

Matrimonial Causes Act 1965

CHAPTER 72

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ELIZABETH II



1965 CHAPTER 72

An Act to consolidate certain enactments relating to matrimonial causes, maintenance and declarations of legitimacy and British nationality, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act 1949. [8th November 1965]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

1.—(1) Subject to the next following section, a petition for Grounds for divorce may be presented to the High Court (hereafter in this petition. Act referred to as “the court”)—

(a) by the husband or the wife on the ground that the respondent—

(i) has since the celebration of the marriage committed adultery ; or

(ii) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition ; or

(iii) has since the celebration of the marriage treated the petitioner with cruelty ; or

(iv) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition ;

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(b) by the wife on the ground that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestiality.

(2) In calculating for the purposes of subsection (1)(a)(ii) of this section the period for which the respondent has deserted the petitioner without cause, and in considering whether the desertion has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to reconciliation ; and, for the purposes of a petition for divorce, the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that that intention continued at that time.

(3) For the purposes of subsection (1)(a)(iv) of this section, a person of unsound mind shall be deemed to be under care and treatment while, and only while—

1959 c. 72.
1960 c. 61.

(a) he is liable to be detained in a hospital, mental nursing home or place of safety under the Mental Health Act 1959 or in a hospital or place of safety under the Mental Health (Scotland) Act 1960 ;

(b) he is detained in pursuance of an order for his detention or treatment as a person of unsound mind or a person suffering from mental illness made under any law for the time being in force in Northern Ireland, the Isle of Man or any of the Channel Islands (including any such law relating to criminal lunatics) or is receiving treatment as a voluntary patient under any law so in force ;

(c) he is receiving treatment for mental illness as a resident in—

(i) a hospital or other institution provided, approved, licensed, registered or exempted from registration by any Minister or other authority in the United Kingdom, the Isle of Man or the Channel Islands ; or

(ii) a hospital or other institution in any other country, being a hospital or institution in which his treatment is comparable with the treatment provided in any such hospital or institution as is mentioned in sub-paragraph (i) of this paragraph ;

and, in determining for the purposes of the said subsection (1)(a)(iv) whether any period of care and treatment has been continuous, any interruption of the period for twenty-eight days or less shall be disregarded.

(4) A certificate by a Secretary of State that a person was receiving treatment for mental illness during any period as a resident in any naval, military or air force hospital under the direction of the Defence Council shall for the purposes of paragraph (c) of the last foregoing subsection be conclusive evidence of the facts certified.

2.—(1) Subject to the next following subsection, no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of the marriage (hereafter in this section referred to as "the specified period").

Restriction on petitions within three years of marriage.

(2) A judge of the court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the judge shall have regard to the interests of any relevant child and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

3.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Matrimonial Proceedings (Magistrates' Courts) Act 1960 or any corresponding enactments in force in Northern Ireland, the Isle of Man or any of the Channel Islands.

Divorce not precluded by previous judicial separation.

1960 c. 48.

(2) On a petition for divorce in such a case as is mentioned in the foregoing subsection, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion or other ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of a petition for divorce in such a case, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or for such an order as aforesaid having the effect of a decree of judicial separation shall, if the parties have not resumed co-habitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

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Alleged
adulterer
as a party.

4.—(1) On a petition for divorce presented by the husband on the ground of adultery, or in the answer of a husband praying for divorce on that ground, the husband shall make the alleged adulterer a co-respondent unless excused by the court on special grounds from doing so.

(2) On a petition for divorce presented by the wife on the ground of adultery the court may, if it thinks fit, direct that the alleged adulteress be made a respondent.

(3) Where an alleged adulterer is made a co-respondent on such a petition as is mentioned in subsection (1) of this section or an alleged adulteress is made a respondent on such a petition as is mentioned in the last foregoing subsection, the court may, after the close of the evidence on the part of the petitioner, direct that the co-respondent or, as the case may be, the respondent be dismissed from the suit if the court is of opinion that there is not sufficient evidence against him or her.

Hearing of
petition.

5.—(1) On a petition for divorce it shall be the duty of the court—

- (a) to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties; and
- (b) to inquire into any countercharge made against the petitioner.

(2) Provision may be made by rules of court for enabling the court, on application made either before or after the presentation of the petition, to take into consideration for the purposes of this section any agreement or arrangement made or proposed to be made between the parties and to give such directions in the matter as the court thinks fit; but nothing in this subsection affects any duty of the parties to disclose to the court any agreement or arrangement made between the parties in contemplation of or in connection with the proceedings.

(3) If the court is satisfied on the evidence that the case for the petition has been proved and—

- (a) where the ground of the petition is adultery, that the petitioner has not in any manner been accessory to or connived at or condoned the adultery;
 - (b) where the ground of the petition is cruelty, that the petitioner has not in any manner condoned the cruelty,
- the court shall, subject to subsections (4) and (5) of this section, grant a decree of divorce; and if the court is not satisfied with respect to any of the matters aforesaid, it shall dismiss the petition.

(4) The court may dismiss a petition for divorce if—

(a) it finds that the petition is presented or prosecuted in collusion with the respondent or either of the respondents ; or

(b) it finds that the petitioner has during the marriage been guilty of adultery ; or

(c) in its opinion the petitioner has been guilty—

(i) of unreasonable delay in presenting or prosecuting the petition ; or

(ii) of cruelty towards the other party to the marriage ; or

(iii) where the ground of the petition is adultery or cruelty, of having without reasonable excuse either deserted or wilfully separated himself or herself from the other party before the adultery or cruelty ; or

(iv) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as conducted to the adultery or unsoundness of mind or desertion.

