



Matrimonial Causes Act 1973

1973 CHAPTER 18

U.K.

F1

An Act to consolidate certain enactments relating to matrimonial proceedings, maintenance agreements, and declarations of legitimacy, validity of marriage and British nationality, with amendments to give effect to recommendations of the Law Commission. [23rd May 1973]

Textual Amendments

- F1** Act: for the words "Supreme Court Act 1981" wherever they occur there is substituted (prosp.) the words "Senior Courts Act 1981" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 1\(2\)](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

Commencement Information

- II** Act not in force at Royal Assent, see s. 55(2); Act wholly in force at 1.1.1974

PART I **E+W**

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

[F21 Divorce on breakdown of marriage. **E+W**

- (1) Subject to section 3, either or both parties to a marriage may apply to the court for an order (a "divorce order") which dissolves the marriage on the ground that the marriage has broken down irretrievably.

Status: Point in time view as at 06/04/2022.

Changes to legislation: Matrimonial Causes Act 1973 is up to date with all changes known to be in force on or before 17 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably.
- (3) The court dealing with an application under subsection (1) must—
 - (a) take the statement to be conclusive evidence that the marriage has broken down irretrievably, and
 - (b) make a divorce order.
- (4) A divorce order—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
- (5) The court may not make a conditional order unless—
 - (a) in the case of an application that is to proceed as an application by one party to the marriage only, that party has confirmed to the court that they wish the application to continue, or
 - (b) in the case of an application that is to proceed as an application by both parties to the marriage, those parties have confirmed to the court that they wish the application to continue;
 and a party may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings.
- (6) The Lord Chancellor may by order made by statutory instrument amend this section so as to shorten or lengthen the period for the purposes of subsection (4)(b) or (5).
- (7) But the Lord Chancellor may not under subsection (6) provide for a period which would result in the total number of days in the periods for the purposes of subsections (4)(b) and (5) (taken together) exceeding 26 weeks.
- (8) In a particular case the court dealing with the case may by order shorten the period that would otherwise be applicable for the purposes of subsection (4)(b) or (5).
- (9) A statutory instrument containing an order under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) Without prejudice to the generality of section 75 of the Courts Act 2003, Family Procedure Rules may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only).]

Textual Amendments

F2 S. 1 substituted (25.6.2020 for specified purposes, 6.4.2022 in so far as not already in force) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), **ss. 1, 8(3)(a)** (with s. 8(4)); S.I. 2022/283, **reg. 2**

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Textual Amendments

- F3** S. 2 omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 2](#) (with s. 8(4)); S.I. 2022/283, reg. 2

[^{F53} Bar on [^{F4} applying for a divorce order] within one year of marriage. **E+W**

- (1) [^{F6}An application for a divorce order may not be made] before the expiration of the period of one year from the date of the marriage.

^{F7}(2)]

Textual Amendments

- F4** Words in s. 3 heading substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 3\(a\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F5** S. 3 substituted (with saving) by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 1, 46(1), 48(2), [Sch. 2](#)
- F6** Words in s. 3(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 3\(b\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F7** S. 3(2) omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 3\(c\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2

^{F84} Divorce not precluded by previous judicial separation. **E+W**

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Textual Amendments

- F8** S. 4 omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 4](#) (with s. 8(4)); S.I. 2022/283, reg. 2

^{F95} Refusal of decree in five year separation cases on grounds of grave hardship to respondent. **E+W**

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Textual Amendments

- F9** S. 5 omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 5](#) (with s. 8(4)); S.I. 2022/283, reg. 2

6 Attempts at reconciliation of parties to marriage. **E+W**

- (1) Provision shall be made by rules of court for requiring the [^{F10}legal representative] acting for [^{F11}an applicant for a divorce order to certify whether the representative has discussed with the applicant the possibility of reconciliation and given the applicant] the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

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- (2) If at any stage of proceedings for [F12a divorce order] it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

Textual Amendments

- F10** Words in s. 6(1) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\), s. 211\(2\), Sch. 21 para. 29](#) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F11** Words in s. 6(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\), s. 8\(1\)\(8\), Sch. para. 6\(a\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F12** Words in s. 6(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\), s. 8\(1\)\(8\), Sch. para. 6\(b\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2

7 Consideration by the court of certain agreements or arrangements. **E+W**

Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made [F13when proceedings for a divorce order are contemplated or have begun,] to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the [F14proceedings,] and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

Textual Amendments

- F13** Words in s. 7 substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\), s. 8\(1\)\(8\), Sch. para. 7\(a\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F14** Word in s. 7 substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\), s. 8\(1\)\(8\), Sch. para. 7\(b\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2

8 Intervention of Queen's Proctor. **E+W**

- (1) In the case of [F15an application for a divorce order] —
- (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 [F16divorce order is made final] 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) Where the Queen's Proctor intervenes or shows cause against a [F17conditional order in any proceedings for a divorce order,] the court may make such order as may be just

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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 Queen’s Proctor shall be entitled to charge as part of the expenses of his office—
- (a) the costs of any proceedings under subsection (1)(a) above;
 - (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) above 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 subsection (2).

Textual Amendments

- F15** Words in s. 8(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 8\(a\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F16** Words in s. 8(1)(b) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 8\(b\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F17** Words in s. 8(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 8\(c\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2

9 Proceedings ^{F18}before divorce order has been made final]: general powers of court. **E+W**

- (1) Where a ^{F19}divorce order has been made but not made final], then, without prejudice to section 8 above, any person (excluding a party to the proceedings other than the Queen’s Proctor) may show cause why the ^{F20}order should not be made final] by reason of material facts not having been brought before the court; and in such a case the court may—
- (a) notwithstanding anything in ^{F21}section 1(4)] above (but subject to ^{F22}section] 10(2) to (4) ^{F23}... below) make the ^{F21}order final]; or
 - (b) rescind the ^{F24}order]; or
 - (c) require further inquiry; or
 - (d) otherwise deal with the case as it thinks fit.
- (2) ^{F25}Where a divorce order has been made on an application by one party to a marriage and that party has not applied for the order to be made final,] then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, ^{F26}the other party to the marriage] 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.

Textual Amendments

- F18** Words in s. 9 heading substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 9\(a\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F19** Words in s. 9(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 9\(b\)\(i\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2
- F20** Words in s. 9(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 9\(b\)\(ii\)](#) (with s. 8(4)); S.I. 2022/283, reg. 2

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- F21** Words in s. 9(1)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 9(c)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F22** Word in s. 9(1)(a) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), **ss. 17(3)(a)**, 139(6); S.I. 2014/793, art. 2 (with transitional provisions in S.I. 2014/1042, arts. 5, 11)
- F23** Words in s. 9(1)(a) omitted (22.4.2014) by virtue of Children and Families Act 2014 (c. 6), **ss. 17(3)(b)**, 139(6); S.I. 2014/793, art. 2 (with transitional provisions in S.I. 2014/1042, arts. 5, 11)
- F24** Word in s. 9(1)(b) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 9(d)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F25** Words in s. 9(2) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 9(e)(i)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F26** Words in s. 9(2) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 9(e)(ii)** (with s. 8(4)); S.I. 2022/283, reg. 2

10 [^{F27}**Proceedings before divorce order made final: special protection for respondent].** **E+W**

^{F28}(1)

[^{F29}(2) The following provisions of this section apply where—

- (a) on an application for a divorce order a conditional order has been made and—
 - (i) the conditional order is in favour of one party to a marriage, or
 - (ii) the conditional order is in favour of both parties to a marriage but one of the parties has since withdrawn from the application, and
 - (b) the respondent has applied to the court for consideration under subsection (3) of their financial position after the divorce.
- (3) Subject to subsection (4), the court hearing an application by the respondent under subsection (2) must not make the divorce order final unless it is satisfied—
- (a) that the applicant should not be required to make any financial provision for the respondent, or
 - (b) that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances.
- (3A) In making a determination under subsection (3) the court must consider all the circumstances including—
- (a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage, and
 - (b) the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.]
- (4) The court may if it thinks fit makes the [^{F30}divorce order final] notwithstanding the requirements of subsection (3) above if—
- (a) it appears that there are circumstances making it desirable that the [^{F31}order should be made final] without delay, and
 - (b) the court has obtained a satisfactory undertaking from the [^{F32}applicant that they will make such financial provision] for the respondent as the court may approve.

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Textual Amendments

- F27** S. 10 heading substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(a)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F28** S. 10(1) omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(b)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F29** S. 10(2)-(3A) substituted for s. 10(2) (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(c)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F30** Words in s. 10(4) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(d)(i)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F31** Words in s. 10(4)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(d)(ii)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F32** Words in s. 10(4)(b) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 10(d)(iii)** (with s. 8(4)); S.I. 2022/283, reg. 2

[^{F33}10A Proceedings [^{F34}before divorce order has been made final]: religious marriage **E** **+W**

- (1) This section applies if a [^{F35}divorce order has been made] but not made [^{F36}final] and the parties to the marriage concerned—
 - (a) were married in accordance with—
 - (i) the usages of the Jews, or
 - (ii) any other prescribed religious usages; and
 - (b) must co-operate if the marriage is to be dissolved in accordance with those usages.
- (2) On the application of either party, the court may order that a [^{F37}divorce order] is not to be made [^{F38}final] until a declaration made by both parties that they have taken such steps as are required to dissolve the marriage in accordance with those usages is produced to the court.
- (3) An order under subsection (2)—
 - (a) may be made only if the court is satisfied that in all the circumstances of the case it is just and reasonable to do so; and
 - (b) may be revoked at any time.
- (4) A declaration of a kind mentioned in subsection (2)—
 - (a) must be in a specified form;
 - (b) must, in specified cases, be accompanied by such documents as may be specified; and
 - (c) must, in specified cases, satisfy such other requirements as may be specified.
- (5) The validity of a [^{F39}divorce order] made by reference to such a declaration is not to be affected by any inaccuracy in that declaration.
- (6) “Prescribed” means prescribed in an order made by the Lord Chancellor [^{F40}after consulting the Lord Chief Justice] and such an order—
 - (a) must be made by statutory instrument;
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) “Specified” means specified in rules of court.

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[The Lord Chief Justice may nominate a judicial office holder (as defined in ^{F41}(8) section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]]

Textual Amendments

- F33** S. 10A inserted (24.2.2003) by [Divorce \(Religious Marriages\) Act 2002 \(c. 27\)](#), **ss. 1(1), 2(2)**; S.I. 2003/186, **art. 2**
- F34** Words in s. 10A heading substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(a)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F35** Words in s. 10A(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(b)(i)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F36** Word in s. 10A(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(b)(ii)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F37** Words in s. 10A(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(c)(i)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F38** Word in s. 10A(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(c)(ii)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F39** Words in s. 10A(5) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 11(d)** (with s. 8(4)); S.I. 2022/283, reg. 2
- F40** Words in s. 10A(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, **Sch. 4 para. 76(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(e)
- F41** S. 10A(8) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, **Sch. 4 para. 76(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(e)

Nullity

11 Grounds on which a marriage is void. **E+W**

A marriage celebrated after 31st July 1971^{F42}, other than a marriage to which section 12A applies,] shall be void on the following grounds only, that is to say—

- (a) that it is not a valid marriage under the provisions of ^{F43}the ^{F44}Marriage Acts 1949 to 1986]] (that is to say where—
- (i) the parties are within the prohibited degrees of relationship;
 - (ii) either party is under the age of sixteen; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
- (b) that at the time of the marriage either party was already lawfully married ^{F45}or a civil partner];
- ^{F46}(c)
- (d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales.

For the purposes of paragraph (d) of this subsection a marriage ^{F47}is not polygamous if] at its inception neither party has any spouse additional to the other.

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Textual Amendments

- F42** Words in s. 11 inserted (10.12.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) and Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(S.I. 2014/3168\)](#), art. 1(2)(3), **Sch. para. 6(2)**
- F43** Words substituted by virtue of [Marriage Act 1983 \(c. 32, SIF 49:1\)](#), s. **12(1)**
- F44** Words substituted by [Marriage \(Prohibited Degrees of Relationship\) Act 1986 \(c. 16, SIF 49:1\)](#), s. **6(4)**
- F45** Words in s. 11(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, **Sch. 27 para. 40**; [S.I. 2005/3175](#), art. **2(2)** (subject to art. 2(3)-(5))
- F46** S. 11(c) omitted (13.3.2014) by virtue of [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 7 para. 27**; [S.I. 2014/93](#), art. 3(k)(ii)
- F47** Words in s. 11 substituted (8.1.1996) by [1995 c. 42](#), ss. 8(2), 16(2), **Sch. para. 2(2)** (with s. 8(1)(3))

12 Grounds on which a marriage is voidable. **E+W**

[^{F48}(1) A marriage celebrated after 31st July 1971 [^{F49}, other than a marriage to which section 12A applies,] shall be voidable on the following grounds only, that is to say—

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
 - (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
 - (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
 - (d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of [^{F50}the Mental Health Act 1983] of such a kind or to such an extent as to be unfitted for marriage;
 - (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
 - (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.
- [^{F51}(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage;]
- [^{F52}(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.]]

[^{F53}(2) Paragraphs (a) and (b) of subsection (1) do not apply to the marriage of a same sex couple.]

Textual Amendments

- F48** S. 12 renumbered as s. 12(1) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 4 para. 4(2)**; [S.I. 2014/93](#), art. 3(j)(i)
- F49** Words in s. 12 inserted (10.12.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) and Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(S.I. 2014/3168\)](#), art. 1(2)(3), **Sch. para. 6(3)**
- F50** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 146, 147, 148, **Sch. 4 para. 34**
- F51** S. 12(g) inserted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), ss. 4(4), 26, **Sch. 2 para. 2**; [S.I. 2005/54](#), art. 2

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- F52** S. 12(h) inserted (4.4.2005) by Gender Recognition Act 2004 (c. 7), ss. 11, 26, **Sch. 4 para. 5**; S.I. 2005/54, **art. 2**
- F53** S. 12(2) inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 4(3)**; S.I. 2014/93, art. 3(j)(i)

[^{F54}12A. Grounds on which a marriage converted from a civil partnership is void or voidable E+W

- (1) This section applies to a marriage which has been converted, or is purported to have been converted, from a civil partnership under section 9 of the 2013 Act and regulations made under that section.
- (2) A marriage which results from the purported conversion of a void civil partnership is void.
- (3) A marriage which results from the conversion of a civil partnership is voidable if any of paragraphs (c) to (h) of section 12(1) applied at the date from which the marriage is treated as having subsisted in accordance with section 9(6) of the 2013 Act.
- (4) In this section, the “2013 Act” means the Marriage (Same Sex Couples) Act 2013.]

