

## SCHEDULES

### SCHEDULE 1

Section 28.

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *General provisions*

- 1 Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals), nothing in any repeal made by this Act shall affect any application made, proceeding begun, order made or deemed to have been made, or direction given or deemed to have been given, under any enactment repealed by this Act, and subject to the provisions of this Act—
- (a) every such application or proceeding which is pending at the commencement of this Act shall have effect as if made or begun under the corresponding provision of this Act; and
  - (b) every such order or direction shall, if in force at the commencement of this Act, continue in force.

##### *Provisions relating to proceedings for restitution of conjugal rights*

- 2 (1) Sections 13, 15, 21, 30(1), 31, 34(1), (4) and (5) and 46(2) of the Matrimonial Causes Act 1965 (hereinafter referred to as "the Act of 1965 ") shall continue to apply in relation to proceedings for restitution of conjugal rights begun before the commencement of this Act and in relation to decrees and orders made in such proceedings so begun.
- (2) In subsection (2) of the said section 21, as applied by sub-paragraph (1) above, the reference to such a direction as is mentioned in section 16(2)(a) of the Act of 1965 shall be construed as a reference to such a direction as is mentioned in section 25(a) of this Act.
- (3) Notwithstanding the repeal by this Act of section 29 of the Act of 1965, rules of court made by virtue of that section, in so far as they apply to applications for relief under subsection (1) or (2) of the said section 21 or for relief under subsection (1)(c) of the said section 34, shall continue to have effect.

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

- 3 (1) Subject to the provisions of this paragraph, section 9 of this Act shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the following provisions of the Act of 1965, that is to say—
- (a) section 15, except in its application to proceedings for restitution of conjugal rights,
  - (b) section 16(1), that subsection as applied by section 16(3) and by section 19,
  - (c) section 20(1) and section 17(2) as applied by section 20(2),
  - (d) section 22,

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- (e) section 34(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 34(3),  
as it applies to the orders mentioned in subsection (2) of the said section 9.
- (2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made or deemed to have been made under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part I of this Act.
- (3) The said section 9, as applied by sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) thereof there were substituted the following subsections—
- “(4) The court shall not exercise the powers conferred by this section in relation to an order made or deemed to have been made under section 17(2) of the Act of 1965, as applied by section 20(2) thereof, in proceedings for judicial separation except on an application made in proceedings—
- (a) for the rescission of the decree of judicial separation, or
  - (b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.
- (5) The court hearing an application for the variation of any order made or deemed to have been made under section 16(1), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965 or under the said section 16(1) as applied by section 16(3) of that Act or by section 19 thereof shall not have power to vary that order by making an order for the payment of a lump sum or any such order as is mentioned in section 4 of this Act.
- (6) Where the person liable to make payments under a secured periodical payments order made or deemed to have been made under the said section 16(1), 22 or 34(3) or under the said section 16(1), as applied by the said section 16(3) or by the said section 19, has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.
- In this subsection ' secured periodical payments order' means an order requiring a person to secure an annual sum or periodical payments to some other person.”
- (4) In relation to an order made before 16th December 1949 which, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, is deemed to have been made under section 16(1)(a) of that Act or the said paragraph (a) as applied by section 19 of that Act, the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any order made, or deemed as aforesaid to have been made, under section 16(1)(b) of that Act or that paragraph, as so applied, as the case may be.
- (5) Section 9(1) and (3) of this Act shall apply to an order made or deemed to have been made under section 15 of the Act of 1965 in its application to proceedings for restitution of conjugal rights, under section 21 of that Act or under section 34(1)(c)

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thereof as they apply to the orders mentioned in subsection (2) of the said section 9, and in exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

4 Section 10 of this Act shall apply in relation to the enforcement of the payment of arrears due under an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say, sections 15, 16, 20, 21, 22 and 34 and section 16, as applied by section 19, where proceedings to enforce through the High Court or any county court the payment of such arrears are begun after the commencement of this Act as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

5 An application may be made under this paragraph in relation to an order to which this paragraph applies in the like circumstances as those in which an application may be made under section 11 of this Act, and the provisions of that section shall apply to such an application and to an order made on such an application as they apply to an application made under that section and to an order made on the last mentioned application.

This paragraph applies to an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say, sections 15, 16(1)(a) and (b), 20(1), 21 and 22, section 16(1)(a) and (b) as applied by section 16(3) and by section 19, section 34(1), in so far as it applies to maintenance, and section 34(3).

6 Section 18(6) of this Act shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 34 of the Act of 1965, and in relation to an order for the custody of a child made or deemed to have been made under section 35 of that Act, as it applies in relation to an order made under the said section 18.

*Provisions with respect to certain maintenance agreements*

7 Where the party chargeable under a maintenance agreement within the meaning of section 13 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.

8 No right or liability shall attach by virtue of section 13(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.

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

9 (1) Section 16 of this Act shall apply in relation to proceedings for relief under any of the following provisions of the Act of 1965, that is to say, sections 16, 17(2), 20(1),

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22, 24, 31, 34(1)(a) or (b), 34(3) and 35, section 16(1) as applied by section 19 and section 17(2) as applied by section 20(2), where the proceedings are pending at the commencement of this Act, and in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965, as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 16(4) of this Act.

- (2) Without prejudice to sub-paragraph (1) above, the said section 16 shall apply in a case where an order has been obtained under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above as it applies in a case where an order has been obtained under any of the provisions of this Act specified in the said section 16(4).

*Protection, custody, etc., of children*

- 10 Section 33 of the Act of 1965 shall continue to apply, and section 17 of this Act shall not apply, in relation to any proceedings for divorce or nullity of marriage in which a decree nisi has been granted but not made absolute before the commencement of this Act.
- 11 Where in any such proceedings the court has made an order by virtue of section 34(1) of the Act of 1965 in relation to a child, the court shall have the like power to make a further order from time to time in relation to that child under section 3 or 18 of this Act as it has where it makes an order in relation to a child under subsection (1) of the said section 3 or 18, but nothing in the foregoing provision shall be taken as affecting the power of the court in any such proceedings to make an order under either of those sections in relation to any other child, being a child of the family.
- 12 Where the court has made an order under section 22 of the Act of 1965 the court shall have the like power to make orders under section 19 of this Act with respect to the custody of any child of the family as it has where it makes an order under section 6 of this Act.