(5) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under section 2(2) of this Act, that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may—

(a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of three years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition ; or

(b) if it grants a decree, direct that no application to make the decree absolute shall be made during that period.

(6) If in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

(7) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant unless the court by general or special order from time to time fixes a shorter period.

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Intervention
of Queen's
Proctor.

6.—(1) In the case of a petition for divorce—

- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to Her Majesty's Proctor (hereafter in this and the next following section referred to as "the 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 deems 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 Proctor on any matter material to the due decision of the case, and the Proctor may thereupon take such steps as the Attorney General considers necessary or expedient ;
- (c) if in consequence of any such information or otherwise the Proctor considers that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, under the direction of the Attorney General and after obtaining the leave of the court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.

(2) Where the Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, 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) The Proctor shall be entitled to charge as part of the expenses of his office—

- (a) the costs of any proceedings under subsection (1)(a) of this section ;
- (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) of this section are not fully satisfied by any order under that subsection, the amount of the difference ;
- (c) if the Treasury so directs, any costs which he pays to any parties under an order made under the said subsection (2).

7.—(1) Where a decree nisi of divorce has been granted but not made absolute, then, without prejudice to the last foregoing section, any person (excluding a party to the proceedings other than the Proctor) may show cause why the decree should not be made absolute either by reason of its having been obtained by collusion or by reason of material facts not having

Proceedings
after decree
nisi.

been brought before the court; and in such a case the court may—

PART I

- (a) notwithstanding anything in section 5(7) of this Act, make the decree absolute; or
- (b) rescind the decree nisi; or
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(2) Where a decree nisi of divorce has been granted and no application for it to be made absolute has been made by the party to whom 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 the foregoing subsection.

8.—(1) Where a decree of divorce has been made absolute and either— Remarriage of divorced persons.

- (a) there is no right of appeal against the decree absolute; or
- (b) the time for appealing against the decree absolute has expired without an appeal having been brought; or
- (c) an appeal against the decree absolute has been dismissed,

either party to the former marriage may marry again.

(2) No clergyman of the Church of England or the Church in Wales shall be compelled—

- (a) to solemnise the marriage of any person whose former marriage has been dissolved and whose former spouse is still living; or
- (b) to permit the marriage of such a person to be solemnised in the church or chapel of which he is the minister.

Nullity

9.—(1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to the next following subsection, be voidable on the ground— Additional grounds for decree of nullity.

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage—
 - (i) was of unsound mind, or
 - (ii) was suffering from mental disorder within the meaning of the Mental Health Act 1959 of such 1959 c. 72.

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a kind or to such an extent as to be unfitted for marriage and the procreation of children, or

(iii) was subject to recurrent attacks of insanity or epilepsy ; or

(c) that the respondent was at the time of the marriage, suffering from venereal disease in a communicable form ; or

(d) that the respondent was at the time of the marriage, pregnant by some person other than the petitioner.

(2) The court shall not grant a decree of nullity in a case falling within paragraph (b), (c) or (d) of the foregoing subsection unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts alleged ; and

(b) proceedings were instituted within a year from the date of the marriage ; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree.

(3) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

Application of ss. 5(7), 6 and 7 to nullity proceedings.

10. Sections 5(7), 6 and 7 of this Act shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

Legitimacy of children of annulled marriages.

11. Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

Other matrimonial suits

Judicial separation.

12.—(1) A petition for judicial separation may be presented to the court by the husband or the wife—

(a) on any of the grounds specified in section 1 of this Act ; or

(b) on the ground of failure to comply with a decree for restitution of conjugal rights ; or

(c) on any ground on which a decree of divorce a mensa et thoro might have been pronounced immediately

before the commencement of the Matrimonial Causes Act 1857;

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1857 c. 85.

and sections 1 and 5(1) to (4) of this Act and paragraphs 2 and 3 of Schedule 1 to this Act shall apply in relation to such a petition as they apply in relation to a petition for divorce but as if the reference in section 5(3) to section 5(5) were omitted.

(2) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(3) The court may, on an application by petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the allegations in the petition are true, rescind the decree at any time on the ground that it was obtained in the absence of the applicant or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

13.—(1) A petition for restitution of conjugal rights may be presented to the court by the husband or the wife; and the court, on being satisfied that—

Restitution of conjugal rights.

(a) the allegations contained in the petition are true; and

(b) there is no legal ground why a decree for restitution of conjugal rights should not be granted,

may grant the decree accordingly.

(2) A decree for restitution of conjugal rights shall not be enforced by imprisonment.

14.—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, subject to the next following subsection, present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.

Presumption of death and dissolution of marriage.

(2) A petition may be presented in pursuance of the foregoing subsection—

(a) in any case, if the petitioner is domiciled in England; and

(b) in the case of a petition presented by a wife, if she is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings.

(3) In any proceedings under this section the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and the

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petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

(4) Sections 5(7) and 6 to 8 of this Act shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

(5) In determining for the purposes of this section whether a woman is domiciled in England, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living; and in any proceedings brought in pursuance of subsection (2)(b) of this section the issues shall be determined in accordance with the law which would be applicable thereto if both parties to the marriage were domiciled in England at the time of the proceedings.

PART II

ANCILLARY RELIEF

Interim orders for alimony

15. On a petition for divorce, nullity of marriage, judicial separation or restitution of conjugal rights, the court may make such interim orders as it thinks just for the payment of alimony—

- (a) in any case other than a case falling within paragraph (b) of this section, to the wife; and
- (b) in the case of a petition for divorce or judicial separation presented by a wife on the ground of her husband's insanity, to the husband.