Textual Amendments

- F54** S. 12A inserted (10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), **Sch. para. 6(4)**

[^{F55}12B The period before nullity of marriage orders may be made final E+W

- (1) An order that annuls a marriage which is void or voidable (a “nullity of marriage order”)—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
- (2) The Lord Chancellor may by order made by statutory instrument amend this section so as to shorten or lengthen the period for the purposes of subsection (1)(b).
- (3) But the Lord Chancellor may not under subsection (2) lengthen the period so that it exceeds 6 months.
- (4) In a particular case the court dealing with the case may by order shorten the period that would otherwise be applicable for the purposes of subsection (1)(b).
- (5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F55** S. 12B inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 12** (with s. 8(4)); S.I. 2022/283, reg. 2

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13 Bars to relief where marriage is voidable. **E+W**

(1) The court shall [^{F56}not make a nullity of marriage order] on the ground that a marriage is voidable if the respondent satisfies the court—

- (a) that the [^{F57}applicant], with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
- (b) that it would be unjust to the respondent to [^{F58}make the order].

[^{F59}(2) Without prejudice to subsection (1) above, the court shall not [^{F60}make a nullity of marriage order] by virtue of section 12 above on the grounds mentioned in paragraph (c), (d), (e) [^{F61}, (f) or (h)] of that section unless—

- (a) it is satisfied that proceedings were instituted within the period of three years from the date of the marriage, or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under subsection (4) below.]

[^{F62}(2A) Without prejudice to subsection (1) above, the court shall not [^{F63}make a nullity of marriage order] by virtue of section 12 above on the ground mentioned in paragraph (g) of that section unless it is satisfied that proceedings were instituted within the period of six months from the date of issue of the interim gender recognition certificate.]

(3) Without prejudice to subsections (1) and (2) above, the court shall not [^{F64}make a nullity of marriage order] by virtue of section 12 above on the grounds mentioned in paragraph (e) [^{F61}, (f) or (h)] of that section unless it is satisfied that the [^{F65}applicant] was at the time of the marriage ignorant of the facts alleged.

[^{F66}(4) In the case of proceedings for the [^{F67}making of a nullity of marriage order] by virtue of section 12 above on the grounds mentioned in paragraph (c), (d), (e) [^{F61}, (f) or (h)] of that section, a judge of the court may, on an application made to him, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if—

- (a) he is satisfied that the [^{F68}applicant] has at some time during that period suffered from mental disorder within the meaning of the Mental Health Act 1983, and
- (b) he considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.

(5) An application for leave under subsection (4) above may be made after the expiration of the period of three years from the date of the marriage.]

Textual Amendments

- F56** Words in s. 13(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 13\(2\)\(a\)](#) (with s. 8(6)); S.I. 2022/283, reg. 2
- F57** Word in s. 13(1)(a) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 13\(2\)\(b\)](#) (with s. 8(6)); S.I. 2022/283, reg. 2
- F58** Words in s. 13(1)(b) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 13\(2\)\(c\)](#) (with s. 8(6)); S.I. 2022/283, reg. 2
- F59** S. 13(2) substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 2\(2\)](#), 48(2)
- F60** Words in s. 13(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 13\(3\)](#) (with s. 8(6)); S.I. 2022/283, reg. 2
- F61** Words in s. 13(2)(3)(4) substituted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), [ss. 11](#), 26, [Sch. 4 para. 6](#); S.I. 2005/54, [art. 2](#)

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- F62** S. 13(2A) inserted (4.4.2005) by Gender Recognition Act 2004 (c. 7), ss. 4(4), 26, **Sch. 2 para. 3**; S.I. 2005/54, **art. 2**
- F63** Words in s. 13(2A) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 13(4)** (with s. 8(6)); S.I. 2022/283, reg. 2
- F64** Words in s. 13(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 13(5)(a)** (with s. 8(6)); S.I. 2022/283, reg. 2
- F65** Word in s. 13(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 13(5)(b)** (with s. 8(6)); S.I. 2022/283, reg. 2
- F66** S. 13(4)(5) added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 2(3)**, 48(2)
- F67** Words in s. 13(4) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 13(6)(a)** (with s. 8(6)); S.I. 2022/283, reg. 2
- F68** Word in s. 13(4)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 13(6)(b)** (with s. 8(6)); S.I. 2022/283, reg. 2

Modifications etc. (not altering text)

- C1** S. 13(4) modified by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(2), 47(1), 48(2), **Sch. 2 para. 2**

14 **Marriages governed by foreign law or celebrated abroad under English law.** **E**
+W

- (1) ^[F69]Subject to subsection (3)] where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales, nothing in section 11, 12 or 13(1) above shall—
- (a) preclude the determination of that matter as aforesaid; or
 - (b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.
- (2) In the case of a marriage which purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 or has taken place outside England and Wales and purports to be a marriage under common law, section 11 above is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside England and Wales under common law.

^[F70](3) No marriage is to be treated as valid by virtue of subsection (1) if, at the time when it purports to have been celebrated, either party was already a civil partner.]

Textual Amendments

- F69** Words in s. 14(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 41(2)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F70** S. 14(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 41(3)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

[F71]15 **Application of sections 8 and 9 to proceedings for a nullity of marriage order** **E**
+W

Section 8 (intervention of Queen's Proctor) and section 9 (proceedings before divorce order has been made final: general powers of court) apply in relation to proceedings

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for a nullity of marriage order as if for any reference in those sections to a divorce order there were substituted a reference to a nullity of marriage order.]

Textual Amendments

- F71** S. 15 substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 14](#) (with s. 8(6)); S.I. 2022/283, reg. 2

16 Effect of ^{F72}annulment] in case of voidable marriage. **E+W**

^{F73}(1) ^{F74}A nullity of marriage order granted] in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the ^{F75}order has been made final,] and the marriage shall, ^{F76}notwithstanding the order,] be treated as if it had existed up to that time.

^{F77}(2) Subsection (1) has effect in relation to a decree of nullity granted after 31 July 1971 as it has effect in relation to a nullity of marriage order, but with the substitution—

- (a) for “order has been made final,” of “decree has been made absolute,” and
- (b) for “notwithstanding the order,” of “notwithstanding the decree,]

Textual Amendments

- F72** Word in s. 16 heading substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(2\)](#); S.I. 2022/283, reg. 2
- F73** S. 16 renumbered as s. 16(1) (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(3\)](#); S.I. 2022/283, reg. 2
- F74** Words in s. 16(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(4\)\(a\)](#); S.I. 2022/283, reg. 2
- F75** Words in s. 16(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(4\)\(b\)](#); S.I. 2022/283, reg. 2
- F76** Words in s. 16(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(4\)\(c\)](#); S.I. 2022/283, reg. 2
- F77** S. 16(2) inserted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 15\(5\)](#); S.I. 2022/283, reg. 2

Other matrimonial suits

17 Judicial separation. **E+W**

^{F78}(1) Either or both parties to a marriage may apply to the court for an order (a “judicial separation order”) which provides for the separation of the parties to the marriage.

(1A) An application under subsection (1) must be accompanied by—

- (a) if the application is by one party to the marriage only, a statement by that person that they seek to be judicially separated from the other party to the marriage, or
- (b) if the application is by both parties to the marriage, a statement by them that they seek to be judicially separated from one another.

(1B) The court dealing with an application under subsection (1) must make a judicial separation order.]

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^{F79}(2)

- (3) Sections 6 and 7 above shall apply for the purpose of encouraging the reconciliation of parties to proceedings for [^{F80}a judicial separation order] and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for [^{F80}a judicial separation order], as they apply in relation to proceedings for [^{F81}a divorce order].

Textual Amendments

- F78** S. 17(1)-(1B) substituted for s. 17(1) (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), **ss. 2(2)**, 8(1)(8) (with s. 8(5)); S.I. 2022/283, reg. 2
- F79** S. 17(2) omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), **ss. 2(3)**, 8(1)(8) (with s. 8(5)); S.I. 2022/283, reg. 2
- F80** Words in s. 17(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), **ss. 2(4)(a)**, 8(1)(8) (with s. 8(5)); S.I. 2022/283, reg. 2
- F81** Words in s. 17(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), **ss. 2(4)(b)**, 8(1)(8) (with s. 8(5)); S.I. 2022/283, reg. 2

18 Effects of judicial separation. E+W

^{F82}(1)

- (2) If while a decree of judicial separation [^{F83}or judicial separation order] is in force and the separation is continuing either of the parties to the marriage dies intestate as respects all or any of his or her real or personal property, the property as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.
- (3) Notwithstanding anything in section 2(1)(a) of the ^{M1}Matrimonial Proceedings (Magistrates' Courts) Act 1960, a provision in force under an order made, or having effect as if made, under that section exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a decree of judicial separation for the purposes of subsection (2) above.

Textual Amendments

- F82** S. 18(1) omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 16(a)** (with s. 8(5)); S.I. 2022/283, reg. 2
- F83** Words in s. 18(2) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 16(b)** (with s. 8(5)); S.I. 2022/283, reg. 2

Marginal Citations

- M1** 1960 c. 48.

^{F84}**19 Presumption of death and dissolution of marriage. E+W**

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Textual Amendments

F84 S. 19 omitted (1.10.2014) by virtue of [Presumption of Death Act 2013 \(c. 13\)](#), s. 22(2), [Sch. 2 para. 1](#) (with s. 21); S.I. 2014/1810, art. 2 (with art. 3(1)(2))

F85
...

Textual Amendments

F85 S. 20 and cross-heading omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 17](#) (with s. 8(4)); S.I. 2022/283, reg. 2

F85 20 **Relief for respondent in divorce proceedings.** **E+W**

.....

PART II **E+W**

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Financial provision and property adjustment orders

21 **Financial provision and property adjustment orders.** **E+W**

(1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 23 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 27(6) below on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say—

- (a) any order for periodical payments in favour of a party to a marriage under section 23(1)(a) or 27(6)(a) or in favour of a child of the family under section 23(1)(d), (2) or (4) or 27(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 23(1)(b) or 27(6)(b) or in favour of a child of the family under section 23(1)(e), (2) or (4) or 27(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 23(1)(c) or 27(6)(c) or in favour of a child of the family under section 23(1)(f), (2) or (4) or 27(6)(f);

and references in this Act (except in paragraphs 17(1) and 23 of Schedule 1 below) to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 24 below

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for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the [^{F86}making of a divorce, nullity of marriage or judicial separation order,] that is to say—

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property; and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

[^{F87}(3) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).]

Textual Amendments

- F86** Words in s. 21(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 18\(a\)](#); S.I. 2022/283, reg. 2
- F87** S. 21(3) inserted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 18\(b\)](#); S.I. 2022/283, reg. 2

[^{F88}21A Pension sharing orders. **E+W**

- (1) For the purposes of this Act, a pension sharing order is an order which—
- (a) provides that one party’s—
 - (i) shareable rights under a specified pension arrangement, or
 - (ii) shareable state scheme rights,
 be subject to pension sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1) above—
- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,
 - (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
 - (c) “ party ” means a party to a marriage.]

Textual Amendments

- F88** S. 21A and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30](#), s. 19, [Sch. 3 para. 2](#); S.I. 2000/1116, [art. 2](#)

Modifications etc. (not altering text)

- C2** S. 21A modified (8.8.2006) by [The Divorce etc. \(Pension Protection Fund\) Regulations 2006 \(S.I. 2006/1932\)](#), [reg. 4\(2\)\(a\)](#)

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[^{F89}21B Pension compensation sharing orders **E+W**

- (1) For the purposes of this Act, a pension compensation sharing order is an order which—
- (a) provides that one party's shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1)—
- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation;
 - (b) “party” means a party to a marriage;
 - (c) “specified” means specified in the order.

Textual Amendments

F89 Ss. 21B, 21C inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 2](#); S.I. 2011/664, art. 2(3), [Sch. Pt. 2](#)

21C Pension compensation: interpretation **E+W**

In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation on divorce etc) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.]

Textual Amendments

F89 Ss. 21B, 21C inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 2](#); S.I. 2011/664, art. 2(3), [Sch. Pt. 2](#)

Ancillary relief in connection with divorce proceedings, etc.

22 Maintenance pending suit. **E+W**

- [^{F90}(1) On [^{F91}an application for a divorce, nullity of marriage or judicial separation order,] the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the [^{F92}making of the application] and ending with the date of the determination of the suit, as the court thinks reasonable.]

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[^{F93}(2) An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceedings.

(3) In subsection (2) “legal services” has the same meaning as in section 22ZA.]

Textual Amendments

F90 S. 22 renumbered as s. 22(1) (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), ss. 49(1)(a), 151(1); S.I. 2013/773, art. 2

F91 Words in s. 22(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), Sch. para. 19(a) (with s. 8(4)(5)(6)); S.I. 2022/283, reg. 2

F92 Words in s. 22(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), Sch. para. 19(b) (with s. 8(4)(5)(6)); S.I. 2022/283, reg. 2

F93 S. 22(2)(3) inserted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), ss. 49(1)(b), 151(1); S.I. 2013/773, art. 2

[^{F94}22ZA Orders for payment in respect of legal services **E+W**

- (1) In proceedings for divorce, nullity of marriage or judicial separation, the court may make an order or orders requiring one party to the marriage to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- (2) The court may also make such an order or orders in proceedings under this Part for financial relief in connection with proceedings for divorce, nullity of marriage or judicial separation.
- (3) The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- (4) For the purposes of subsection (3), the court must be satisfied, in particular, that—
 - (a) the applicant is not reasonably able to secure a loan to pay for the services, and
 - (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
- (5) An order under this section may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.
- (6) An order under this section may—
 - (a) provide for the payment of all or part of the amount by instalments of specified amounts, and
 - (b) require the instalments to be secured to the satisfaction of the court.
- (7) An order under this section may direct that payment of all or part of the amount is to be deferred.
- (8) The court may at any time in the proceedings vary an order made under this section if it considers that there has been a material change of circumstances since the order was made.

Status: Point in time view as at 06/04/2022.

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- (9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings.
- (10) In this section “legal services”, in relation to proceedings, means the following types of services—
- (a) providing advice as to how the law applies in the particular circumstances,
 - (b) providing advice and assistance in relation to the proceedings,
 - (c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
 - (d) providing advice and assistance in relation to the enforcement of decisions in the proceedings or as part of the settlement or resolution of the dispute,
- and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.
- (11) In subsections (5) and (6) “specified” means specified in the order concerned.]

