump sum in favour of a party to the marriage;
 - (b) one or more property adjustment orders in favour of a party to the marriage;
 - (c) a direction that the party in whose favour the original order discharged or varied was made is not entitled to make any further application for—
 - (i) a periodical payments or secured periodical payments order, or
 - (ii) an extension of the period to which the original order is limited by any variation made by the court.
- (7C) An order for the payment of a lump sum made under subsection (7B) above may—
- (a) provide for the payment of that sum by instalments of such amount as may be specified in the order; and
 - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (7D) Subsections (7) and (8) of section 22A above apply where the court makes an order for the payment of a lump sum under subsection (7B) above as they apply where it makes such an order under section 22A above.
- (7E) If under subsection (7B) above the court makes more than one property adjustment order in favour of the same party to the marriage, each of those orders must fall within a different paragraph of section 21(2) above.
- (7F) Sections 24A and 30 above apply where the court makes a property adjustment order under subsection (7B) above as they apply where it makes such an order under section 23A above.”
- 17 In section 32(1) (payment of certain arrears to be unenforceable), for the words from “an order” to “financial provision order” substitute “any financial provision order under this Part of this Act or any interim order for maintenance”.
- 18 For section 33(2) (repayment of sums paid under certain orders) substitute—
- “(2) This section applies to the following orders under this Part of this Act—
- (a) any periodical payments order;
 - (b) any secured periodical payments order; and

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- (c) any interim order for maintenance, so far as it requires the making of periodical payments.”
- 19 (1) Section 33A (consent orders) is amended as follows.
- (2) In subsection (2), after “applies”, in the first place, insert “(subject, in the case of the powers of the court under section 31A above, to subsections (6) and (7) of that section)”.
- (3) In subsection (3), in the definition of “order for financial relief”, for “an order under any of sections 23, 24, 24A or 27 above” substitute “any of the following orders under this Part of this Act, that is to say, any financial provision order, any property adjustment order, any order for the sale of property or any interim order for maintenance”.
- 20 In section 35 (alteration of maintenance agreements), after subsection (6), insert—
- “(7) Subject to subsection (5) above, references in this Act to any such order as is mentioned in section 21 above shall not include references to any order under this section.”
- 21 In section 37(1) (avoidance of transactions intended to prevent or reduce financial relief), for “22, 23, 24, 27, 31 (except subsection (6))” substitute “22A to 24, 27, 31 (except subsection (6)), 31A”.
- 22 In section 47(2) (relief in cases of polygamous marriages)—
- (a) in paragraph (a), after “any” insert the words “divorce order, any separation order under the 1996 Act or any”; and
- (b) in paragraph (d), after “this Act” insert “or the 1996 Act” and for “such decree or order” substitute “a statement of marital breakdown or any such order or decree”.
- 23 Omit section 49 (under which a person who is alleged to have committed adultery with a party to a marriage is required to be made a party to certain proceedings).
- 24 (1) Section 52(1) (interpretation) is amended as follows.
- (2) After “In this Act”, insert—
- ““the 1996 Act” means the Family Law Act 1996;”.
- (3) After the definition of “maintenance assessment” insert—
- ““statement of marital breakdown” has the same meaning as in the Family Law Act 1996.”
- 25 In section 52(2)(a), for “with section 21 above” substitute “(subject to section 35(7) above) with section 21 above and—
- (i) in the case of a financial provision order or periodical payments order, as including (except where the context otherwise requires) references to an interim periodical payments order under section 22A or 23 above; and
- (ii) in the case of a financial provision order or order for the payment of a lump sum, as including (except where the context otherwise requires) references to an interim order for the payment of a lump sum under section 22A or 23 above;”.

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The Domicile and Matrimonial Proceedings Act 1973 (c. 45)

26 For section 5(5) of the Domicile and Matrimonial Proceedings Act 1973 (jurisdiction in cases of change of domicile or habitual residence) substitute—

“(5) The court shall have jurisdiction to entertain proceedings for nullity of marriage (even though it would not otherwise have jurisdiction) at any time when marital proceedings, as defined by section 20 of the Family Law Act 1996, are pending in relation to the marriage.”