Maintenance and application of property in cases of divorce

16.—(1) On granting a decree of divorce or at any time thereafter (whether before or after the decree is made absolute), the court may, if it thinks fit and subject to subsection (3) of this section, make one or more of the following orders—

- (a) an order requiring the husband to secure to the wife, to the satisfaction of the court, such lump or annual sum for any term not exceeding her life as the court thinks reasonable having regard to her fortune (if any), his ability and the conduct of the parties;
- (b) an order requiring the husband to pay to the wife during their joint lives such monthly or weekly sum for her maintenance as the court thinks reasonable;
- (c) an order requiring the husband to pay to the wife such lump sum as the court thinks reasonable.

Interim
orders for
alimony.

Maintenance
orders.

(2) Where the court decides to make an order under paragraph (a) of the foregoing subsection, it may—

- (a) direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) if it thinks fit, defer the grant of the decree until the instrument has been duly executed.

(3) Where a petition for divorce is presented by the wife on the ground of her husband's insanity, subsection (1) of this section shall have effect with the substitution of references to the wife for references to the husband and of references to the husband for references to the wife.

17.—(1) The court may, after granting a decree of divorce—

Application
of settled
and other
property.

- (a) inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree; and
- (b) make such orders as the court thinks fit as respects the application, for the benefit of the children of the marriage or the parties to the marriage, of the whole or any part of the property settled;

and the court may exercise its powers under the foregoing provisions of this section notwithstanding that there are no children of the marriage.

(2) Where the court grants a decree of divorce by reason of the adultery, desertion or cruelty of the wife and it appears to the court that she is entitled to any property either in possession or reversion, the court may if it thinks fit order such settlement as it thinks reasonable to be made of the property, or of any part of it, for the benefit of the innocent party and of the children of the marriage or either or any of them.

18.—(1) Where a petition for divorce has been presented, proceedings under the foregoing provisions of this Part of this Act may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but—

Commence-
ment of
proceedings
with respect to
maintenance
and
settlements.

- (a) no order under section 16 or 17 of this Act shall be made unless a decree nisi has been granted;
- (b) without prejudice to the power to give directions under section 16(2)(a) of this Act, no such order and no settlement made in pursuance of such an order shall take effect unless the decree has been made absolute.

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(2) Subsection (1) of this section shall have effect notwithstanding anything in the foregoing provisions of this Part of this Act but subject to section 29 of this Act.

Maintenance etc. in other cases

Nullity.

19. Sections 16(1) and (2) and 17(1) of this Act and, so far as it relates to those provisions, section 18 of this Act shall apply in relation to nullity of marriage as they apply in relation to divorce but as if the reference in section 16(1) to section 16(3) were omitted.

Judicial separation.

20.—(1) On granting a decree of judicial separation or at any time thereafter the court may make such order as it thinks just for the payment of alimony or a lump sum or both—

- (a) in any case other than a case falling within paragraph (b) of this subsection, to the wife; and
- (b) in a case where the petition was presented by the wife on the ground of her husband's insanity, to the husband.

(2) Section 17(2) of this Act shall apply in relation to judicial separation as it applies in relation to divorce.

(3) In a case of judicial separation—

- (a) any property which is acquired by or devolves upon the wife on or after the date of the decree whilst the separation continues; and
- (b) where the decree is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion on the date of the decree,

shall, if she dies intestate, devolve as if her husband had then been dead.

(4) If in a case of judicial separation alimony has been ordered to be paid under the foregoing provisions of this Part of this Act and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife.

Restitution of conjugal rights.

21.—(1) Where a decree for restitution of conjugal rights is made on the application of the wife, the court may—

- (a) make such order as it thinks just for the payment of alimony to the wife;
- (b) on making the decree or at any time thereafter, order the husband to pay to the wife, if the decree is not complied with within the time specified by the court, such periodical payments as the court thinks just.

(2) Where the court makes an order under paragraph (b) of the foregoing subsection—

- (a) the order may be enforced in the same manner as an order for alimony; and
- (b) the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure the periodical payments to the wife, and may for that purpose give such a direction as is mentioned in section 16(2)(a) of this Act.

(3) Where a decree for restitution of conjugal rights is made on the application of the husband and it appears to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may—

- (a) order a settlement of the property or any part of it to be made to the satisfaction of the court for the benefit of the husband and of the children of the marriage or either or any of them; or
- (b) order such part of the profits or earnings as the court thinks reasonable to be paid periodically by the wife to the husband for his own benefit, or to him or another person for the benefit of the children of the marriage or either or any of them.

22.—(1) Where—

Neglect to maintain.

- (a) a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or any child to whom this subsection applies; and
- (b) the court would have jurisdiction to entertain proceedings by the wife for judicial separation,

then, without prejudice to the provisions of section 35(2) of this Act, the court may on the application of the wife order the husband to make to her such periodical payments as may be just.

(2) The foregoing subsection applies to any infant child of the marriage in question and any infant illegitimate child of both parties to the marriage.

(3) Where the court makes an order under subsection (1) of this section—

- (a) the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation; and

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- (b) the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure the periodical payments to the wife and may for that purpose give such a direction as is mentioned in section 16(2)(a) of this Act.

Maintenance agreements

Validity of
maintenance
agreements.

23.—(1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—

- (a) that provision shall be void ; but
(b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to the next two following sections), be binding on the parties to the agreement.

(2) In this and the next following section—

“ maintenance agreement ” means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being—

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage ; or

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements ;

“ financial arrangements ” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the marriage ; and

“ child of the marriage ” includes any child of both parties to the marriage, whether legitimate or not, and any child adopted by both parties to the marriage.