Textual Amendments

F94 S. 22ZA inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), ss. 49(2), 151(1); S.I. 2013/773, art. 2

[^{F95}22ZBMatters to which court is to have regard in deciding how to exercise power under section 22ZA **E+W**

- (1) When considering whether to make or vary an order under section 22ZA, the court must have regard to—
- (a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (c) the subject matter of the proceedings, including the matters in issue in them,
 - (d) whether the paying party is legally represented in the proceedings,
 - (e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
 - (f) the applicant's conduct in relation to the proceedings,
 - (g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and
 - (h) the effect of the order or variation on the paying party.
- (2) In subsection (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.
- (3) For the purposes of subsection (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—
- (a) cause undue hardship to the paying party, or

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- (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.
- (4) The Lord Chancellor may by order amend this section by adding to, omitting or varying the matters mentioned in subsections (1) to (3).
- (5) An order under subsection (4) must be made by statutory instrument.
- (6) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section “legal services” has the same meaning as in section 22ZA.]

Textual Amendments

F95 S. 22ZB inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), ss. 50, 151(1); S.I. 2013/773, art. 2

23 Financial provision orders in connection with divorce proceedings, etc. **E+W**

- (1) [^{F96}On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final),] the court may make any one or more of the following orders, that is to say—
- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
 - (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
 - (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
 - (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
 - (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
 - (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;
- subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.
- (2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) above—
- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before [^{F97}making a divorce order, nullity of marriage order or judicial separation order (as the case may be);] and
 - (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

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- (3) Without prejudice to the generality of subsection (1)(c) or (f) above—
- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
 - (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
 - (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under subsection (1) or (2)(a) above to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) above, it may from time to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f) above.
- (5) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under subsection (1)(a), (b) or (c) above on or after ^{F98}making a divorce or nullity of marriage order, neither the order under subsection (1)(a), (b) or (c) nor any settlement made in pursuance of it is to take effect unless the divorce or nullity of marriage order has been made final.]
- ^{F99}(6) Where the court—
- (a) makes an order under this section for the payment of a lump sum; and
 - (b) directs—
 - (i) that payment of that sum or any part of it shall be deferred; or
 - (ii) that that sum or any part of it shall be paid by instalments,the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due.]

^{F100}(7) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).]

Textual Amendments

- F96** Words in s. 23(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 20\(2\)](#); S.I. 2022/283, reg. 2
- F97** Words in s. 23(2)(a) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 20\(3\)](#) (with s. 8(4)(5)(6)); S.I. 2022/283, reg. 2
- F98** Words in s. 23(5) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 20\(4\)](#); S.I. 2022/283, reg. 2
- F99** S. 23(6) added by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), [ss. 16](#), 77(1)

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F100 S. 23(7) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 20(5)** (with s. 8(4)(6)); S.I. 2022/283, reg. 2

Modifications etc. (not altering text)

C3 S. 23(3) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(a)**, 48(2)

24 Property adjustment orders in connection with divorce proceedings, etc. E+W

(1) [^{F101}On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final),] the court may make any one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage [^{F102}, other than one in the form of a pension arrangement (within the meaning of section 25D below)];
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement [^{F102}, other than one in the form of a pension arrangement (within the meaning of section 25D below)];

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

- (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
- (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after [^{F103}making a divorce or nullity of marriage order, neither the order under this section nor any settlement made in pursuance of it is to take effect unless the divorce or nullity of marriage order has been made final.]

[^{F104}(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).]

Textual Amendments

F101 Words in s. 24(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 21(2)**; S.I. 2022/283, reg. 2

F102 Words in s. 24(1)(c)(d) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 3**; S.I. 2000/1116, **art. 2**

F103 Words in s. 24(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 21(3)**; S.I. 2022/283, reg. 2

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F104 S. 24(4) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 21(4)**; S.I. 2022/283, reg. 2

[^{F105}24A Orders for sale of property **E+W**

- (1) Where the court makes [^{F106}an order under section 22ZA or makes] under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.
- (2) Any order made under subsection (1) above may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include—
 - (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
 - (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.
- (3) Where an order is made under subsection (1) above on or after the [^{F107}making of a divorce or nullity of marriage order, the order under subsection (1) is not to take effect unless the divorce or nullity of marriage order has been made final.]
- (4) Where an order is made under subsection (1) above, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.
- (5) Where an order under subsection (1) above contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of [^{F108}, or formation of a civil partnership by,] that person.

[Where a party to a marriage has a beneficial interest in any property, or in the proceeds
^{F109}(6) of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 25(1) below.]

[See also section 52A (interpretation of certain references to divorce orders, nullity of
^{F110}(7) marriage orders and judicial separation orders).]]

Textual Amendments

F105 S. 24A inserted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), s. 7

F106 Words in s. 24A(1) inserted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), ss. 51, 151(1); S.I. 2013/773, art. 2

F107 Words in s. 24A(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 22(2)**; S.I. 2022/283, reg. 2

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F108 Words in s. 24A(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 42**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F109 S. 24A(6) added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 11**

F110 S. 24A(7) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 22(3)**; S.I. 2022/283, reg. 2

Modifications etc. (not altering text)

C4 S. 24A(2)(4)(5)(6) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(b)**, 48(2)

[^{F111}24B Pension sharing orders in connection with divorce proceedings etc. E+W

- (1) [^{F112}On making a divorce or nullity of marriage order or at any time after making such an order (whether before or after the order is made final),] the court may, on an application made under this section, make one or more pension sharing orders in relation to the marriage.
- (2) A pension sharing order under this section is not to take effect unless the [^{F113}divorce or nullity of marriage order on or after which it is made has been made final.]
- (3) A pension sharing order under this section may not be made in relation to a pension arrangement which—
 - (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.
- (4) A pension sharing order under this section may not be made in relation to shareable state scheme rights if—
 - (a) such rights are the subject of a pension sharing order in relation to the marriage, or
 - (b) such rights have been the subject of pension sharing between the parties to the marriage.
- (5) A pension sharing order under this section may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.

[See also section 52A (interpretation of certain references to divorce orders, nullity of ^{F114}(6) marriage orders and judicial separation orders).]

Textual Amendments

F111 S. 24B and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 4**; S.I. 2000/1116, **art. 2**

F112 Words in s. 24B(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 23(2)**; S.I. 2022/283, reg. 2

F113 Words in s. 24B(2) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 23(3)**; S.I. 2022/283, reg. 2

F114 S. 24B(6) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 23(4)**; S.I. 2022/283, reg. 2

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[^{F115}**24C Pension sharing orders: duty to stay.** **E+W**]

- (1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F115 S. 24C and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19, Sch. 3 para. 4](#); [S.I. 2000/1116, art. 2](#)

[^{F116}**24D Pension sharing orders: apportionment of charges.** **E+W**]

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs), or under corresponding Northern Ireland legislation.]

Textual Amendments

F116 S. 24D and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19, Sch. 3 para. 4](#); [S.I. 2000/1116, art. 2](#)

[^{F117}**24E Pension compensation sharing orders in connection with divorce proceedings** **E+W**]

- (1) [^{F118}On making a divorce or nullity of marriage order or at any time after making such an order (whether before or after the order is made final),] the court may, on an application made under this section, make a pension compensation sharing order in relation to the marriage.
- (2) A pension compensation sharing order under this section is not to take effect unless the [^{F119}divorce or nullity of marriage order on or after which it is made has been made final.]
- (3) A pension compensation sharing order under this section may not be made in relation to rights to PPF compensation that—
 - (a) are the subject of pension attachment,
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the parties to the marriage.
- (4) For the purposes of subsection (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.

Status: Point in time view as at 06/04/2022.

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- (5) The first condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(4), and
 - (b) that order, as modified under section 25E(3), remains in force.
- (6) The second condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(7), and
 - (b) that order—
 - (i) has been complied with, or
 - (ii) has not been complied with and, as modified under section 25E(5), remains in force.
- (7) The third condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25C, and
 - (b) that order remains in force.
- (8) For the purposes of subsection (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.
- (9) For the purposes of subsection (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of section 25F relating to them.
- (10) For the purposes of subsection (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

[See also section 52A (interpretation of certain references to divorce orders, nullity of ^{F120}(11) marriage orders and judicial separation orders).]

Textual Amendments

- F117** Ss. 24E-24G inserted (s. 24F in force at 6.3.2011, ss. 24E, 24G in force at 6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 3](#); S.I. 2011/664, art. 2(2)(3), Sch. Pts. 1, 2
- F118** Words in s. 24E(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 24\(2\)](#); S.I. 2022/283, reg. 2
- F119** Words in s. 24E(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 24\(3\)](#); S.I. 2022/283, reg. 2
- F120** S. 24E(11) inserted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 24\(4\)](#); S.I. 2022/283, reg. 2

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24F Pension compensation sharing orders: duty to stay **E+W**

- (1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F117 Ss. 24E-24G inserted (s. 24F in force at 6.3.2011, ss. 24E, 24G in force at 6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 3](#); S.I. 2011/664, art. 2(2)(3), Sch. Pts. 1, 2

24G Pension compensation sharing orders: apportionment of charges **E+W**

The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 117 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or under corresponding Northern Ireland legislation.]

Textual Amendments

F117 Ss. 24E-24G inserted (s. 24F in force at 6.3.2011, ss. 24E, 24G in force at 6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 3](#); S.I. 2011/664, art. 2(2)(3), Sch. Pts. 1, 2

[^{F121}25 Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 [^{F122}, 24A, 24B and 24E]. **E+W**

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 [^{F123}, 24A [^{F124}, 24B or 24E]] above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 [^{F125}, 24A [^{F126}, 24B or 24E]] above in relation to a party to the marriage, the court shall in particular have regard to the following matters—
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;

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- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 - (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit^{F127} . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
- (3) As regards the exercise of the powers of the court under section 23(1)(*d*), (*e*) or (*f*), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters—
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
 - (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (*a*), (*b*), (*c*) and (*e*) of subsection (2) above.
- (4) As regards the exercise of the powers of the court under section 23(1)(*d*), (*e*) or (*f*), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—
- (a) to whether that party assumed any responsibility for the child’s maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
 - (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
 - (c) to the liability of any other person to maintain the child.]

Textual Amendments

- F121** Ss. 25, 25A substituted for s. 25 by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 3, 48\(2\)](#)
- F122** Words in s. 25 heading substituted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 4\(2\)](#); [S.I. 2011/664](#), [art. 2\(3\)](#), [Sch. Pt. 2](#)
- F123** Words in s. 25(1) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30](#), s. 19, [Sch. 3 para. 5\(a\)](#); [S.I. 2000/1116](#), [art. 2](#)
- F124** Words in s. 25(1) substituted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 4\(3\)](#); [S.I. 2011/664](#), [art. 2\(3\)](#), [Sch. Pt. 2](#)
- F125** Words in s. 25(2) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30](#), s. 19, [Sch. 3 para. 5\(b\)](#); [S.I. 2000/1116](#), [art. 2](#)
- F126** Words in s. 25(2) substituted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 4\(3\)](#); [S.I. 2011/664](#), [art. 2\(3\)](#), [Sch. Pt. 2](#)
- F127** Words in s. 25(2)(h) omitted (1.8.1996) by virtue of [1995 c. 26, s. 166\(2\)](#); [S.I. 1996/1675](#), [art. 3\(b\)](#)

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[^{F129}25A Exercise of court's powers in favour of party to marriage on [^{F128}divorce or nullity of marriage order]. **E+W**

- (1) Where on or after the [^{F130}making of a divorce or nullity of marriage order] the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or [^{F131}, 24A [^{F132}, 24B or 24E]] above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the [^{F133}making of the order] as the court considers just and reasonable.
- (2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.
- (3) Where on or after the [^{F134}making of a divorce or nullity of marriage order] an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 23(1)(a) or (b) above.

[See also section 52A (interpretation of certain references to divorce orders, nullity of ^{F135}(4) marriage orders and judicial separation orders).]]

Textual Amendments

- F128** Words in s. 25A heading substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 25(2)**; S.I. 2022/283, reg. 2
- F129** Ss. 25, 25A substituted for s. 25 by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 3, 48(2)**
- F130** Words in s. 25A(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 25(3)(a)**; S.I. 2022/283, reg. 2
- F131** Words in s. 25A(1) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, **ss. 19, 89, Sch. 3 para. 6**; S.I. 2000/1116, **art. 2**
- F132** Words in s. 25A(1) substituted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 6 para. 5**; S.I. 2011/664, **art. 2(3), Sch. Pt. 2**
- F133** Words in s. 25A(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 25(3)(b)**; S.I. 2022/283, reg. 2
- F134** Words in s. 25A(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 25(4)**; S.I. 2022/283, reg. 2
- F135** S. 25A(4) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 25(5)**; S.I. 2022/283, reg. 2

[^{F136}25B

Pensions. **E+W**

- (1) The matters to which the court is to have regard under section 25(2) above include—
 - (a) in the case of paragraph (a), any benefits under a pension [^{F137}arrangement] which a party to the marriage has or is likely to have, and

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- (b) in the case of paragraph (h), any benefits under a pension [^{F137}arrangement] which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,
- and, accordingly, in relation to benefits under a pension [^{F137}arrangement], section 25(2)(a) above shall have effect as if “in the foreseeable future” were omitted.
- ^{F138}[In any proceedings for a financial provision order under section 23 above in a case (2) where a party to the marriage has, or is likely to have, any benefit under a pension scheme, the court shall, in addition to considering any other matter which it is required to consider apart from this subsection, consider—
- (a) whether, having regard to any matter to which it is required to have regard in the proceedings by virtue of subsection (1) above, such an order (whether deferred or not) should be made, and
- (b) where the court determines to make such an order, how the terms of the order should be affected, having regard to any such matter.]
- (3) The following provisions apply where, having regard to any benefits under a pension [^{F139}arrangement], the court determines to make an order under section 23 above.
- (4) To the extent to which the order is made having regard to any benefits under a pension [^{F140}arrangement], the order may require the [^{F141}person responsible for] the pension [^{F140}arrangement] in question, if at any time any payment in respect of any benefits under the [^{F140}arrangement] becomes due to the party with pension rights, to make a payment for the benefit of the other party.
- ^{F142}[The order must express the amount of any payment required to be made by virtue of (5) subsection (4) above as a percentage of the payment which becomes due to the party with pension rights.]
- (6) Any such payment by the [^{F143}person responsible for the arrangement]—
- (a) shall discharge so much of [^{F144}his] liability to the party with pension rights as corresponds to the amount of the payment, and
- (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.
- (7) Where the party with pension rights [^{F145}has a right of commutation under the arrangement, the order may require him to exercise it to any extent]; and this section applies to the [^{F146}any payment due in consequence of commutation] in pursuance of the order as it applies to other payments in respect of benefits under the [^{F147}arrangement].
- ^{F148}[The power conferred by subsection (7) above may not be exercised for the purpose (7A) of commuting a benefit payable to the party with pension rights to a benefit payable to the other party.
- (7B) The power conferred by subsection (4) or (7) above may not be exercised in relation to a pension arrangement which—
- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.
- (7C) In subsection (1) above, references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.]]