The Inheritance (Provision for Family and Dependants) Act 1975 (c. 63)

27 (1) The Inheritance (Provision for Family and Dependants) Act 1975 (meaning of reasonable financial provision) is amended as follows.

(2) In section 1(2)(a), for the words from “the marriage” to “in force” substitute “, at the date of death, a separation order under the Family Law Act 1996 was in force in relation to the marriage”.

(3) In section 3(2) (matters to which the court is to have regard)—

- (a) for “decree of judicial separation” substitute “separation order under the Family Law Act 1996”; and
- (b) for “a decree of divorce” substitute “a divorce order”.

(4) In section 14 (provision where no financial relief was granted on divorce)—

- (a) in subsection (1), for the words from “a decree” to first “granted” substitute “a divorce order or separation order has been made under the Family Law Act 1996 in relation to a marriage or a decree of nullity of marriage has been made absolute”;
- (b) in subsection (1)(a), for “section 23” and “section 24” substitute, respectively, “section 22A or 23” and “section 23A or 24”;
- (c) after paragraph (b), for the words from “the decree of divorce” to the end substitute “, as the case may be, the divorce order or separation order had not been made or the decree of nullity had not been made absolute”; and
- (d) in subsection (2), for “decree of judicial separation” and “the decree” substitute, respectively, “separation order” and “the order”.

(5) In section 15(1) (restriction imposed in divorce proceedings on applications under that Act), for the words from the beginning to “thereafter” substitute—

“At any time when the court—

- (a) has jurisdiction under section 23A or 24 of the Matrimonial Causes Act 1973 to make a property adjustment order in relation to a marriage; or
- (b) would have such jurisdiction if either the jurisdiction had not already been exercised or an application for such an order were made with the leave of the court.”.

(6) In section 15, for subsections (2) to (4) substitute—

“(2) An order made under subsection (1) above with respect to any party to a marriage has effect in accordance with subsection (3) below at any time—
(a) after the marriage has been dissolved;

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- (b) after a decree of nullity has been made absolute in relation to the marriage; and
 - (c) while a separation order under the Family Law Act 1996 is in force in relation to the marriage and the separation is continuing.
- (3) If at any time when an order made under subsection (1) above with respect to any party to a marriage has effect the other party to the marriage dies, the court shall not entertain any application made by the surviving party to the marriage for an order under section 2 of this Act.”
- (7) In section 19(2)(b) (effect and duration of certain orders), for the words from “the marriage” to “in force” substitute “, at the date of death, a separation order under the Family Law Act 1996 was in force in relation to the marriage with the deceased”.
- (8) In section 25 (interpretation), in the definition of “former wife” and “former husband”, for “a decree”, in the first place, substitute “an order or decree”.

The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)

- 28 (1) Section 28(1) of the Domestic Proceedings and Magistrates' Courts Act 1978 (powers of High Court in respect of orders under Part I) is amended as follows.
- (2) After “this Act” insert—
- “(a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage has been received by the court but no application has been made under that Act by reference to that statement, or
 - (b)”.
- (3) For the words from “then” to “lump sum” substitute “then, except in the case of an order for the payment of a lump sum, any court to which an application may be made under that Act by reference to that statement or, as the case may be,”.

The Housing Act 1980 (c. 51)

- 29 In section 54(2) of the Housing Act 1980 (prohibition of assignment of shorthold tenancy under that section) for “section 24” substitute “sections 23A or 24”.

The Supreme Court Act 1981 (c. 54)

- 30 In section 18 of the Supreme Court Act 1981 (restrictions on appeals to Court of Appeal), in paragraph (d) of subsection (1) omit “divorce or” and after that paragraph insert—
- “(dd) from a divorce order;”.

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

- 31 In section 18(6)(a) of the Civil Jurisdiction and Judgments Act 1982 (decrees of judicial separation), for “a decree” substitute “an order or decree”.

The Matrimonial and Family Proceedings Act 1984 (c. 42)

- 32 (1) The Matrimonial and Family Proceedings Act 1984 is amended as follows.