Alteration of
agreements
by court
during lives
of parties

24.—(1) Where a maintenance agreement (other than an agreement made more than six months after the dissolution or annulment of the marriage) is for the time being subsisting and the parties to the agreement are for the time being either both domiciled or both resident in England and on an application

by either party the High Court or, subject to the next following subsection, a magistrates' court is satisfied either—

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it, the agreement should be altered so as to make different, or as the case may be so as to contain, financial arrangements ; or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage,

the court to which the application is made may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it or by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to that court to be just having regard to all the circumstances or, as the case may be, as may appear to that court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage ; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(2) A magistrates' court shall not entertain an application under the foregoing subsection unless both the parties to the agreement are resident in England and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which that court acts, and shall not have power to make any order on such an application except—

1952 c. 55.

(a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments—

(i) for the maintenance of the other party, at a rate not exceeding seven pounds ten shillings a week ;

(ii) for the maintenance of any child of the marriage, at a rate not exceeding fifty shillings a week in respect of each such child ;

(b) in a case where the agreement includes provision for the making by one of the parties of periodical payments at rates not exceeding those aforesaid, an order increasing to such higher rate not exceeding the appropriate rate aforesaid, or reducing the rate of, or terminating, any of those payments.

(3) For the avoidance of doubt it is hereby declared that nothing in this or the last foregoing section affects any power

PART II

of the court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Alteration of agreements by court after death of one party.

25.—(1) Where a maintenance agreement within the meaning of section 23 of this Act provides for the continuation of payments under the agreement after the death of one of the parties and that party dies after 16th August 1957 domiciled in England, the surviving party may—

- (a) before the end of the period of six months from the date when representation in regard to the deceased's estate is first taken out ; or
- (b) with the permission of the court, after the end of that period but before the administration and distribution of the estate is completed,

apply to the High Court for any order under subsection (1) of the last foregoing section for which the surviving party might have applied immediately before the death.

(2) If a maintenance agreement is altered by the court on an application made in pursuance of the foregoing subsection, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(3) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section after that period ; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(5) For the purposes of section 162(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (which relates to the discretion of the court as to the persons to whom administration is to be granted) a person by whom an application is proposed to be made by virtue of this section shall be deemed to be a person interested in the deceased's estate.

Maintenance from estate of deceased former spouse

PART II

26.—(1) Where after 31st December 1958 a person dies domiciled in England and is survived by a former spouse of his or hers (hereafter in this section referred to as “the survivor”) who has not remarried, the survivor may—

Orders for maintenance from deceased's estate.

- (a) before the end of the period of six months beginning with the date on which representation in regard to the estate of the deceased is first taken out; or
- (b) with the permission of the court, after the end of that period but before the administration and distribution of the estate is completed,

apply to the court for an order under this section on the ground that the deceased has not made reasonable provision for the survivor's maintenance after the deceased's death.

(2) If on an application under this section the court is satisfied—

- (a) that it would have been reasonable for the deceased to make provision for the survivor's maintenance; and
- (b) that the deceased has made no provision, or has not made reasonable provision, for the survivor's maintenance,

the court may order that such reasonable provision for the survivor's maintenance as the court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the court may impose.

(3) Where the court makes an order under this section requiring provision to be made for the maintenance of the survivor, the order shall require that provision to be made by way of periodical payments terminating not later than the survivor's death and, if the survivor remarries, not later than the remarriage, so however that if the value of the net estate of the deceased does not exceed five thousand pounds the order may require that provision to be made wholly or in part by way of a lump sum payment.

(4) On an application under this section the court shall have regard—

- (a) to the past, present or future capital of the survivor and to any income of the survivor from any source;
- (b) to the survivor's conduct in relation to the deceased and otherwise;
- (c) to any application made or deemed to be made by the survivor during the lifetime of the deceased—

(i) where the survivor is a former wife of the deceased, for such an order as is mentioned in section 16(1) of this Act or that subsection as applied by section 19 of this Act;

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(ii) where the survivor is a former husband of the deceased, for such an order as could be made either under the said section 16(1) as applied by subsection (3) of that section or under section 17(2) of this Act,

and to the order (if any) made on any such application, or (if no such application was made by the survivor, or such an application was made by the survivor and no order was made on the application) to the circumstances appearing to the court to be the reasons why no such application was made, or no such order was made, as the case may be ; and

(d) to any other matter or thing which, in the circumstances of the case, the court may consider relevant or material in relation to the survivor, to persons interested in the estate of the deceased, or otherwise.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the court shall have regard to the nature of the property representing the net estate of the deceased and shall not order any such provision to be made as would necessitate a realisation that would be imprudent having regard to the interests of the dependants of the deceased, of the survivor, and of the persons who apart from the order would be entitled to that property.

(6) In this and the next following section—

“former spouse”, in relation to a deceased person, means a person whose marriage with the deceased was during the deceased’s lifetime dissolved or annulled by a decree made or deemed to be made under this Act, and “former wife” and “former husband” shall be construed accordingly ;

“net estate” and “dependant” have the same meanings as in the Inheritance (Family Provision) Act 1938 ; and

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not.

1938 c. 45.

Discharge
and variation
of orders
under s. 26.

27.—(1) Subject to the following provisions of this section, where an order (in this section referred to as “the original order”) has been made under the last foregoing section, the court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend

any provision of it temporarily and to revive the operation of any provision so suspended.

PART II

(2) An application under this section may be made by any of the following persons, that is to say,—

- (a) the former spouse on whose application the original order was made ;
- (b) any other former spouse of the deceased ;
- (c) any dependant of the deceased ;
- (d) the trustees of any relevant property ;
- (e) any person who, under the will or codicil of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.