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Textual Amendments

- F136** S. 25B inserted (1.8.1996 with effect as mentioned in S.I. 1996/1675, **art. 4**) by 1995 c. 26, s. 166(1); S.I. 1996/1675, **art. 3(b)**
- F137** Words in s. 25B(1)(a)(b) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(2)**; S.I. 2000/1116, **art. 2**
- F138** S. 25B(2) repealed (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, 88, **Sch. 4 para. 1(1)(3)**, **Sch. 13 Pt. II**; S.I. 2000/1116, **art. 2**
- F139** Word in s. 25B(3) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(4)**; S.I. 2000/1116, **art. 2**
- F140** Words in s. 25B(4) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(5)(a)**; S.I. 2000/1116, **art. 2**
- F141** Words in s. 25B(4) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(5)(b)**; S.I. 2000/1116, **art. 2**
- F142** S. 25B(5) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(6)**; S.I. 2000/1116, **art. 2**
- F143** Words in s. 25B(6) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(7)(a)**; S.I. 2000/1116, **art. 2**
- F144** Words in s. 25B(6)(a) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(7)(b)**; S.I. 2000/1116, **art. 2**
- F145** Words in s. 25B(7) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(8)(a)**; S.I. 2000/1116, **art. 2**
- F146** Words in s. 25B(7) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(8)(b)**; S.I. 2000/1116, **art. 2**
- F147** Words in s. 25B(7) substituted (11.11.1999 for certain purposes and otherwise *prosp.*) by 1999 c. 30, ss. 21, 89(2)(a)(5), **Sch. 4 para. 1(1)(8)(c)**
- F148** S. 25B(7A)-(7C) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, **Sch. 4 para. 1(1)(9)**; S.I. 2000/1116, **art. 2**

Modifications etc. (not altering text)

- C5** S. 25B modified (8.8.2006) by *The Divorce etc. (Pension Protection Fund) Regulations 2006* (S.I. 2006/1932), **reg. 4(2)(b)**
- C6** S. 25B(6) modified (8.8.2006) by *The Divorce etc. (Pension Protection Fund) Regulations 2006* (S.I. 2006/1932), **reg. 2**

[^{F149}25C Pensions: lump sums. **E+W**

- (1) The power of the court under section 23 above to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension [^{F150}arrangement]] include any lump sum payable in respect of his death, power to make any of the following provision by the order.
- (2) The court may—
 - (a) if the [^{F151}person responsible for the pension arrangement in question has] power to determine the person to whom the sum, or any part of it, is to be paid, require [^{F152}him]to pay the whole or part of that sum, when it becomes due, to the other party,
 - (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum,

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- (c) in any other case, require the [^{F153}person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.
- (3) Any payment by the [^{F154}person responsible for the arrangement] under an order made under section 23 above by virtue of this section shall discharge so much of [^{F155}his] liability in respect of the party with pension rights as corresponds to the amount of the payment.
- ^{F156}[(4) The powers conferred by this section may not be exercised in relation to a pension arrangement which—
- (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.]

Textual Amendments

- F149** S. 25C inserted (1.8.1996 with effect as mentioned in S.I. 1996/1675) by 1995 c. 26, s. 166(1); S.I. 1996/1675, art. 3(b)
- F150** Word in s. 25C(1) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(1)(2); S.I. 2000/1116, art. 2
- F151** Words in s. 25C(2)(a) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(1)(3)(a)(i); S.I. 2000/1116, art. 2
- F152** Word in s. 25C(2)(a) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(1)(3)(a)(ii); S.I. 2000/1116, art. 2
- F153** Words in s. 25C(2)(c) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(1)(3)(b); S.I. 2000/1116, art. 2
- F154** Words in s. 25C(3) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(1)(4)(a); S.I. 2000/1116, art. 2
- F155** Words in s. 25C(3) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(4)(b); S.I. 2000/1116, art. 2
- F156** S. 25C(4) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 2(5); S.I. 2000/1116, art. 2

^{F157}25D Pensions: supplementary. E+W

- (1) Where—
- (a) an order made under section 23 above by virtue of section 25B or 25C above imposes any requirement on the person responsible for a pension arrangement (“ the first arrangement ”) and the party with pension rights acquires rights under another pension arrangement (“ the new arrangement ”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and
 - (b) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,
- the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.]
- (2) [^{F158}The Lord Chancellor may by regulations]—
- (a) in relation to any provision of sections 25B or 25C above which authorises the court making an order under section 23 above to require the [^{F159}person responsible for a pension arrangement] to make a payment for the benefit of

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- the other party, make provision as to the person to whom, and the terms on which, the payment is to be made,
- ^{F160}[(ab) make, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25B or 25C above in an order under section 23 above, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due,]
- (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 25B and 25C above,
- ^{F161}[(ba) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25B or 25C above,]
- ^{F162}[(c) make provision for the trustees or managers of any pension scheme to provide, for the purposes of orders under section 23 above, information as to the value of any benefits under the scheme,]
- ^{F162}[(d) make provision for the recovery of the administrative expenses of—
- (i) complying with such orders, so far as they include provision made by virtue of sections 25B and 25C above, and
- (ii) providing such information,
- from the party with pension rights or the other party,]
- ^{F163}[(e) make provision about calculation and verification in relation to the valuation of—
- (i) benefits under a pension arrangement, or
- (ii) shareable state scheme rights,
- for the purposes of the court’s functions in connection with the exercise of any of its powers under this Part of this Act.]
- [^{F164}and regulations made by virtue of paragraph (e) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed person and approved by the Secretary of State.]
- [^{F165}(2A) Regulations under subsection (2)(e) above may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and
- (b) provision by reference to regulations under section 30 or 49(4) of the Welfare Reform and Pensions Act 1999.
- (2B) Regulations under subsection (2) above may make different provision for different cases.
- (2C) Power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]
- [^{F166}(3) In this section and sections 25B and 25C above—
- “ occupational pension scheme ” has the same meaning as in the ^{M2} Pension Schemes Act 1993;
- “ the party with pension rights ” means the party to the marriage who has or is likely to have benefits under a pension arrangement and “ the other party ” means the other party to the marriage;
- “ pension arrangement ” means—
- (a) an occupational pension scheme,

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- (b) a personal pension scheme,
 - (c) a retirement annuity contract,
 - (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
 - (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;
- “ personal pension scheme ” has the same meaning as in the Pension Schemes Act 1993;
- “ prescribed ” means prescribed by regulations;
- “ retirement annuity contract ” means a contract or scheme approved under Chapter III of Part XIV of the ^{M3} Income and Corporation Taxes Act 1988;
- “ shareable state scheme rights ” has the same meaning as in section 21A(1) above; and
- “ trustees or managers ”, in relation to an occupational pension scheme or a personal pension scheme, means—
- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
 - (b) in any other case, the managers of the scheme.
- (4) In this section and sections 25B and 25C above, references to the person responsible for a pension arrangement are—
- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
 - (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement” above, the provider of the annuity, and
 - (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.]

Textual Amendments

- F157** S. 25D inserted (27.6.1996 in relation to the insertion of s. 25D(2)(3)(4) and 1.8.1996 otherwise) by 1995 c. 26, s. 166(1); S.I. 1995/1675, art. 3
- F158** Words in s. 25D(2) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(3)(a); S.I. 2000/1116, art. 2
- F159** Words in s. 25D(2)(a) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(3)(b); S.I. 2000/1116, art. 2
- F160** S. 25D(2)(ab) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(3)(c); S.I. 2000/1116, art. 2
- F161** S. 25D(2)(ba) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(3)(d); S.I. 2000/1116, art. 2
- F162** S. 25D(2)(c)(d) repealed (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, ss. 21, 88, Sch. 4 para. 3(1)(3)(e), Sch. 13 Pt. II; S.I. 2000/1116, art. 2
- F163** S. 25D(2)(e) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(3)(f); S.I. 2000/1116, art. 2
- F164** Words in s. 25D(2) repealed (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, ss. 21, 88, Sch. 4 para. 3(1)(3)(g), Sch. 13 Pt. II; S.I. 2000/1116, art. 2

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F165 S. 25D(2A)-(2C) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(4); S.I. 2000/1116, art. 2

F166 S. 25D(3)(4) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 21, Sch. 4 para. 3(1)(5); S.I. 2000/1116, art. 2

Modifications etc. (not altering text)

C7 S. 25D(1) applied (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1984 c. 42, s. 21(3) (as amended (1.12.2000) by 1999 c. 30, s. 22(5)); S.I. 2000/1116, art. 2

Marginal Citations

M2 1993 c. 48.

M3 1988 c. 1

[^{F167}**25E The Pension Protection Fund** **E+W**]

- (1) The matters to which the court is to have regard under section 25(2) include—
- (a) in the case of paragraph (a), any PPF compensation to which a party to the marriage is or is likely to be entitled, and
 - (b) in the case of paragraph (h), any PPF compensation which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring entitlement to,
- and, accordingly, in relation to PPF compensation, section 25(2)(a) shall have effect as if “in the foreseeable future” were omitted.
- (2) Subsection (3) applies in relation to an order under section 23 so far as it includes provision made by virtue of section 25B(4) which—
- (a) imposed requirements on the trustees or managers of an occupational pension scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any provision in force in Northern Ireland corresponding to that Chapter, and
 - (b) was made before the trustees or managers of the scheme received the transfer notice in relation to the scheme.
- (3) The order is to have effect from the time when the trustees or managers of the scheme receive the transfer notice—
- (a) as if, except in prescribed descriptions of case—
 - (i) references in the order to the trustees or managers of the scheme were references to the Board, and
 - (ii) references in the order to any pension or lump sum to which the party with pension rights is or may become entitled under the scheme were references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum, and
 - (b) subject to such other modifications as may be prescribed.
- (4) Subsection (5) applies to an order under section 23 if—
- (a) it includes provision made by virtue of section 25B(7) which requires the party with pension rights to exercise his right of commutation under an occupational pension scheme to any extent, and
 - (b) before the requirement is complied with the Board has assumed responsibility for the scheme as mentioned in subsection (2)(a).

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- (5) From the time the trustees or managers of the scheme receive the transfer notice, the order is to have effect with such modifications as may be prescribed.
- (6) Regulations may modify section 25C as it applies in relation to an occupational pension scheme at any time when there is an assessment period in relation to the scheme.
- (7) Where the court makes a pension sharing order in respect of a person’s shareable rights under an occupational pension scheme, or an order which includes provision made by virtue of section 25B(4) or (7) in relation to such a scheme, the Board subsequently assuming responsibility for the scheme as mentioned in subsection (2)(a) does not affect—
- (a) the powers of the court under section 31 to vary or discharge the order or to suspend or revive any provision of it, or
 - (b) on an appeal, the powers of the appeal court to affirm, reinstate, set aside or vary the order.
- (8) Regulations may make such consequential modifications of any provision of, or made by virtue of, this Part as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of this section.
- (9) In this section—
- “ assessment period ” means an assessment period within the meaning of Part 2 of the Pensions Act 2004 (pension protection) (see sections 132 and 159 of that Act) or an equivalent period under any provision in force in Northern Ireland corresponding to that Part;
 - “ the Board ” means the Board of the Pension Protection Fund;
 - “ occupational pension scheme ” has the same meaning as in the Pension Schemes Act 1993;
 - “ prescribed ” means prescribed by regulations;
 - F168** ...
 - “ regulations ” means regulations made by the Lord Chancellor;
 - “ shareable rights ” are rights in relation to which pension sharing is available under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 or any provision in force in Northern Ireland corresponding to that Chapter;
 - “ transfer notice ” has the same meaning as in section 160 of the Pensions Act 2004 or any corresponding provision in force in Northern Ireland.
- (10) Any power to make regulations under this section is exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F167 S. 25E inserted (1.1.2006) by [Pensions Act 2004 \(c. 35\)](#), ss. 319(1), 322, [Sch. 12 para. 3](#); S.I. 2005/3331, [art. 2\(3\)](#), [Sch. Pt. 3](#) (subject to [art. 3](#))

F168 Words in s. 25E(9) repealed (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 6](#), [Sch. 11 Pt. 4](#); S.I. 2011/664, [art. 2\(3\)](#), [Sch. Pt. 2](#)

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^{F169}25F Attachment of pension compensation **E+W**

- (1) This section applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under section 23.
- (2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.
- (3) The order must express the amount of any payment required to be made by virtue of subsection (2) as a percentage of the payment which becomes due to the party with compensation rights.
- (4) Any such payment by the Board of the Pension Protection Fund—
 - (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and
 - (b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party's liability under the order.
- (5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this section applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.
- (6) The power conferred by subsection (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.
- (7) The power conferred by subsection (2) or (5) may not be exercised in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or
 - (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

Textual Amendments

F169 Ss. 25F, 25G inserted (s. 25G in force at 6.3.2011, s. 25F in force at 6.4.2011) by [Pensions Act 2008](#) (c. 30), s. 149(1), [Sch. 6 para. 7](#); S.I. 2011/664, art. 2(2)(3), [Sch. Pts. 1, 2](#)

25G Pension compensation: supplementary **E+W**

- (1) The Lord Chancellor may by regulations—
 - (a) make provision, in relation to any provision of section 25F which authorises the court making an order under section 23 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
 - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25F in an

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- order under section 23, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to orders under section 23 which include provision made by virtue of section 25F;
 - (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25F;
 - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.
- (2) Regulations under subsection (1)(e) may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
 - (b) provision by reference to regulations under section 112 of the Pensions Act 2008.
- (3) Regulations under subsection (1) may make different provision for different cases.
- (4) The power to make regulations under subsection (1) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section and section 25F—
- “ the party with compensation rights ” means the party to the marriage who is or is likely to be entitled to PPF compensation, and “ the other party ” means the other party to the marriage;
- “ prescribed ” means prescribed by regulations.]