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- (2) In section 17(1) (financial relief in the case of overseas divorces etc.), for the words from “any” where it first occurs to the end substitute “one or more orders each of which would, within the meaning of Part II of the 1973 Act, be a financial provision order in favour of a party to the marriage or child of the family or a property adjustment order in relation to the marriage.”
- (3) For section 21(a) (provisions of the 1973 Act applied for the purposes of the powers to give relief in the case of overseas divorces etc.) substitute—
- “(a) section 22A(5) (provisions about lump sums in relation to divorce or separation);
 - (aa) section 23(4), (5) and (6) (provisions about lump sums in relation to annulment);”.
- (4) In section 27 (interpretation), for the definition of “property adjustment order”, substitute—
- ““property adjustment order” and “secured periodical payments order” mean any order which would be a property adjustment order or, as the case may be, secured periodical payments order within the meaning of Part II of the 1973 Act;”
- (5) In section 32 (meaning of “family business”), for the definition of “matrimonial cause” substitute—
- ““matrimonial cause” means an action for nullity of marriage or any marital proceedings under the Family Law Act 1996;”.

The Finance Act 1985 (c. 54)

- 33 In section 83(1) of the Finance Act 1985 (stamp duty for transfers of property in connection with divorce etc.)—
- (a) after paragraph (b), insert—
 - “(bb) is executed in pursuance of an order of a court which is made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973, or”; and
 - (b) in paragraph (c), for “or their judicial separation” substitute “, their judicial separation or the making of a separation order in respect of them”.

The Housing Act 1985 (c. 68)

- 34 In each of sections 39(1)(c), 88(2), 89(3), 90(3)(a), 91(3)(b), 99B(2)(e), 101(3)(c), 160(1)(c), 171B(4)(b)(i) of, and paragraph 1(2)(c) to, Schedule 6A of the Housing Act 1985 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

The Housing Associations Act 1985 (c. 69)

- 35 In paragraph 5(1)(c) of Schedule 2 to the Housing Associations Act 1985 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

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The Agricultural Holdings Act 1986 (c. 5)

- 36 In paragraph 1(3) of Schedule 6 to the Agricultural Holdings Act 1986 (spouse of close relative not to be treated as such when marriage subject to decree nisi etc.), for the words from “when” to the end substitute “when a separation order or a divorce order under the Family Law Act 1996 is in force in relation to the relative’s marriage or that marriage is the subject of a decree nisi of nullity.”

The Family Law Act 1986 (c. 55)

- 37 (1) The Family Law Act 1986 is amended as follows.
- (2) For section 2(1) and (2) (jurisdiction to make orders under section 1) substitute—
- “(1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child unless—
- (a) the case falls within section 2A below; or
- (b) in any other case, the condition in section 3 below is satisfied.”
- (3) For section 2A(1) (jurisdiction in or in connection with matrimonial proceedings), substitute—
- “(1) Subject to subsections (2) to (4) below, a case falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made—
- (a) at a time when—
- (i) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage of the parents of the child concerned has been received by the court; and
- (ii) it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or
- (b) at a time when an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.
- (1A) A case also falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made in or in connection with any proceedings for the nullity of the marriage of the parents of the child concerned and—
- (a) those proceedings are continuing; or
- (b) the order is made—
- (i) immediately on the dismissal, after the beginning of the trial, of the proceedings; and
- (ii) on an application made before the dismissal.”
- (4) In section 2A(2), for the words from the beginning to “judicial separation” substitute “A case does not fall within this section if a separation order under the Family Law Act 1996 is in force in relation to the marriage of the parents of the child concerned if”.
- (5) In section 2A(3), for “in which the other proceedings there referred to” substitute “in Scotland, Northern Ireland or a specified dependent territory in which the proceedings for divorce or nullity”.