(3) An order under this section varying the original order, or reviving any suspended provision of it, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.

(4) In exercising the powers conferred by this section, the court shall have regard to all the circumstances of the case, including any change in the circumstances to which the court was required to have regard in determining the application for the original order.

(5) In this section “relevant property” means property the income of which, in accordance with the original order or any consequential directions given by the court in connection with it, is applicable wholly or in part for the maintenance of the former spouse on whose application the original order was made.

28.—(1) The provisions of the last two foregoing sections shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period mentioned in subsection (1) of section 26 of this Act on the ground that they ought to have taken into account the possibility that the court might permit an application under that section after the end of that period, or that an order under that section might be varied under section 27 of this Act ; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order under section 26 or section 27 of this Act.

Additional provisions as to orders under ss. 26 and 27.

(2) Section 25(4) of this Act shall apply for the purposes of section 26(1) of this Act as it applies for the purposes of subsection (1) of the said section 25 ; and section 25(5) of this Act shall apply in relation to an application under section 26 or section 27 of this Act as it applies in relation to an application in pursuance of the said section 25.

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1938 c. 45.

(3) Section 3 of the Inheritance (Family Provision) Act 1938 (which relates to the effect and form of orders under that Act) shall have effect in relation to orders under sections 26 and 27 of this Act as it has effect in relation to orders under that Act.

Supplemental

Applications for ancillary relief.

29.—(1) Rules of court may provide, in such cases as may be prescribed by the rules,—

- (a) that all applications for ancillary relief shall be made in the petition or answer ; or
- (b) that applications for ancillary relief which are not so made shall be made only with the leave of the court.

(2) In the foregoing subsection “ancillary relief” means relief under any of the following provisions of this Act, that is to say, section 15, section 16(1), that subsection as applied by section 16(3) and by section 19, section 20(1), and section 21(1) and (2).

Payment of alimony or maintenance to trustees etc.

30.—(1) Where the court makes an order for alimony, it may—

- (a) direct the alimony to be paid either to the wife or husband, as the case may be, or to a trustee approved by the court on her or his behalf ; and
- (b) impose such terms or restrictions as the court thinks expedient ; and
- (c) from time to time appoint a new trustee if for any reason it appears to the court expedient to do so.

(2) Where—

- (a) a petition for divorce or judicial separation is presented by a wife on the ground of her husband’s insanity ; or
- (b) a petition for divorce, nullity or judicial separation is presented by a husband on the ground of his wife’s insanity or mental deficiency or disorder,

and the court orders payments, other than a lump sum payment, in favour of the respondent under section 15, section 16(1), that subsection as applied by section 16(3) or by section 19, or under section 20(1) of this Act, the court may order the payments to be made to such persons having charge of the respondent as the court may direct.

Variation and discharge of certain orders for relief.

31.—(1) Where the court has made an order under section 21(3) or section 22 or any of the provisions mentioned in section 29(2) of this Act (other than an order for the payment of a lump sum), the court shall have power to discharge or vary the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(3) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage.

32.—(1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as “financial relief”) are brought by a person against his or her spouse or former spouse (hereafter in this section referred to as “the other party”), the court may, on an application by that person—

Avoidance of transactions intended to prevent relief.

(a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);

(c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in the last foregoing paragraph;

and an application for the purposes of paragraph (b) of this subsection shall be made in the proceedings for the financial relief in question.

(2) Paragraphs (b) and (c) of the foregoing subsection apply respectively to a disposition made by the other party (whether before or after the commencement of the proceedings for financial relief) within the period of three years ending with the date of the application made for the purposes of the paragraph in question, not being a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as aforesaid on the part of the other party.

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(3) Where an application is made under this section with respect to a disposition or other transaction and the court is satisfied—

(a) in a case falling within subsection (1)(a) or (b) of this section, that the disposition or other transaction would (apart from this section) have the consequence, or

(b) in a case falling within subsection (1)(c) of this section, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention aforesaid.

(4) In this section—

“disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise ;

“property” has the same meaning as in section 26 of this Act ; and

“the relevant provisions of this Act” means any of the provisions of the following enactments, that is to say, sections 16, 17(2), 20(1), 21 and 22 of this Act and section 16(1) as applied by section 19 and section 17(2) as applied by section 20(2) of this Act ;

and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.

PART III

PROTECTION OF CHILDREN

33.—(1) Notwithstanding anything in Part I of this Act but subject to the following subsection, the court shall not make absolute a decree of divorce or nullity of marriage in any proceedings begun after 31st December 1958, or make a decree of judicial separation in any such proceedings, unless it is satisfied as respects every relevant child who is under sixteen that—

(a) arrangements for his care and upbringing have been made and are satisfactory or are the best that can be devised in the circumstances ; or

(b) it is impracticable for the party or parties appearing before the court to make any such arrangements.

(2) The court may if it thinks fit proceed without observing the requirements of the foregoing subsection if—

(a) it appears that there are circumstances making it desirable that the decree should be made absolute or

Restrictions
on decrees for
dissolution
or separation
affecting
children.

should be made, as the case may be, without delay ; and

PART III

- (b) the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time.

34.—(1) Subject to subsection (6) of this section, the court may make such order as it thinks just for the custody, maintenance and education of any relevant child—

Custody and maintenance of children affected by matrimonial suits.

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree ;
- (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal ;
- (c) in any proceedings for restitution of conjugal rights, before the decree or, if the respondent fails to comply with the decree, after the decree ;

and in any case in which the court has power by virtue of paragraph (a) of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the court.