Textual Amendments

F169 Ss. 25F, 25G inserted (s. 25G in force at 6.3.2011, s. 25F in force at 6.4.2011) by [Pensions Act 2008](#) (c. 30), s. 149(1), [Sch. 6 para. 7](#); S.I. 2011/664, art. 2(2)(3), [Sch. Pts. 1, 2](#)

26 Commencement of proceedings for ancillary relief, etc. E+W

- (1) Where [^{F170}an application for a divorce, nullity of marriage or judicial separation order has been made,] then, subject to subsection (2) below, proceedings for maintenance pending suit under section 22 above, for a financial provision order under section 23 above, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the [^{F171}presentation of the application].
- (2) Rules of court may provide, in such cases as may be prescribed by the rules—
 - (a) that applications for any such relief as is mentioned in subsection (1) above shall be made in the [^{F172}application or response]; and
 - (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the [^{F173}presentation of the application or filing of the response] as may be so prescribed, shall be made only with the leave of the court.

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Textual Amendments

- F170** Words in s. 26(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 26\(a\)\(i\)](#) (with s. 8(4)-(6)); S.I. 2022/283, reg. 2
- F171** Words in s. 26(1) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 26\(a\)\(ii\)](#) (with s. 8(4)-(6)); S.I. 2022/283, reg. 2
- F172** Words in s. 26(2)(a) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 26\(b\)](#) (with s. 8(4)-(6)); S.I. 2022/283, reg. 2
- F173** Words in s. 26(2)(b) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 26\(c\)](#) (with s. 8(4)-(6)); S.I. 2022/283, reg. 2

Financial provision in case of neglect to maintain

27 **Financial provision orders, etc., in case of neglect by party to marriage to maintain other party or child of the family.** **E+W**

^{F174}(1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)

- (a) has failed to provide reasonable maintenance for the applicant, or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.]

^{F175}(2) The court may not entertain an application under this section unless—

- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application;
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(2A) If the application or part of it relates to a matter in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain that application or part of it except where permitted by Article 18.

(2B) In subsection (2A), “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.]

^{F176}[Where an application under this section is made on the ground mentioned in ^{F177}(3) subsection (1)(a) above, then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
 - (b) what order, if any, to make under this section in favour of the applicant,
- the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(2) above, and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while a minor.]

(3A) Where an application under this section is made on the ground mentioned in subsection (1)(b) above then, in deciding—

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- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
- (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in [F178]section 25(3)(a) to (e)] above, and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in [F178]section 25(4)] above.

(3B) In relation to an application under this section on the ground mentioned in subsection (1)(a) above, [F179]section 25(2)(c) above] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) above, [F179]section 25(2)(c) above (as it applies by virtue of section 25(3)(e) above)] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.]

(5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, the court may make [F180]any one or more of the following orders], that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

[F181](6A) An application for the variation under section 31 of this Act of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

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[Where a periodical payments order made in favour of a child under this section ceases
F182(6B) to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that—

- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its power under section 31 of this Act in relation to any order so revived.]]

(7) Without prejudice to the generality of subsection (6)(c) or (f) above, an order under this section for the payment of a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

F183(8)

Textual Amendments

- F174** S. 27(1) substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 63(1), 89(2)**
- F175** S. 27(2)-(2B) substituted for s. 27(2) (31.12.2020) by S.I. 2019/519, **Sch. para. 6(2)** (with reg. 8) (as substituted by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(2)(3)(b)**); 2020 c. 1, Sch. 5 para. 1(1)
- F176** S. 27(3)(3A)(3B) substituted for s. 27(3)(4) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 63(2), 89(2)**
- F177** S. 27(3) substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 4, 48(2)**
- F178** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 46(1), 48(3), Sch. 1 para. 12(a)**
- F179** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 46(1), 48(2), Sch. 1 para. 12(b)**
- F180** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 63(3), 89(2)**
- F181** S. 27(6A)(6B) inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 63(4), 89(2)**
- F182** S. 27(6B) substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), **ss. 33(1), Sch. 2 para. 52**
- F183** S. 27(8) repealed by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 89(2), **Sch. 3**

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Additional provisions with respect to financial provision and property adjustment orders

28 Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage ^{F184}or formation of civil partnership]. E+W

- (1) ^{F185}Subject in the case of an order made on or after the ^{F186}making of a divorce or nullity of marriage order] to the provisions of sections 25A(2) above and 31(7) below, the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits], that is to say—
- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the ^{F187}making of a divorce or nullity of marriage order,] the remarriage of ^{F188}, or formation of a civil partnership by,] the party in whose favour the ^{F189}periodical payments] order is made; and
 - (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the ^{F190}making of a divorce or nullity of marriage order,] the remarriage of ^{F188}, or formation of a civil partnership by,] the party in whose favour the ^{F191}secured periodical payments] order is made.
- ^{F192}(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the ^{F193}making of a divorce or nullity of marriage order,] the court may direct that that party shall not be entitled to apply under section 31 below for the extension of the term specified in the ^{F194}periodical payments or secured periodical payments] order]
- (2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the ^{F195}making of a divorce or nullity of marriage order,] and the marriage in question is subsequently dissolved or annulled but the ^{F196}periodical payments or secured periodical payments order continues in force, that order] shall, notwithstanding anything in it, cease to have effect on the remarriage of ^{F197}, or formation of a civil partnership by,] that party, except in relation to any arrears due under it on the date of the remarriage ^{F198}or formation of the civil partnership].
- (3) If after the ^{F199}grant or making of a decree or order] dissolving or annulling a marriage either party to that marriage remarries ^{F200}whether at any time before or after the commencement of this Act] ^{F201}or forms a civil partnership], that party shall not be entitled to apply, by reference to the ^{F202}grant or making of that decree or order,] for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.
- ^{F203}(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).]

Textual Amendments

F184 Words in s. 28 heading inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 43\(5\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

F185 Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. **5(1)**, 48(2)

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- F186** Words in s. 28(1) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(2)(a)**; S.I. 2022/283, reg. 2
- F187** Words in s. 28(1)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(2)(b)**; S.I. 2022/283, reg. 2
- F188** Words in s. 28(1)(a)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 43(2)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F189** Words in s. 28(1)(a) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(2)(b)**; S.I. 2022/283, reg. 2
- F190** Words in s. 28(1)(b) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(2)(c)(i)**; S.I. 2022/283, reg. 2
- F191** Words in s. 28(1)(b) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(2)(c)(ii)**; S.I. 2022/283, reg. 2
- F192** S. 28(1A) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 5(2)**, 48(2)
- F193** Words in s. 28(1A) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(3)(a)**; S.I. 2022/283, reg. 2
- F194** Words in s. 28(1A) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(3)(b)**; S.I. 2022/283, reg. 2
- F195** Words in s. 28(2) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(4)(a)**; S.I. 2022/283, reg. 2
- F196** Words in s. 28(2) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(4)(b)**; S.I. 2022/283, reg. 2
- F197** Words in s. 28(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 43(3)(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F198** Words in s. 28(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 43(3)(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F199** Words in s. 28(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(5)(a)**; S.I. 2022/283, reg. 2
- F200** Words inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 5(3)**, 48(2)
- F201** Words in s. 28(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 43(4)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F202** Words in s. 28(3) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(5)(b)**; S.I. 2022/283, reg. 2
- F203** S. 28(4) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 27(6)**; S.I. 2022/283, reg. 2

Modifications etc. (not altering text)

- C8** S. 28(1) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(c)**, 48(2)
- C9** S. 28(2) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(c)**, 48(2)

29 Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour. E+W

- (1) Subject to subsection (3) below, no financial provision order and no order for a transfer of property under section 24(1)(a) above shall be made in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date [^{F204}or a date ascertained in accordance with subsection (5) or (6) below] but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory

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- school age ^[F205](construed in accordance with section 8 of the Education Act 1996)^[F206]unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and
- (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) Subsection (1) above, and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that—
- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.
- (4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.
- ^[F207](5) Where—
- (a) a ^[F208]maintenance calculation] (“the ^[F209]current calculation]”) is in force with respect to a child; and
- (b) an application is made under Part II of this Act for a periodical payments or secured periodical payments order in favour of that child—
- (i) in accordance with section 8 of the Child Support Act 1991, and
- (ii) before the end of the period of 6 months beginning with the making of the ^[F209]current calculation]
- the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—
- (a) the date 6 months before the application is made; or
- (b) the date on which the ^[F209]current calculation] took effect or, where successive ^[F210] maintenance calculations] have been continuously in force with respect to a child, on which the first of ^[F210]those calculations] took effect.
- (7) Where—
- (a) a ^[F208] maintenance calculation] ceases to have effect ^[F211]or is cancelled] by or under any provision of the Child Support Act 1991; and
- (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for a periodical payments or secured periodical payments order in favour of a child with respect to whom that ^[F208] maintenance calculation] was in force immediately before it ceased to have effect ^[F211]or was cancelled],
- the term to be specified in any such order made on that application may begin with the date on which that ^[F208] maintenance calculation] ceased to have effect ^[F211]or, as the case may be, the date with effect from which it was cancelled], or any later date.
- (8) In subsection (7)(b) above—
- (a) where the ^[F208] maintenance calculation] ceased to have effect, the relevant date is the date on which it so ceased; ^[F212]and]

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- (b) [^{F212}where the maintenance assessment was cancelled, the relevant date is the later of—
- (i) the date on which the person who cancelled it did so, and
 - (ii) the date from which the cancellation first had effect.]]

Textual Amendments

- F204** Words in s. 29(2) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch. 1 para. 1**
- F205** Words in s. 29(2)(a) substituted (1.9.1997) by 1996 c. 56, s. 582(1)(4), **Sch. 37 Pt. II para. 136**; S.I. 1997/1623, **art. 2**
- F206** Words substituted by **Matrimonial and Family Proceedings Act 1984** (c. 42, SIF 49:3), **ss. 5(4), 48(2)**
- F207** S. 29(5)-(8) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch. 1 para. 2**
- F208** Words in s. 29(5)(a)(7)(8)(a) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(2), **Sch. 3 para. 3(2)(a)** (with s. 83(6)); S.I. 2003/192, **art. 3**, **Sch.**
- F209** Words in s. 29(5)(a)(b)(ii)(6)(b) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(2), **Sch. 3 para. 3(2)(b)** (with s. 83(6)); S.I. 2003/192; **art. 3**, **Sch.**
- F210** Words in s. 29(6)(b) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(2), **Sch. 3 para. 3(2)(c)(d)** (with s. 83(6)); S.I. 2003/192, **art. 3**, **Sch.**
- F211** Words in s. 29(7) repealed (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 85, 86(2), **Sch. 9 Pt. I** (with s. 83(6)); S.I. 2003/192, **art. 3**, **Sch.**
- F212** S. 29(8)(b) and preceding word repealed (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 85, 86(2), **Sch. 9 Pt. I** (with s. 83(6)); S.I. 2003/192, **art. 3**, **Sch.**

Modifications etc. (not altering text)

- C10** S. 29 extended by **Matrimonial and Family Proceedings Act 1984** (c. 42, SIF 49:3), **ss. 21(d), 48(2)**

30 Direction for settlement of instrument for securing payments or effecting property adjustment. **E+W**

Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order—

- (a) it may 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) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the [^{F213}making of the divorce, nullity of marriage or judicial separation order] until the instrument has been duly executed.

Textual Amendments

- F213** Words in s. 30(b) substituted (6.4.2022) by **Divorce, Dissolution and Separation Act 2020** (c. 11), s. 8(1)(8), **Sch. para. 28** (with s. 8(4)(5)(6)); S.I. 2022/283, **reg. 2**

Modifications etc. (not altering text)

- C11** S. 30 extended except para. (b), by **Matrimonial and Family Proceedings Act 1984** (c. 42, SIF 49:3), **ss. 21(e), 48(2)**

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Variation, discharge and enforcement of certain orders, etc.

31 Variation, discharge, etc., of certain orders for financial relief. E+W

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section [^{F214}and of section 28(1A) above], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) This section applies to the following orders, that is to say—
- (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order;
 - (c) any secured periodical payments order;
 - (d) any order made by virtue of section 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments;
 - [^{F215}(dd) any deferred order made by virtue of section 23(1)(c) (lump sums) which includes provision made by virtue of—
 - (i) section 25B(4), ^{F216} ...
 - (ii) section 25C, [^{F217}or]
 - [section 25F(2),]
 - ^{F218}(iii)
 - (provision in respect of pension rights)] [^{F219}or pension compensation rights]
 - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the [^{F220}making of a judicial separation order;]
 - [^{F221}(f) any order made under section 24A(1) above for the sale of property]
 - [^{F222}(g) a pension sharing order under section 24B above [^{F223}, or a pension compensation sharing order under section 24E above,] which is made at a time before the [^{F224}divorce or nullity of marriage order has been made final].]

[^{F225}(2A) Where the court has made an order referred to in subsection (2)(a), (b) or (c) above, then, subject to the provisions of this section, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]

[^{F226}(2B) Where the court has made an order referred to in subsection (2)(dd)(ii) above, this section shall cease to apply to the order on the death of either of the parties to the marriage]

(3) 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.

(4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above except on an application made in proceedings—

 - (a) for the rescission of the [^{F227}judicial separation order] by reference to which the order was made, or
 - (b) for the dissolution of the marriage in question.

^{F228}[(4A) In relation to an order which falls within paragraph (g) of subsection (2) above (“the subsection (2) order”)—

 - (a) the powers conferred by this section may be exercised—

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- (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, the [^{F229}divorce or nullity of marriage order has not been made final]; 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 of a pension sharing order [^{F230} or a pension compensation sharing order.] shall be made so as to take effect before the [^{F231}divorce or nullity of marriage order is made final].
- (4C) The variation of a pension sharing order [^{F232} or a pension compensation sharing order.] prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.]
- (5) [^{F233}Subject to subsections (7A) to [^{F234}(7G)] below and without prejudice to any power exercisable by virtue of subsection (2)(d), (dd) [^{F235}, (e) or (g)] above or otherwise than by virtue of this section.] no property adjustment order [^{F236} or pension sharing order][^{F237} or pension compensation sharing order] shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 23 or under section 27 above).
- (6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order [^{F238}(and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments 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.
- [^{F239}(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include 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, and—
- (a) in the case of a periodical payments or secured periodical payments order made on or after the [^{F240}making of a divorce or nullity of marriage order.] the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient [^{F241}(in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below)] to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;

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- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]
- [^{F242}(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;
- ^{F243}[one or more pension sharing orders;]
- (ba) [a pension compensation sharing order;]
- ^{F244}(bb) (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) [^{F245}Section 23(6)] above [^{F246}applies] where the court makes an order for the payment of a lump sum under subsection (7B) above as [^{F247}it applies where the court] makes such an order under [^{F248}section 23] 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 [^{F249}section 24] above.]
- ^{F250}[(7G) Subsections (3) to (5) of section 24B above apply in relation to a pension sharing order under subsection (7B) above as they apply in relation to a pension sharing order under that section.]
- [^{F251}(7H) Subsections (3) to (10) of section 24E above apply in relation to a pension compensation sharing order under subsection (7B) above as they apply in relation to a pension compensation sharing order under that section.]
- (8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the

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possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; 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.