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- (6) In section 2A(4)—
- (a) for “in or in connection with matrimonial proceedings” substitute “by virtue of the case falling within this section”; and
 - (b) for “in or in connection with those proceedings” substitute “by virtue of section 2(1)(a) of this Act”.
- (7) In section 3 (child habitually resident or present in England and Wales), for “section 2(2)” substitute “section 2(1)(b)”.
- (8) In section 6 (duration and variation of Part I orders), for subsections (3A) and (3B) substitute—
- “(3A) Subsection (3) above does not apply if the Part I order was made in a case falling within section 2A of this Act.”
- (9) In section 38 (restriction on removal of wards of court from the jurisdiction), insert after subsection (3)—
- “(4) The reference in subsection (2) above to a time when proceedings for divorce or judicial separation are continuing in respect of a marriage in another part of the United Kingdom includes, in relation to any case in which England and Wales would be another part of the United Kingdom, any time when—
- (a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to that marriage has been received by the court and it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or
 - (b) an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.”
- (10) In section 42(2) (times when divorce etc. proceedings are to be treated as continuing for the purposes of certain restrictions on the removal of children from the jurisdiction), for the words from “unless” to the end substitute “be treated as continuing (irrespective of whether a divorce order, separation order or decree of nullity has been made)—
- (a) from the time when a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage is received by the court in England and Wales until such time as the court may designate or, if earlier, until the time when—
 - (i) the child concerned attains the age of eighteen; or
 - (ii) it ceases, by virtue of section 5(3) or 7(9) of that Act (lapse of divorce or separation process) to be possible for an application for a divorce order, or for a separation order, to be made by reference to that statement; and
 - (b) from the time when a petition for nullity is presented in relation to the marriage in England and Wales or a petition for divorce, judicial separation or nullity is presented in relation to the marriage in Northern Ireland or a specified dependent territory, until the time when—
 - (i) the child concerned attains the age of eighteen; or
 - (ii) if earlier, proceedings on the petition are dismissed.”

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

- (11) In section 51(4) (definitions), after the definition of “the relevant date” insert—
- ““judicial separation” includes a separation order under the Family Law Act 1996;”.

The Landlord and Tenant Act 1987 (c. 31)

- 38 In section 4(2)(c) of the Landlord and Tenant Act 1987 (which refers to the 1973 Act), for “section 24” substitute “section 23A, 24”.

The Legal Aid Act 1988 (c. 34)

- 39 In paragraph 5A of Part II of Schedule 2 to the Legal Aid Act 1988 (excepted proceedings)—
- (a) for “decree of divorce or judicial separation” substitute “a divorce order or a separation order”; and
 - (b) in sub-paragraph (b) of that paragraph, for “petition” substitute “application”.

The Housing Act 1988 (c. 50)

- 40 In paragraph 4(1)(c) of Schedule 11 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

The Children Act 1989 (c. 41)

- 41 (1) The Children Act 1989 is amended as follows.
- (2) In section 6(3A) (revocation or appointment of guardian) for paragraph (a) substitute—
- “(a) a court of civil jurisdiction in England and Wales by order dissolves, or by decree annuls, a marriage, or”.
- (3) In section 8(3) after “means” insert “(subject to subsection (5))”.
- (4) In section 8, insert after subsection (4)—
- “(5) For the purposes of any reference in this Act to family proceedings, powers which under this Act are exercisable in family proceedings shall also be exercisable in relation to a child, without any such proceedings having been commenced or any application having been made to the court under this Act, if—
- (a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage in relation to which that child is a child of the family has been received by the court; and
 - (b) it may, in due course, become possible for an application for a divorce order or for a separation order to be made by reference to that statement.”

The Local Government and Housing Act 1989 (c. 42)

- 42 In section 124(3)(c) of the Local Government and Housing Act 1989 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

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

Pensions Act 1995 (c. 26)

- 43 In section 166(4) of the Pensions Act 1995 (jurisdiction of the court under the Matrimonial Causes Act 1973 in respect of pensions to which that section applies) for “section 23” substitute “section 22A or 23”.

PART II

AMENDMENTS CONNECTED WITH PART III

The Legal Aid Act 1988 (c. 34)

- 44 (1) The 1988 Act is amended as follows.
- (2) In section 1, after “III” insert “IIIA”.
- (3) In sections 1, 2(11), 3(2), 4(1), (2) and (4), 5(1) and (6), 6(2)(a) and (3)(a), 34(2) (c) and (d) and (11), 38(1) and (6) and 39(1) and (4)(a), after “assistance”, in each place, insert “, mediation”.
- (4) In section 3(9), after paragraph (a) insert—
“(aa) the provision of mediation;”.
- (5) In section 6, after subsection (3)(c) insert—
“(ca) any sum which is to be paid out of property on which it is charged under regulations under section 13C(5) below”.
- (6) In section 15—
(a) in subsection (1), after “(3D)” insert “and (3F)”; and
(b) in subsection (3D), after “(3)” insert “and (3F)”.
- (7) In section 16(9), leave out “and” at the end of paragraph (a).
- (8) In section 38—
(a) in subsection (1)(f), after “legal representatives” insert “or mediators”; and
(b) in subsection (6), after “legal representative” insert “or mediator”.
- (9) In section 43—
(a) after ““assistance”” insert “, “mediation””;
(b) after “(3)” insert “, (3A)”; and
(c) after the definition of “financial resources” insert—
““family matters” has the meaning assigned by section 13A(2);”.