(2) Where the court makes or makes absolute a decree of divorce or makes a decree of judicial separation, it may include in the decree a declaration that the parent by reason of whose misconduct the decree is made is unfit to have the custody of the children of the marriage ; and the parent to whom the declaration relates shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of the children of the marriage.

(3) Subject to subsection (6) of this section, on granting a decree of divorce or nullity of marriage or at any time thereafter (whether before or after the decree is made absolute) the court may make an order—

- (a) in any case, requiring the husband ; and
- (b) in the case of a decree of divorce made on the ground of the husband's insanity, requiring the wife,

to secure for the benefit of the relevant children such lump or annual sum as the court thinks reasonable, and may for that purpose give such a direction as is mentioned in section 16(2)(a) of this Act ; but the term for which any sum is secured for the benefit of a child in pursuance of this subsection shall not extend beyond the date when the child will become twenty-one.

(4) In considering whether any and what order should be made under this section for requiring any party to make any payment, by virtue of paragraph (b) in section 46(2) of this Act, towards

PART III the maintenance or education of a child who is not his own, the court shall have regard—

(a) to the extent (if any) to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance; and

(b) to the liability of any person other than a party to the marriage to maintain the child.

(5) While the court has power to make an order in any proceedings by virtue of paragraph (a) or (c) of subsection (1) of this section, it may exercise that power from time to time; and where the court makes an order by virtue of paragraph (b) of that subsection with respect to a child it may from time to time make a further order with respect to his custody, maintenance and education.

(6) Section 18 of this Act (including that section as applied by section 19 of this Act) shall apply to proceedings and orders under subsection (3) of this section as it applies to such proceedings and orders as are mentioned in the said section 18; and section 29(1) of this Act shall apply to relief under subsections (1) and (3) of this section (other than relief under subsection (1)(b)) as it applies to ancillary relief within the meaning of the said section 29.

(7) Section 32 of this Act shall apply to relief under this section as if for references in that section to the relevant provisions of this Act there were substituted references to this section.

Custody etc.
of children
in cases of
neglect.

35.—(1) Where the court makes an order under section 22(1) of this Act, the court shall also have jurisdiction from time to time to make such order as appears just with respect to the custody of any child to whom that subsection applies; but the jurisdiction conferred by this subsection and any order made in exercise of that jurisdiction shall have effect only as respects any period when an order is in force under that subsection.

(2) In any case where the court would have power, on an application made under the said section 22(1), to order the husband to make to the wife periodical payments for the maintenance of a child to whom that subsection applies, the court may, if it thinks fit, order those payments to be made to the child, or to any other person for the benefit of the child, instead of to the wife; and the reference to the wife in subsection (3) of that section shall be construed accordingly.

(3) Section 32 of this Act shall apply to relief under this section as if for references in that section to the relevant provisions of this Act there were substituted references to this section.

(4) Without prejudice to any power to include, in any order under this Act for the custody, maintenance and education of

a child, provision for access to him, the reference to custody of a child in subsection (1) of this section includes a reference to access to the child.

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36.—(1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may if it thinks fit make an order committing the care of the child to the council of a county, county borough or London borough or the Common Council of the City of London (hereafter in this section referred to as “the local authority”); and thereupon Part II of the Children Act 1948 (which relates to the treatment of children in the care of a local authority) shall, subject to the provisions of this section, apply as if the child had been received by the local authority into their care under section 1 of that Act.

Power to
commit
children to
care of local
authority.

1948 c. 43.

(2) The authority specified in an order under this section shall be the local authority for the area in which the child was, in the opinion of the court, resident before the order was made to commit the child to the care of a local authority, and the court shall before making an order under this section hear any representations from the local authority, including any representations as to the making of an order for payments for the maintenance and education of the child.

(3) While an order made by virtue of this section is in force with respect to a child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.

(4) An order made by virtue of this section shall cease to have effect as respects any child when he becomes eighteen, and the court shall not make an order committing a child to the care of a local authority under this section after he has become seventeen.

(5) In the application of Part II of the Children Act 1948 by virtue of this section—

(a) the exercise by the local authority of their powers under sections 12 to 16 of that Act (which among other things relate to the accommodation and welfare of a child in the care of a local authority) shall be subject to any directions given by the court; and

(b) section 17 of that Act (which relates to arrangements for the emigration of such a child) shall not apply.

(6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address

PART III

for the time being, and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding five pounds.

(7) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

Power to provide for supervision of children.

37.—(1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority.

(2) Where the court makes an order under this section for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State; and where the order is for supervision by a local authority, that authority shall be the council of a county, county borough or London borough selected by the court and specified in the order or, if the Common Council of the City of London is so selected and specified, that Council.

1948 c. 43.

(3) This section shall be included among the enactments specified in subsection (1) of section 39 of the Children Act 1948 (which lists the functions which are matters for the children's committee of a local authority), and a local authority shall discharge the duties conferred on them by an order under this section through an officer employed in connection with those functions.

(4) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under the last foregoing section is in the care of a local authority.

(5) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any order made with respect to the child's custody, maintenance or education under this Part of this Act shall, subject to any rules of court, be exercisable at the instance of that court itself.

(6) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

38.—(1) Without prejudice to the operation of section 38(1) of the Interpretation Act 1889 (which provides for references to enactments which are repealed and re-enacted to be construed as references to those enactments as re-enacted), any order for maintenance or other payments made by virtue of this Part of this Act or any corresponding enactment of the Parliament of Northern Ireland shall be included among the orders to which section 16 of the Maintenance Orders Act 1950 applies (which section specifies the orders enforceable under Part II of that Act); and any order for maintenance or other payments made by virtue of this Part of this Act shall be a maintenance order within the meaning of the Maintenance Orders Act 1958.