[^{F252}(9) The following are to be left out of account when considering for the purposes of subsection (6) above when representation was first taken out—

- (a) a grant limited to settled land or to trust property,
- (b) any other grant that does not permit any of the estate to be distributed,
- (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
- (d) a grant, or its equivalent, made outside the United Kingdom (but see subsection (9A) below).

(9A) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of subsection (9) above, but is to be taken as dated on the date of sealing.]

[^{F253}(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

[^{F254}(11) Where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a [^{F255}maintenance calculation] (“ [^{F256}the calculation]”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which [^{F256}the calculation] was made, for the variation or discharge of the order, the court may, in exercise of its powers under this section to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [^{F256}the calculation] took effect or any later date.

(12) Where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a [^{F255}maintenance calculation];
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the [^{F255}maintenance calculation] was made, for the spousal order to be varied or discharged,

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the court may, in exercise of its powers under this section to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(13) For the purposes of subsection (12) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.

(14) Subsections (11) and (12) above are without prejudice to any other power of the court to direct that the variation or discharge of an order under this section shall take effect from a date earlier than that on which the order for variation or discharge was made.]

^{F257}[(15) The power to make regulations under subsection (4C) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

[^{F258}(16) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).]

Textual Amendments

- F214** Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 6(2)**, 48(2)
- F215** S. 31(2)(dd) inserted (1.8.1996) by [1995 c. 26, s. 166\(3\)\(a\)](#); [S.I. 1996/1675](#), **art. 3(b)**
- F216** Word in s. 31(2)(dd)(i) repealed (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 6 para. 8\(2\)\(a\)](#), **Sch. 11 Pt. 4**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F217** Word in s. 31(2)(dd)(ii) added (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(2)(b)**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F218** S. 31(2)(dd)(iii) inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(2)(c)**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F219** Words in s. 31(2)(dd) inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(2)(d)**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F220** Words in s. 31(2)(e) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 29(2)**; [S.I. 2022/283](#), **reg. 2**
- F221** S. 31(2)(f) inserted by [Matrimonial Homes and Property Act 1981 \(c. 24, SIF 49:5\)](#), **s. 8(2)(a)**
- F222** S. 31(2)(g) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19](#), **Sch. 3 para. 7(1)(2)**; [S.I. 2000/1116](#), **art. 2**
- F223** Words in s. 31(2)(g) inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(3)**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F224** Words in s. 31(2)(g) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 29(3)**; [S.I. 2022/283](#), **reg. 2**
- F225** S. 31(2A) inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), **ss. 51, 77(1)**
- F226** S. 31(2B) inserted (1.8.1996) by [1995 c. 26, s. 166\(3\)\(b\)](#); [S.I. 1996/1675](#), **art. 3(b)**
- F227** Words in s. 31(4)(a) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 29(4)**; [S.I. 2022/283](#), **reg. 2**
- F228** S. 31(4A)-(4C) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19](#), **Sch. 3 para. 7(1)(3)**; [S.I. 2000/1116](#), **art. 2**
- F229** Words in s. 31(4A)(a)(ii) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 29(5)**; [S.I. 2022/283](#), **reg. 2**
- F230** Words in s. 31(4B) inserted (6.4.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(4)**; [S.I. 2011/664](#), **art. 2(3)**, [Sch. Pt. 2](#)
- F231** Words in s. 31(4B) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 29(6)**; [S.I. 2022/283](#), **reg. 2**
- F232** Words in s. 31(4C) inserted (6.3.2011) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 6 para. 8(5)**; [S.I. 2011/664](#), **art. 2(2)**, [Sch. Pt. 1](#)

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- F233** Words in s. 31(5) inserted (1.11.1998) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. I para. 16(5)(a)** (with Sch. 9 para. 5); S.I. 1998/2572, **art. 3**
- F234** Words in s. 31(5) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(4)(a)**; S.I. 2000/1116, **art. 2**
- F235** Words in s. 31(5) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(4)(b)**; S.I. 2000/1116, **art. 2**
- F236** Words in s. 31(5) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(4)(c)**; S.I. 2000/1116, **art. 2**
- F237** Words in s. 31(5) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 6 para. 8(6)**; S.I. 2011/664, art. 2(3), Sch. Pt. 2
- F238** Words substituted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), **s. 8(2)(b)**
- F239** S. 31(7) substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 6(3), 48(2)**
- F240** Words in s. 31(7)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 29(7)**; S.I. 2022/283, reg. 2
- F241** Words in s. 31(7)(a) inserted (1.11.1998) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. I para. 16(6)(b)** (with Sch. 9 para. 5); S.I. 1998/2572, **art. 3**
- F242** S. 31(7A)-(7F) inserted (1.11.1998) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. I para. 16(7)** (with Sch. 9 para. 5); S.I. 1998/2572, **art. 3** (subject to temporary modifications in art. 4 of that S.I.)
- F243** S. 31(7B)(ba) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(5)**; S.I. 2000/1116, **art. 2**
- F244** S. 31(7B)(bb) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 6 para. 8(7)**; S.I. 2011/664, art. 2(3), Sch. Pt. 2
- F245** Words in s. 31(7D) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), **ss. 18(7)(b)(i), 139(4)** (with s. 18(6))
- F246** Word in s. 31(7D) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), **ss. 18(8)(a), 139(4)**
- F247** Words in s. 31(7D) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), **ss. 18(8)(b), 139(4)**
- F248** Words in s. 31(7D) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), **ss. 18(7)(b)(ii), 139(4)** (with s. 18(6))
- F249** Words in s. 31(7F) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), **ss. 18(7)(b)(iii), 139(4)** (with s. 18(6))
- F250** S. 31(7G) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(6)**
- F251** S. 31(7H) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 6 para. 8(8)**; S.I. 2011/664, art. 2(3), Sch. Pt. 2
- F252** S. 31(9)(9A) substituted for s. 31(9) (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 3 para. 1** (with s. 12(4)); S.I. 2014/2039, art. 2
- F253** S. 31(10) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 6(4), 48(2)**
- F254** S. 31(11)-(14) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch. 1 para. 3**
- F255** Words in s. 31(11)(c)(12)(a)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, **ss. 26, 86(2), Sch. 3 para. 3(3)(a)** (with s. 83(6)); S.I. 2003/192, **art. 3, Sch.**
- F256** Words in s. 31(11) substituted (3.3.2003 for certain purposes, otherwise prosp.) by virtue of 2000 c. 19, **ss. 26, 86(2), Sch. 3 para. 3(3)(b)** (with s. 83(6)); S.I. 2003/192, **art. 3, Sch.**
- F257** S. 31(15) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(7)**; S.I. 2000/1116, **art. 2**
- F258** S. 31(16) inserted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 29(8)**; S.I. 2022/283, reg. 2

Modifications etc. (not altering text)

- C12** S. 31(1) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f), 48(2)**
- C13** S. 31(2)(a)-(d) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f), 48(2)**

Status: Point in time view as at 06/04/2022.

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- C14** S. 31(2)(f) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C15** S. 31(3)(5) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C16** S. 31(6) amended by [Forfeiture Act 1982 \(c. 34, SIF 116:1, 2\)](#), **ss. 3(2)(b)**, 7(3)
- C17** S. 31(6) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C18** S. 31(6) amended by [Inheritance \(Provisions for Family and Dependants\) Act 1975 \(c. 63\)](#), **s. 18**
- C19** S. 31(7)–(10) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)

32 **Payment of certain arrears unenforceable without the leave of the court.** E+W

- (1) A person shall not be entitled to enforce through the High Court or [^{F259}the family court] the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.
- (2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

Textual Amendments

F259 Words in [s. 32\(1\)](#) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 11 para. 60](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), [arts. 3-11](#))

Modifications etc. (not altering text)

C20 S. 32 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(g)**, 48(2)

33 **Orders for repayment in certain cases of sums paid under certain orders.** E+W

- (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—
 - (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
 - (b) the changed circumstances resulting from the death of the person so liable,
 the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

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- (2) This section applies to the following orders, that is to say—
- (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order; and
 - (c) any secured periodical payments order.
- (3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.
- (4) An application under this section may be made in proceedings in the High Court or ^{F260}the family court] for—
- (a) the variation or discharge of the order to which this section applies, or
 - (b) leave to enforce, or the enforcement of, the payment of arrears under that order;
- but when not made in such proceedings shall be made to ^{F260}the family court], and accordingly references in this section to the court are references to the High Court or ^{F260}the family court], as the circumstances require.
- ^{F261}(5)
- (6) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Textual Amendments

F260 Words in s. 33(4) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 61\(2\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F261 S. 33(5) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 61\(3\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

C21 S. 33 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(h\)](#), 48(2)

^{F262} Consent orders]

Textual Amendments

F262 S. 33(A) and cross heading inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 7](#), 48(2)

^{F263}33A Consent orders for financial provision or property adjustment. E+W

- (1) Notwithstanding anything in the preceding provisions of this Part of this Act, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

Status: Point in time view as at 06/04/2022.

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- (2) Subsection (1) above applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this section—
- “consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;
- “order for financial relief” means an order under any of sections 23, 24, 24A [^{F264}, 24B]] or 27 above; and
- “prescribed” means prescribed by rules of court.

Textual Amendments

F263 S. 33A and cross heading inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 7, 48(2)

F264 Words in definition of “order for financial relief” in s. 33A(3) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19, Sch. 3 para. 8](#); [S.I. 2000/1116, art. 2](#)

Maintenance agreements

34 **Validity of maintenance agreements.** E+W

- (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 sections 35 and 36 below), be binding on the parties to the agreement.
- (2) In this section and in section 35 below—
- “maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, 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 family.

Status: Point in time view as at 06/04/2022.

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35 Alteration of agreements by court during lives of parties. **E+W**

- (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then ^{F265}... either party may apply to the court ^{F266}... for an order under this section.

^{F267}(1A)

- (2) If the court ^{F268}... 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 (including a change foreseen by the parties when making the agreement), 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 family,
- then subject to [^{F269}subsections] (4) and (5) below, [^{F270}the court] may by order make such alterations in the agreement—
- (i) by varying or revoking any financial arrangements contained in it, or
 - (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to [^{F270}the court] to be just having regard to all the circumstances, including, if relevant, the matters mentioned in [^{F271}section 25(4)] above; 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.

^{F272}(3)

- (4) Where [^{F273}the court] decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—
- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of [^{F274}, or formation of a civil partnership by,] the party to whom the payments are to be made;
 - (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of [^{F274}, or formation of a civil partnership by,] that party.
- (5) Where [^{F273}the court] decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured

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for the benefit of the child, the court shall apply the provisions of section 29(2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

- (6) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a 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.

Textual Amendments

- F265** Words in s. 35(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/519), reg. 1(1), **Sch. para. 6(3)(a)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F266** Words in s. 35(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(2)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F267** S. 35(1A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/519), reg. 1(1), **Sch. para. 6(3)(b)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F268** Words in s. 35(2) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(3)(a)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F269** Word in s. 35(2) substituted (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(3)(b)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F270** Words in s. 35(2) substituted (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(3)(c)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F271** Words substituted by [Matrimonial and Family Proceedings Act 1984](#) (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 13(a)**
- F272** S. 35(3) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(4)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F273** Words in s. 35(4)(5) substituted (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), **Sch. 11 para. 62(5)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F274** Words in s. 35(4)(a)(b) inserted (5.12.2005) by [Civil Partnership Act 2004](#) (c. 33), ss. 261(1), 263, **Sch. 27 para. 44**; [S.I. 2005/3175](#), **art. 2(2)** (subject to art. 2(3)-(5))

36 Alteration of agreements by court after death of one party. E+W

- (1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the ^{F275}... court for an order under section 35 above.

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- (2) An application under this section shall not, except with the permission of the ^{F276}... court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- ^{F277}(3)
- (4) If a maintenance agreement is altered by [^{F278}the court] on an application made in pursuance of subsection (1) above, 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.
- (5) 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 period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that [^{F278}the court] might permit an application by virtue of this section to be made by the surviving party 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.
- (6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.
- ^{F279}(7)

Textual Amendments

- F275** Words in s. 36(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 63\(2\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F276** Words in s. 36(2) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 63\(3\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F277** S. 36(3) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 63\(4\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F278** Words in s. 36(4)(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 63\(5\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F279** S. 36(7) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 63\(4\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

- C22** S. 36(1) amended by [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c. 63\)](#), s. 18
- C23** S. 36(1) amended by [Forfeiture Act 1982 \(c. 34\)](#), SIF 116:1, 2, [ss. 3\(2\)\(b\)](#), 7(3)

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Miscellaneous and supplemental

37 Avoidance of transactions intended to prevent or reduce financial relief. E+W

- (1) For the purposes of this section “financial relief” means relief under any of the provisions of sections 22, 23, 24, [F²⁸⁰24B,] 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person’s claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, 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 or has been made at his instance under any of those provisions.
- (2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—
 - (a) if it is satisfied that the other party to the proceedings 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 that intention, made a reviewable disposition 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;
 - (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;
 and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.
- (3) Where the court makes an order under subsection (2)(b) or (c) above setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).
- (4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was 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 intention on the part of the other party to defeat the applicant’s claim for financial relief.
- (5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—
 - (a) in a case falling within subsection (2)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or
 - (b) in a case falling within subsection (2)(c) above, that the disposition has had the consequence,
 of defeating the applicant’s claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal

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with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant’s claim for financial relief.

(6) 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.

(7) This section does not apply to a disposition made before 1st January 1968.

Textual Amendments

F280 Words in s. 37 inserted (11.11.1999 for certain purposes, 1.12.2000 otherwise) by 1999 c. 30, s. 19, Sch. 3 para. 9; S.I. 2000/1116, art. 2(e)

38 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage [F281 or formation of civil partnership]. E+W

(1) Where—

(a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of [F282, or formation of a civil partnership by,] that party, and

(b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage [F283 or formation of the civil partnership] in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

(2) On an application under this section the court [F284 to which the application is made] may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made in proceedings in the High Court or [F285 the family court] for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to [F285 the family court]; and accordingly references in this section to the court are references to the High Court or [F285 the family court], as the circumstances require.