PART III

AMENDMENTS CONNECTED WITH PART IV

The Land Registration Act 1925 (c. 21)

- 45 In section 64 of the Land Registration Act 1925 (certificates to be produced and noted on dealings) in subsection (5) for “section 2(8) of the Matrimonial Homes

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

Act 1983” substitute “section 31(10) of the Family Law Act 1996 and for “rights of occupation” substitute “matrimonial home rights””.

The Land Charges Act 1972 (c. 61)

46 In section 1(6A) of the Land Charges Act 1972 (cases where county court has jurisdiction to vacate registration) in paragraph (d)—

(a) after “section 1 of the Matrimonial Homes Act 1983” insert “or section 33 of the Family Law Act 1996”; and

(b) for “that section” substitute “either of those sections”.

47 In section 2(7) of that Act (Class F land charge) for “Matrimonial Homes Act 1983” substitute “Part IV of the Family Law Act 1996”.

The Land Compensation Act 1973 (c. 26)

48 (1) Section 29A of the Land Compensation Act 1973 (spouses having statutory rights of occupation) is amended as follows.

(2) In subsection (1), for “rights of occupation (within the meaning of the Matrimonial Homes Act 1983)” substitute “matrimonial home rights (within the meaning of Part IV of the Family Law Act 1996)”.

(3) In subsection (2)(a), for “rights of occupation” substitute “matrimonial home rights”.

The Magistrates' Courts Act 1980 (c. 43)

49 In section 65(1) of the Magistrates' Courts Act 1980 (meaning of family proceedings) after paragraph (o) insert—

“(p) Part IV of the Family Law Act 1996;”.

The Contempt of Court Act 1981 (c. 49)

50 In Schedule 3 to the Contempt of Court Act 1981 (application of Magistrates' Courts Act 1980 to civil contempt proceedings), in paragraph 3 for the words from ““or, having been arrested” onwards substitute—

““or, having been arrested under section 47 of the Family Law Act 1996 in connection with the matter of the complaint, is at large after being remanded under subsection (7)(b) or (10) of that section.””

The Supreme Court Act 1981 (c. 54)

51 In Schedule 1 to the Supreme Court Act 1981 (distribution of business in High Court), in paragraph 3 (Family Division)—

(a) in paragraph (d), after “matrimonial proceedings” insert “or proceedings under Part IV of the Family Law Act 1996”, and

(b) in paragraph (f)(i), for “Domestic Violence and Matrimonial Proceedings Act 1976” substitute “Part IV of the Family Law Act 1996”.

The Matrimonial and Family Proceedings Act 1984 (c. 42)

52 For section 22 of the Matrimonial and Family Proceedings Act 1984 substitute—

“22 Powers of court in relation to certain tenancies of dwelling-houses

- (1) This section applies if—
 - (a) an application is made by a party to a marriage for an order for financial relief; and
 - (b) one of the parties is entitled, either in his own right or jointly with the other party, to occupy a dwelling-house situated in England or Wales by virtue of a tenancy which is a relevant tenancy within the meaning of Schedule 7 to the Family Law Act 1996 (certain statutory tenancies).
- (2) The court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if—
 - (a) a divorce order,
 - (b) a separation order, or
 - (c) a decree of nullity of marriage,had been made or granted in England and Wales in respect of the marriage.
- (3) The provisions of paragraphs 10, 11 and 14(1) in Part III of that Schedule apply in relation to any order under this section as they apply to any order under Part II of that Schedule.”