PART III
Application of Maintenance Orders Acts to orders under Part III.
1889 c. 63.
1950 c. 37.
1958 c. 39.

(2) This section, so far as it affects Part II of the Maintenance Orders Act 1950, shall extend to Scotland and Northern Ireland.

PART IV

MISCELLANEOUS AND GENERAL

Miscellaneous

39.—(1) Any person who is a British subject, or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in England or Northern Ireland or claims any real or personal estate situate in England, apply by petition to the court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

Declarations of legitimacy, etc.

(2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the court, or may apply to a county court in the manner prescribed by county court rules, for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimacy Act 1926, and includes a person recognised under section 8 of that Act as legitimated.

1926 c. 60.

(3) Where an application under the last foregoing subsection is made to a county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court; and on such a transfer the proceeding shall be continued in the High Court as if it had been originally commenced by petition to the court.

(4) Any person who is domiciled in England or Northern Ireland or claims any real or personal estate situate in England

PART IV may apply to the court for a decree declaring his right to be deemed a British subject.

(5) Applications to the court (but not to a county court) under the foregoing provisions of this section may be included in the same petition, and on any application under the foregoing provisions of this section (including an application to a county court) the court or the county court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person—

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(6) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Attorney-General at least one month before the application is made, and the Attorney-General shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.

(7) Where any application is made under this section, such persons as the court or county court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(8) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

Additional jurisdiction in proceedings by a wife.

40.—(1) Without prejudice to any jurisdiction exercisable by the court apart from this section, the court shall have jurisdiction to entertain proceedings by a wife, notwithstanding that the husband is not domiciled in England,—

- (a) in the case of any proceedings under this Act (other than proceedings under section 14 or sections 23 to 28), if—
 - (i) the wife has been deserted by her husband, or
 - (ii) the husband has been deported from the United Kingdom under any law for the time being in force relating to deportation,
 and the husband was immediately before the desertion or deportation domiciled in England;

(b) in the case of proceedings for divorce or nullity of marriage, if—

(i) the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and

(ii) the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.

(2) In any proceedings in which the court has jurisdiction by virtue of the foregoing subsection the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England at the time of the proceedings.

41.—(1) A husband may, on a petition for divorce or for Damages for separation or for damages only, claim damages from adultery. any person on the ground of adultery with the wife of the petitioner.

(2) A claim for damages on the ground of adultery shall, subject to the provisions of any enactment relating to trial by jury in the court, be tried on the same principles and in the same manner as actions for criminal conversation were tried immediately before the commencement of the Matrimonial Causes Act 1857, and the provisions of this Act with reference to the hearing and decision of petitions shall so far as may be necessary apply to the hearing and decision of petitions on which damages are claimed. 1857 c. 85.

(3) The court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

42.—(1) Any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent. Condonation.

(2) For the purposes of this Act and the Matrimonial Proceedings (Magistrates' Courts) Act 1960, adultery or cruelty shall not be deemed to have been condoned by reason only of a continuation or resumption of cohabitation between the parties for one period not exceeding three months, or of anything done during such cohabitation, if it is proved that cohabitation was continued or resumed, as the case may be, with a view to effecting a reconciliation. 1960 c. 48.

(3) Adultery which has been condoned shall not be capable of being revived.

PART IV
Evidence.

43.—(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period; but a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings; but no witness in any such proceedings, whether a party to the proceedings or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

(3) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

Power to
allow
intervention
on terms.

44. In every case in which any person is charged with adultery with any party to a suit or in which the court may consider, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

General

Transitional
provisions
and repeals.

45. The foregoing provisions of this Act shall have effect subject to the provisions of Schedule 1 to this Act (which contains transitional provisions required in consequence of the repeals made by this Act); and, subject to the provisions of the said Schedule 1, the enactments mentioned in the first and second columns of Schedule 2 to this Act are hereby repealed to the extent shown in the third column of that Schedule.

Short title,
interpretation,
commence-
ment and
extent.

46.—(1) This Act may be cited as the Matrimonial Causes Act 1965.

(2) In this Act—

“adopted”, except in section 23(2), means adopted in pursuance of an adoption order made under the Adoption Act 1958, any previous enactment relating to the adoption of children or any corresponding enactment of the Parliament of Northern Ireland or made in the Isle of Man or any of the Channel Islands; and

“relevant child” means a child who is—

(a) a child of both parties to the marriage in question; or

1958
(7 & 8 Eliz. 2)
c. 5.

(b) a child of one party to the marriage who has been accepted as one of the family by the other party,

and in paragraphs (a) and (b) of this definition "child" includes illegitimate child and adopted child ;

and references to a child of the marriage in sections 17, 21(3), 22(2), 34(2) and 41(3) of this Act include references to a child adopted by both parties to the marriage.

(3) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.

(4) Subject to the provisions of section 38(2) of this Act, this Act does not extend to Scotland or Northern Ireland.

SCHEDULES

Section 45.

SCHEDULE 1

TRANSITIONAL PROVISIONS

1889 c. 63.

1. Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals)—

- (a) nothing in any repeal made by this Act shall affect any order or rule made, direction given or thing done, or deemed to have been made, given or done, under any enactment repealed by this Act, and every such order, rule, direction or thing shall, if in force at the commencement of this Act, continue in force and, so far as it could have been made, given or done under this Act, be deemed to have been made, given or done under the corresponding provisions of this Act ; and
- (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.