^{F286}(4)

(5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(6) [F287 An officer of the family court,] and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable—

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- (a) in the case of [^{F288}an officer of the family court,] for any act done by him [^{F289}, in pursuance of a payments order requiring payments to be made to the court or an officer of the court,] after the date on which that order ceased to have effect by reason of the remarriage of [^{F290}, or formation of a civil partnership by,] the person entitled to payments under it, and
- (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried [^{F291} or formed a civil partnership] was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

- (7) In this section “collecting officer”, in relation to an attachment of earnings order, means the officer of the High Court, [^{F292} or the officer of the family court,] to whom a person makes payments in compliance with the order.

Textual Amendments

- F281** Words in s. 38 heading inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(4\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F282** Words in s. 38(1)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(2\)\(a\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F283** Words in s. 38(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(2\)\(b\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F284** Words in s. 38(2) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(2\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F285** Words in s. 38(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(3\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F286** S. 38(4) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(4\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F287** Words in s. 38(6) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(a\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F288** Words in s. 38(6)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(b\)\(i\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F289** Words in s. 38(6)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(b\)\(ii\)](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F290** Words in s. 38(6)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(3\)\(a\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F291** Words in s. 38(6) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(3\)\(b\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to art. 2(3)-(5))

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F292 Words in s. 38(7) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(6\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

Modifications etc. (not altering text)

C24 S. 38 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(i\)](#), 48(2)

39 Settlement, etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor. [E+W](#)

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being ^[F293]a transaction in respect of which an order may be made under ^[F294]section 339 or 340 of the ^{M4}Insolvency Act 1986] (transactions at an undervalue and preferences.)]

Textual Amendments

F293 Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), ss. 235, 236, Sch. 8 para. 23, [Sch. 9 para. 11\(2\)](#)

F294 Words substituted by virtue of [Insolvency Act 1986 \(c. 45, SIF 66\)](#), ss. 439(2), 440, 441, [Sch 14](#)

Modifications etc. (not altering text)

C25 S. 39 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(j\)](#), 48(2)

Marginal Citations

M4 [1986 c.45\(66\)](#).

40 Payments, etc., under order made in favour of person suffering from mental disorder. [E+W](#)

^[F295](1) Where the court makes an order under this Part of this Act requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made ^[F296](“P”) lacks capacity (within the meaning of the Mental Capacity Act 2005) in relation to the provisions of the order] then, subject to any order, direction or authority made or given in relation to ^[F297]P under that Act], the court may order the payments to be made, or as the case may be, the property to be transferred, to ^[F298]such person (“D”) as it may direct].

^[F299](2) In carrying out any functions of his in relation to an order made under subsection (1), D must act in P's best interests (within the meaning of that Act).]

Textual Amendments

F295 S. 40 renumbered (1.10.2007) as s. 40(1) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 19](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897](#), [art. 2\(1\)\(d\)](#)

F296 Words in s. 40(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 19\(a\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897](#), [art. 2\(1\)\(d\)](#)

F297 Words in s. 40(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 19\(b\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897](#), [art. 2\(1\)\(d\)](#)

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F298 Words in s. 40(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 19\(c\)](#) (with ss. 27-29, 62); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)

F299 S. 40(2) inserted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68, [Sch. 6 para. 19\(d\)](#) (with ss. 27-29, 62); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)

Modifications etc. (not altering text)

C26 S. 40 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(k\)](#), 48(2)

[^{F300} 40A Appeals relating to pension sharing orders which have taken effect. E+W

- (1) Subsections (2) and (3) below apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.
- (2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.
- (3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.
- (4) In determining for the purposes of subsection (2) or (3) above whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.
- (5) Where subsection (2) or (3) above applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (6) Section 24C above only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.
- (7) In subsection (2) above, the reference to the person responsible for the pension arrangement is to be read in accordance with section 25D(4) above.]

Textual Amendments

F300 S. 40A inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19, Sch. 3 para. 10](#); S.I. 2000/1116, [art. 2](#)

PART III E+W

PROTECTION, CUSTODY, ETC., OF CHILDREN

[^{F301} 41 Restrictions on decrees for dissolution, annulment or separation affecting children. E+W

.....

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Textual Amendments

F301 S. 41 repealed (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 17(1)(a)**, 139(6); S.I. 2014/793, **art. 2** (with transitional provisions in S.I. 2014/1042, arts. 5, 11)

F302 **42** **E+W**

Textual Amendments

F302 S. 42 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 12 para. 32, **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F303 **43** **E+W**

Textual Amendments

F303 S. 43 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F304 **44** **E+W**

Textual Amendments

F304 S. 44 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

PART IV **E+W**

MISCELLANEOUS AND SUPPLEMENTAL

F305 **45** **E+W**

Textual Amendments

F305 S. 45 repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(2), 69, **Sch. 2**

F306 **46** **E+W**

Textual Amendments

F306 S. 46 repealed by [Domicile and Matrimonial Proceedings Act 1973 \(c. 45\)](#), s. 17(2), **Sch. 6**

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47 **Matrimonial relief and declarations of validity in respect of polygamous marriages.** **E+W**

- (1) A court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that ^{F307}either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person].
- (2) In this section “matrimonial relief” means—
- (a) any ^{F308}order] under Part I of this Act;
 - (b) a financial provision order under section 27 above;
 - (c) an order under section 35 above altering a maintenance agreement;
 - (d) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for, any such ^{F309}... order as is mentioned in paragraphs (a) to (c) above;
- ^{F310}(dd) an order under Part III of the Matrimonial and Family Proceedings Act 1984;]
- (e) an order under ^{F311}Part I of the ^{M5}Domestic Proceedings and Magistrates’ Courts Act 1978].
- ^{F312}(3) In this section “a declaration concerning the validity of a marriage” means any declaration under Part III of the Family Law Act 1986 involving a determination as to the validity of a marriage]
- ^{F313}(4) Provision may be made by rules of court—
- (a) for requiring notice of proceedings brought by virtue of this section to be served on any additional spouse of a party to the marriage in question; and
 - (b) for conferring on any such additional spouse the right to be heard in the proceedings,
- in such cases as may be specified in the rules.]

Textual Amendments

- F307** Words in s. 47(1) substituted (8.1.1996) by 1995 c. 42, ss. 8, 16(2), **Sch. para. 3(a)** (with s. 8(1)(3))
- F308** Word in s. 47(2)(a) substituted (6.4.2022) by Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 30(a)** (with s. 8(4)(6)); S.I. 2022/283, reg. 2
- F309** Words in s. 47(2)(d) omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 30(b)** (with s. 8(4)(6)); S.I. 2022/283, reg. 2
- F310** S. 47(2)(dd) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 15**
- F311** Words substituted by Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22), s. 89(2), **Sch. 2 para. 39**, with saving for an application made before 1.2.1981 under Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (c. 48): S.I. 1979/731, **Sch. 2 para. 8**
- F312** S.47(3) substituted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(5), **Sch. 1 para. 14**
- F313** S. 47(4) substituted (8.1.1996) by 1995 c. 42, ss. 8, 16(2), **Sch. para. 3(b)** (with s. 8(1)(3))

Marginal Citations

- M5** 1978 c. 22.

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48 Evidence. E+W

- (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.
- (2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the [^{F314}court] is satisfied that in the interests of justice any such evidence ought to be heard in open court.

Textual Amendments

F314 Word in s. 48(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 34](#); [S.I. 2014/954](#), [art. 2\(d\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

49 Parties to proceedings under this Act. E+W

^{F315}(1)

^{F315}(2)

^{F315}(3)

- (4) Rules of court may make provision^{F316}... with respect to the joinder as parties to proceedings under this Act of persons involved in allegations of ^{F317}... improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.
- (5) [^{F318}In every case] in which the court considers, 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.

Textual Amendments

F315 [S. 49\(1\)-\(3\)](#) omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 31\(2\)](#) (with s. 8(4)(5)); [S.I. 2022/283](#), [reg. 2](#)

F316 Words in s. 49(4) omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 31\(3\)\(a\)](#) (with s. 8(4)(5)); [S.I. 2022/283](#), [reg. 2](#)

F317 Words in s. 49(4) omitted (6.4.2022) by virtue of [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 31\(3\)\(b\)](#) (with s. 8(4)(5)); [S.I. 2022/283](#), [reg. 2](#)

F318 Words in s. 49(5) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 31\(4\)](#) (with s. 8(4)(5)); [S.I. 2022/283](#), [reg. 2](#)

^{F319}**50** **E+W**

Textual Amendments

F319 [S. 50](#) repealed (14.10.1991) by [Matrimonial and Family Proceedings Act 1984 \(c. 42\)](#), [SIF 49:3](#), s. 46(3), [Sch. 3](#); [S.I. 1991/1211](#), [art. 2](#)

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^{F320}51 **E+W**

Textual Amendments

F320 S. 51 repealed (14.10.1991) by **Matrimonial and Family Proceedings Act 1984** (c. 42, SIF 49:3), s. 46(3), **Sch. 3**; S.I. 1991/1211, **art.2**

52 Interpretation. **E+W**

(1) In this Act—

^{F321}
...

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate ^{F322}... child of that party or, as the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage, means—

(a) a child of both of those parties; and

(b) any other child, not being a child who [^{F323}is placed with those parties as foster parents] by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;

[^{F324}“the court” (except where the context otherwise requires) means the High Court or the family court;]

^{F325}
...

“education” includes training.

[^{F326}“[^{F327}maintenance calculation]” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.]

^{F328}
...

(2) In this Act—

(a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 21 above;

[^{F329}(aa) references to pension sharing orders shall be construed in accordance with section 21A above; and]

(b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 22 and section 27(5) above.

(3) For the avoidance of doubt it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.

[^{F330}(3A) References in this Act to the formation of a civil partnership by a person include references to a civil partnership which is by law void or voidable.]

(4) Except where the contrary intention is indicated, references in this Act to any enactment include references to that enactment as amended, extended or applied by or under any subsequent enactment, including this Act.

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Textual Amendments

- F321** Definition repealed by [Children Act 1975 \(c. 72\)](#), [Sch. 4 Pt. I](#) as respects things done, or events occurring, after 31.12.1975
- F322** Words repealed by [Children Act 1975 \(c. 72\)](#), [Sch. 4 Pt. I](#) as respects things done, or events occurring, after 31.12.1975
- F323** Words in s. 52(1) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 12 para. 33](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)
- F324** Definition in s. 52(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 65\(1\)](#) (with [Sch. 11 para. 65\(2\)](#)); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F325** Definition in s. 52(1) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#)
- F326** Definition in s. 52(1) inserted (5.4.1993) by S.I. 1993/623, [art. 2](#), [Sch. 1 para. 4](#)
- F327** Words in s. 52(1) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(2), [Sch. 3 para. 3\(4\)](#) (with s. 83(6)); S.I. 2003/192, [art. 3](#), [Sch.](#)
- F328** Words in s. 52(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), [reg. 1\(1\)](#), [Sch. para. 6\(4\)](#) (with [reg. 8](#)) (as amended by S.I. 2020/1574, [regs. 1, 5\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F329** S. 52(2)(aa) substituted for word in s. 52(2) (1.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, [Sch. 3 para. 11](#); S.I. 2000/1116, [art. 2](#)
- F330** S. 52(3A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, {[Sch. 27 para. 46](#)}; S.I. 2005/3175, [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

[^{F331}52A Interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders **E+W**

- (1) In sections 21(2), 23(1) and (5), 24(1) and (3), 24A(3), 24B(1) and (2), 24E(1) and (2), 25A(1) and (3), 28(1) to (2) and 31—
- a reference to a divorce order includes a decree of divorce,
 - a reference to a nullity of marriage order includes a decree of nullity of marriage;
 - a reference to a judicial separation order includes a decree of judicial separation;
 - a reference to making includes granting;
 - a reference to an order being made final includes a decree being made absolute.]

Textual Amendments

- F331** S. 52A inserted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), [Sch. para. 32](#); S.I. 2022/283, [reg. 2](#)

53 Transitional provisions and savings. **E+W**

Schedule 1 to this Act shall have effect for the purpose of—

- the transition to the provisions of this Act from the law in force before the commencement of this Act;

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- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Act or by enactments repealed and replaced by this Act; and
- (c) the assimilation in certain respects to orders under this Act of orders made, or deemed to have been made, under the ^{M6}Matrimonial Causes Act 1965.

Marginal Citations

M6 1965 c. 72.

54 Consequential amendments and repeals. **E+W**

- (1) Subject to the provisions of Schedule 1 to this Act—
 - (a) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act or on enactments repealed by this Act; and
 - ^{F332}(b)
- (2) The amendment of any enactment by Schedule 2 to this Act shall not be taken as prejudicing the operation of [^{F333}sections 16(1) and 17(2)(a) of the ^{M7}Interpretation Act 1978] (which relates to the effect of repeals).

Textual Amendments

F332 S. 54(1)(b) repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII

F333 Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)

Marginal Citations

M7 1978 c. 30.

55 Citation, commencement and extent. **E+W**

- (1) This Act may be cited as the Matrimonial Causes Act 1973.
- (2) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) Subject to the provisions of paragraphs 3(2) ^{F334} . . . of Schedule 2 below, this Act does not extend to Scotland or Northern Ireland.

Textual Amendments

F334 Words repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII

Modifications etc. (not altering text)

C27 Power of appointment conferred by s. 55(2) fully exercised: 1.1.1974 appointed by SI. 1973/1972, art.

2

Status: Point in time view as at 06/04/2022.

Changes to legislation: Matrimonial Causes Act 1973 is up to date with all changes known to be in force on or before 17 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 1 **E+W**

TRANSITIONAL PROVISIONS AND SAVINGS

PART I **E+W**

MISCELLANEOUS AND GENERAL

General transitional provisions and savings

- 1 Without prejudice to the provisions of [^{F335}sections 16(1) and 17(2)(a) of the Interpretation Act 1978] (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.

Textual Amendments

F335 Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

- 2 Without prejudice to paragraph 1 above, but subject to paragraph 3 below, any application made or proceeding begun, or deemed to have been made or begun, under any enactment repealed by this Act, being an application or proceeding which is pending at the commencement of this Act, shall be deemed to have been made or begun under the corresponding provision of this Act.
- 3 Nothing in Part I of this Act shall apply in relation to any petition for divorce or judicial separation presented before 1st January 1971 and notwithstanding any repeal or amendment made by this Act the ^{M8}Matrimonial Causes Act 1965 (hereafter in this Schedule referred to as the Act of 1965) and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Act as they had effect immediately before the commencement of this Act.