The Housing Act 1985 (c. 68)

- 53 (1) Section 85 of the Housing Act 1985 (extended discretion of court in certain proceedings for possession) is amended as follows.
- (2) In subsection (5)—
 - (a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”; and
 - (b) for “those rights of occupation” substitute “those matrimonial home rights”.
 - (3) After subsection (5) insert—

“(5A) If proceedings are brought for possession of a dwelling-house which is let under a secure tenancy and—

 - (a) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant or an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,
 - (b) the former spouse, cohabitant or former cohabitant is then in occupation of the dwelling-house, and
 - (c) the tenancy is terminated as a result of those proceedings,the former spouse, cohabitant or former cohabitant shall, so long as he or she remains in occupation, have the same rights in relation to, or in connection with, any adjournment, stay, suspension or postponement in pursuance of this section as he or she would have if the rights conferred by the order referred to in paragraph (a) were not affected by the termination of the tenancy.”

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

- 54 In section 99B of that Act (persons qualifying for compensation for improvements) in subsection (2) for paragraph (f) substitute—
 “(f) a spouse, former spouse, cohabitant or former cohabitant of the improving tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”
- 55 In section 101 of that Act (rent not to be increased on account of tenant’s improvements) in subsection (3) for paragraph (d) substitute—
 “(d) a spouse, former spouse, cohabitant or former cohabitant of the tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”
- 56 In section 171B of that Act (extent of preserved right to buy: qualifying persons and dwelling-houses) in subsection (4)(b)(ii) after “Schedule 1 to the Matrimonial Homes Act 1983” insert “or Schedule 7 to the Family Law Act 1996”.

The Insolvency Act 1986 (c. 45)

- 57 (1) Section 336 of the Insolvency Act 1986 (rights of occupation etc. of bankrupt’s spouse) is amended as follows.
- (2) In subsection (1), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.
- (3) In subsection (2)—
 (a) for “rights of occupation under the Act of 1983” substitute “matrimonial home rights under the Act of 1996”, and
 (b) in paragraph (b), for “under section 1 of that Act” substitute “under section 33 of that Act”.
- (4) In subsection (4), for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.
- 58 (1) Section 337 of that Act is amended as follows.
- (2) In subsection (2), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.
- (3) For subsection (3) substitute—
 “(3) The Act of 1996 has effect, with the necessary modifications, as if—
 (a) the rights conferred by paragraph (a) of subsection (2) were matrimonial home rights under that Act,
 (b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act, and
 (c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.”
- (4) In subsections (4) and (5) for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.

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

The Housing Act 1988 (c. 50)

- 59 (1) Section 9 of the Housing Act 1988 (extended discretion of court in possession claims) is amended as follows.
- (2) In subsection (5)—
- (a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”, and
 - (b) for “those rights of occupation” substitute “those matrimonial home rights”.
- (3) After subsection (5) insert—
- “(5A) In any case where—
- (a) at a time when proceedings are brought for possession of a dwelling-house let on an assured tenancy—
 - (i) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant, or
 - (ii) an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,
 - (b) that cohabitant, former cohabitant or former spouse is then in occupation of the dwelling-house, and
 - (c) the assured tenancy is terminated as a result of those proceedings, the cohabitant, former cohabitant or former spouse shall have the same rights in relation to, or in connection with, any such adjournment as is referred to in subsection (1) above or any such stay, suspension or postponement as is referred to in subsection (2) above as he or she would have if the rights conferred by the order referred to in paragraph (a) above were not affected by the termination of the tenancy.”

The Children Act 1989 (c. 41)

- 60 (1) In section 8(4) of the Children Act 1989 (meaning of “family proceedings” for purposes of that Act), omit paragraphs (c) and (f) and after paragraph (g) insert—
- “(h) the Family Law Act 1996.”
- (2) In Schedule 11 to that Act, in paragraph 6(a) (amendment of the Domestic Proceedings and Magistrates' Courts Act 1978), for “sections 16(5)(c) and” substitute “section”.

The Courts and Legal Services Act 1990 (c. 41)

- 61 In section 58 of the Courts and Legal Services Act 1990 (conditional fee agreements) in subsection (10), omit paragraphs (b) and (e) and immediately before the “or” following paragraph (g) insert—
- “(gg) Part IV of the Family Law Act 1996”.