2. Any agreement between the petitioner and the respondent to live separate and apart, whether or not made in writing, shall be disregarded for the purposes of section 1(1)(a)(ii) of this Act if the agreement was entered into before 1st January 1938 and either—

- (a) at the time when the agreement was made the respondent had deserted the petitioner without cause ; or
- (b) the court is satisfied that the circumstances in which the agreement was made and the parties proceeded to live separate and apart were such as, but for the agreement, to amount to desertion of the petitioner by the respondent without cause.

3. Without prejudice to the provisions of section 38 of the said Act of 1889 and notwithstanding anything in section 1(3) of this Act, a person of unsound mind shall be deemed to have been under care and treatment for the purposes of subsection (1)(a)(iv) of section 1 of this Act while—

- (a) at any time before 1st November 1960 he was—

- (i) detained in pursuance of an order or inquisition under the Lunacy and Mental Treatment Acts 1890 to 1930 or of an order or warrant under the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act 1884 or the Yarmouth Naval Hospital Act 1931, or

- (ii) detained as a Broadmoor patient or in pursuance of an order made under the Criminal Lunatics Act 1884, or

- (iii) receiving treatment as a voluntary patient under the Mental Treatment Act 1930 ;

1884 c. 46.
1931 c. 15.

1884 c. 64.

1930 c. 23.

(b) at any time before 1st June 1962 he was detained in pursuance of an order or warrant for his detention or custody as a lunatic under the Lunacy (Scotland) Acts 1857 to 1919.

4. In relation to a marriage celebrated before 1st November 1960, for sub-paragraphs (ii) and (iii) of section 9(1)(b) of this Act there shall be substituted the following sub-paragraphs—

“(ii) was a mental defective within the meaning of the Mental Deficiency Acts 1913 to 1938, or

(iii) was subject to recurrent fits of insanity or epilepsy; or”.

5. In relation to proceedings under section 23 of the Matrimonial Causes Act 1950 begun before 1st January 1959 and deemed by virtue of paragraph 1 of this Schedule to be proceedings under section 22(1) of this Act, that subsection shall have effect as if the reference to any illegitimate child of both parties to the marriage in section 22(2) of this Act were omitted. 1950 c. 25.

6. Where the party chargeable under a maintenance agreement within the meaning of section 23 of this Act died before 17th August 1957, then—

(a) subsection (1) of that section shall not apply to the agreement unless there remained undistributed at that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of the funeral, testamentary and administrative expenses, debts and liabilities payable thereout (other than any liability arising by virtue of that subsection); and

(b) nothing in that subsection shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.

7. No right or liability shall attach by virtue of section 23(1) of this Act in respect of any sum payable under a maintenance agreement within the meaning of that section in respect of a period before 17th August 1957.

8. Any rules of court made before 31st July 1963 shall be deemed to have been validly made if they could have been made after the commencement of this Act under section 29(1) of this Act or that subsection as applied by section 34(6) of this Act; but nothing in this paragraph affects any order for ancillary relief (as defined by section 5(4) of the Matrimonial Causes Act 1963) made after 19th December 1962 and before 31st July 1963. 1963 c. 45.

9. In relation to an order made before 16th December 1949 which, by virtue of paragraph 1 of this Schedule is deemed to have been made under section 16(1)(a) of this Act or the said paragraph (a) as applied by section 19 of this Act, the powers conferred by section 31 of this Act shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by the

SCH. 1 discharge, variation or suspension of any order made, or deemed as aforesaid to have been made, under section 16(1)(b) of this Act, or that paragraph as so applied, as the case may be.

10. In relation to such proceedings as are mentioned in section 34(1) of this Act which were begun before 1st January 1959, that subsection shall have effect as if paragraph (b) were omitted; and, in relation to any such proceedings and in the application of section 34(3) of this Act to any proceedings so begun, subsections (1) and (3) of that section shall have effect respectively as if paragraph (b) in section 46(2) of this Act were omitted.

1950 c. 25.

11. Section 35(1) of this Act shall not apply in relation to an order made under section 23(1) of the Matrimonial Causes Act 1950 before 1st January 1959 and deemed by virtue of paragraph 1 of this Schedule to be made under section 22(1) of this Act.

Section 45.

SCHEDULE 2

REPEALS

Chapter	Short title	Extent of repeal
49 & 50 Vict. c. 27.	The Guardianship of Infants Act 1886.	Section 7.
14 Geo. 6. c. 25.	The Matrimonial Causes Act 1950.	The whole Act.
4 & 5 Eliz. 2. c. 46.	The Administration of Justice Act 1956.	Section 31(2).
5 & 6 Eliz. 2. c. 35.	The Maintenance Agreements Act 1957.	The whole Act.
6 & 7 Eliz. 2. c. 35.	The Matrimonial Causes (Property and Maintenance) Act 1958.	Sections 1 to 6 and the Schedule.
6 & 7 Eliz. 2. c. 40.	The Matrimonial Proceedings (Children) Act 1958.	The whole Act, except sections 17 and 18. In section 17, the words from "and in" onwards. Section 18(4).
6 & 7 Eliz. 2. c. 54.	The Divorce (Insanity and Desertion) Act 1958.	The whole Act.
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	In Schedule 7, the entry relating to the Matrimonial Causes Act 1950.
7 & 8 Eliz. 2. c. 73.	The Legitimacy Act 1959.	Section 2(6).
8 & 9 Eliz. 2. c. 61.	The Mental Health (Scotland) Act 1960.	In Schedule 4, the entry relating to the Matrimonial Causes Act 1950.
10 & 11 Eliz. 2. c. 21.	The Commonwealth Immigrants Act 1962.	In section 20(1), the words from the beginning to "1950 and".
1963 c. 45.	The Matrimonial Causes Act 1963.	The whole Act.