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Marginal Citations

M8 1965 c. 72.

- 4 Notwithstanding any repeal or amendment made by this Act, the Act of 1965 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—
- (a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before 1st January 1971 which are pending at the commencement of this Act, and
 - (b) any proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Act,
- as they had effect immediately before the commencement of this Act; and nothing in Schedule 2 below shall affect the operation of any other enactment in relation to any such proceedings.
- 5 Nothing in any repeal made by this Act shall affect any order made, or deemed to have been made, under the Act of 1965 which was continued in force by paragraph 1 of Schedule 1 to the ^{M9}Matrimonial Proceedings and Property Act 1970 notwithstanding the repeal by the last-mentioned Act of the provision of the Act of 1965 under which the order had effect, and every such order shall, if in force at the commencement of this Act, continue in force subject to the provisions of this Act.

Marginal Citations

M9 1970 c. 45.

- 6 Nothing in sections 11 to 14 or 16 of this Act affects any law or custom relating to the marriage of members of the Royal Family.
- 7 Nothing in section 50(1)(a) or (c) above affects—
- (a) any rules of court made under the ^{M10}Supreme Court of Judicature (Consolidation) Act 1925 for the purposes of proceedings under section 39 of the Act of 1965 and having effect by virtue of paragraph 1(b) above in relation to proceedings under section 45 above;
 - (b) any rules of court so made for the purposes of proceedings under section 17 of the ^{M11}Married Women's Property Act 1882 or under section 1 of the ^{M12}Matrimonial Homes Act 1967; or
 - (c) any rules of court so made for the purposes of the exercise by the High Court of its jurisdiction to grant declaratory relief in proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status;
- but rules of court made under section 50 may revoke any rules of court made under the said Act of 1925 in so far as they apply for any such purposes.

Marginal Citations

M10 1925 c. 49.

M11 1882 c. 75.

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M12 1967 c. 75.

Transitional provisions derived from the Act of 1965

F336⁸

Textual Amendments

F336 Sch. 1 para. 8 omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), Sch. para. 33(a) (with s. 8(4)(5)); S.I. 2022/283, reg. 2

- 9 Where the party chargeable under a maintenance agreement within the meaning of section 34 above died before 17th August 1957, then—
- (a) subsection (1) of that section shall not apply to the agreement unless there remained undistributed on 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.
- 10 No right or liability shall attach by virtue of section 34(1) above 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.

PART II **E+W**

PRESERVATION FOR LIMITED PURPOSES OF CERTAIN PROVISIONS OF PREVIOUS ENACTMENTS

Nullity

- 11 (1) Subject to sub-paragraphs (2) and (3) below, a marriage celebrated before 1st August 1971 shall (without prejudice to any other grounds on which a marriage celebrated before that date is by law void or voidable) be voidable on the ground—
- (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 ^{M13}Mental Health Act 1959 of such 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^{F337} or

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- (e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;]
- (2) In relation to a marriage celebrated before 1st November 1960, for heads (ii) and (iii) of sub-paragraph (1)(b) above shall be substituted the following heads—
- “(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”.
- (3) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(b), (c) or (d) above 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;
- and where the proceedings with respect to the marriage are instituted after 31st July 1971 the application of section 13(1) above in relation to the marriage shall be without prejudice to the preceding provisions of this sub-paragraph.
- [^{F338}(3A) The court shall not [^{F339}make a nullity of marriage order] in a case falling within sub-paragraph (1)(e) above unless it is satisfied that proceedings were instituted within six months from the date of issue of the interim gender recognition certificate.]
- (4) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which [^{F340}no decree of nullity or nullity of marriage order has been made].

Textual Amendments

- F337** Sch. 1 para. 11(1)(e) and preceding word inserted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), ss. 4(4), 26, **Sch. 2 para. 4(2)**; S.I. 2005/54, **art. 2**
- F338** Sch. 1 para. 11(3A) inserted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), ss. 4(4), 26, **Sch. 2 para. 4(3)**; S.I. 2005/54, **art. 2**
- F339** Words in Sch. 1 para. 11(3A) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 33(b)** (with s. 8(6)); S.I. 2022/283, reg. 2
- F340** Words in Sch. 1 para. 11(4) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 33(c)**; S.I. 2022/283, reg. 2

Marginal Citations

- M13** 1959 c. 72.

- 12 Where a decree of nullity was granted on or before 31st July 1971 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.

Succession on intestacy in case of judicial separation

- 13 Section 18(2) above shall not apply in a case where the death occurred before 1st August 1970, but section 20(3) of the Act of 1965 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death

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intestate, as if her husband had then been dead) shall continue to apply in any such case.

Validation of certain void or voidable decrees

- 14 Any decree of divorce, nullity of marriage or judicial separation which, apart from this paragraph, would be void or voidable on the ground only that the provisions of section 33 of the Act of 1965 (restriction on the making of decrees of dissolution or separation where children are affected) or of section 2 of the ^{M14}Matrimonial Proceedings (Children) Act 1958 (corresponding provision replaced by section 33) had not been complied with when the decree was made absolute or granted, as the case may be, shall be deemed always to have been valid unless—
- (a) the court declared the decree to be void before 1st January 1971, or
 - (b) in proceedings for the annulment of the decree pending at that date the court has before the commencement of this Act declared or after that commencement declares the decree to be void.

Marginal Citations

M14 1958 c. 40.

PART III E+W

**ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS
ACT OF ORDERS MADE, ETC., UNDER THE ACT OF 1965, ETC.**

*Cesser on remarriage of orders made, etc., under the Act
of 1965 and recovery of sums mistakenly paid thereafter*

- 15 (1) An order made, or deemed to have been made, under section 16(1)(a) or (b) of the Act of 1965 (including either of those paragraphs as applied by section 16(3) or by section 19) shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- (2) An order for the payment of alimony made, or deemed to have been made, under section 20 of the Act of 1965, and an order made, or deemed to have been made, under section 21 or 22 of that Act shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Act of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- 16 Section 38 above shall apply in relation to an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) and by section 19), 20(1), 21 or 22 of the Act of 1965 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

Status: Point in time view as at 06/04/2022.

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

- 17 (1) Subject to the provisions of this paragraph, section 31 above shall apply, as it applies to the orders mentioned in subsection (2) thereof, 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) (including 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;
 - (e) section 34(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 34(3).
- (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 II of this Act.
- (3) Section 31, as it applies by virtue of sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) 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) of that Act, in connection with the grant of a decree of judicial separation except on an application made in proceedings—
- (a) for the rescission of that decree, or
 - (b) for the dissolution of the marriage in question.
- (5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965.
- (6) In the case of an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 22 or 34(3) of the Act of 1965 and requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this section relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments 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”;
- and in that section, as it so applies, the reference in subsection (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in subsection (6).

Status: Point in time view as at 06/04/2022.

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- (4) In relation to an order made before 16th December 1949 on or after granting a decree of divorce or nullity of marriage and deemed, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, to have been made under section 16(1)(a) of that Act (secured provision), 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 other order made by reference to that decree, being an order made, or deemed by virtue of that paragraph to have been made, under section 16(1)(b) of that Act (unsecured periodical payments).
- 18 (1) Subsections (1) and (3) of section 31 above 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, or under section 21 or 34(1)(c) of that Act, as they apply to the orders mentioned in subsection (2) of section 31.
- (2) 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.
- 19 Section 42(7) above 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 section 42.

Orders made under the Act of 1965 to count as orders under this Act for certain purposes

- 20 The power of the court under section 23(1) or (2)(a) or 42(1)(a) above to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 34(1)(a) of the Act of 1965; and where the court has made an order in relation to a child under section 34(1)(b) of that Act sections 23(4) and 42(6) above shall apply respectively in relation to that child as if the order were an order made under section 23(2)(b) or section 42(1)(b), as the case may be.
- 21 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 42 above with respect to the custody of any child of the family as it has where it makes an order under section 27 above.

Application of provisions of this Act with respect to enforcement of arrears and recovery of excessive payments to certain orders made, etc., under the Act of 1965

- 22 Section 32 above shall apply in relation to the enforcement, by proceedings begun after 1st January 1971 (whether before or after the commencement of this Act), 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—
- (a) section 15;
 - (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
 - (c) section 20(1);
 - (d) section 21;

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- (e) section 22;
- (f) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);

as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

- 23 Section 33 above 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 provisions of the Act of 1965 mentioned in paragraph 22 above as it applies to the orders mentioned in section 33(2).

Avoidance under this Act of transactions intended to defeat claims for relief and relief granted under the Act of 1965

- 24 (1) Section 37 above shall apply in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 continuing by virtue of paragraph 4(b) above as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 37(1).

- (2) Without prejudice to sub-paragraph (1) above, section 37 shall also apply where an order has been obtained under any of the following provisions of the Act of 1965, that is to say—

- (a) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
- (b) section 17(2) (including that subsection as applied by section 20(2));
- (c) section 20(1);
- (d) section 21;
- (e) section 22;
- (f) section 24;
- (g) section 31;
- (h) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);
- (i) section 35;

as it applies where an order has been obtained under any of the provisions of this Act specified in section 37(1).

Care and supervision of children

- 25 (1) Sections 43 and 44 above shall apply where the court has jurisdiction by virtue of paragraph 4(b) above to make an order for the custody of a child under section 34(1)(c) of the Act of 1965 as they apply where the court has jurisdiction to make an order for custody under Part III of this Act, but as if the reference in section 43(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.

- (2) Without prejudice to the effect of paragraph 1(a) of this Schedule in relation to an order made under section 36 or 37 of the Act of 1965 which could have been made under section 43 or, as the case may be, section 44 above, any order made under section 36 or 37 of that Act by virtue of the jurisdiction of the court to make an order for the custody of a child under section 34(1)(c) of that Act shall be deemed to have been made under section 43 or 44 above, as the case may require.

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- 26 Section 44(4) above shall apply in relation to the jurisdiction possessed by a court to vary an order made or deemed to have been made with respect to a child’s custody, maintenance or education under Part III of the Act of 1965 as it applies in relation to the jurisdiction possessed by a court to vary any financial provision order in a child’s favour and any order made with respect to a child’s custody or education under Part III of this Act.

^{X1}SCHEDULE 2 U.K.

CONSEQUENTIAL AMENDMENTS

Editorial Information

- X1** The text of Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

F341 1

Textual Amendments

- F341** Sch. 2 para. 1 repealed by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), Sch. 7

- 2 In section 2(1) of the ^{M15}Limitation (Enemies and War Prisoners) Act 1945, in the definition of “statute of limitation” for the words “subsection (1) of section seven of the Matrimonial Causes Act 1937” there shall be substituted the words “ section 13(2) of the Matrimonial Causes Act 1973 and paragraph 11(3) of Schedule 1 to that Act ”.

Marginal Citations

- M15** 1945 c. 16.

- 3 (1) In section 16 of the ^{M16}Maintenance Orders Act 1950 (orders enforceable under Part II of that Act)—
- (a) in subsection (2)(a) for sub-paragraph (i) there shall be substituted the following sub-paragraph:—
- “(i) sections 15 to 17, 19 to 22, 30, 34 and 35 of the Matrimonial Causes Act 1965 and sections 22, 23(1), (2) and (4) and 27 of the Matrimonial Causes Act 1973”; and
- (b) in subsection (2)(c), for sub-paragraph (v) there shall be substituted the following sub-paragraph:—
- “(v) any enactment of the Parliament of Northern Ireland containing provisions corresponding with section 22(1), 34 or 35 of the Matrimonial Causes Act 1965, with section 22, 23(1), (2) or (4) or 27 of the Matrimonial Causes Act 1973, or with

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section 12(2) of the Guardianship of Minors Act 1971”.

- (2) Sub-paragraph (1) above extends to Scotland and Northern Ireland, and the references to section 16(2)(c) of the ^{M17}Maintenance Orders Act 1950 in paragraph 8 of Schedule 8 to the ^{M18}Administration of Justice Act 1970 and paragraph 9 of Schedule 1 to the ^{M19}Attachment of Earnings Act 1971 shall be construed as references to section 16(2)(c) as amended by sub-paragraph (1)(b) above.

Marginal Citations

- M16** 1950 c. 37.
M17 1950 c. 37.
M18 1970 c. 31.
M19 1971 c. 32.

- 4 In section 109(2) of the ^{M20}County Courts Act 1959 (proceedings in which appeals on questions of fact are to lie) the following paragraph shall be inserted after paragraph (f) (in place of the paragraph inserted by section 34(2) of the ^{M21}Matrimonial Proceedings and Property Act 1970):—

“(g) any proceedings on an application under section 13A of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 or under section 33, 36 or 38 of the Matrimonial Causes Act 1973”.

Marginal Citations

- M20** 1959 c. 22.
M21 1970 c. 45.

- 5 ^{F342}(1)

- (2) In section 42 of that Act (provisions as to condonation), at the beginning of subsections (1) and (3) there shall be inserted the words “ For the purposes of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 ”.

Textual Amendments

- F342** Sch. 2 para. 5(1) repealed by [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c. 63\), s. 26\(3\), Sch.](#)

- ^{F343}6

Textual Amendments

- F343** Sch. 2 para. 6 repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\), ss. 46\(3\), 48\(2\), Sch. 3](#)

- 7 (1) In subsection (1) of section 2 of the ^{M22}Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (restriction of publicity for certain proceedings) for the words in paragraph (a) “section 39 of the Matrimonial Causes Act 1965” there shall be substituted the words “ section 45 of the Matrimonial Causes Act

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1973 ”, the following paragraph shall be substituted for the paragraph (c) inserted in the subsection by paragraph 3 of Schedule 2 to the Matrimonial Proceedings and Property Act 1970:—

“(c) proceedings under section 27 of the Matrimonial Causes Act 1973 (which relates to proceedings by a wife against her husband, or by a husband against his wife, for financial provision) and any proceedings for the discharge or variation of an order made under that section or for the temporary suspension of any provision of any such order or the revival of the operation of any provision so suspended”;

subsection (2) of that section shall be omitted, and the references in subsection (3) of that section to subsection (1) and to subsection (1)(a) thereof shall be construed as references to subsection (1) and to subsection (1)(a) as they respectively have effect by virtue of this sub-paragraph.

F344 (2)

Textual Amendments

F344 Sch. 2 para. 7(2)(3) repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII

Marginal Citations

M22 1968 c. 63.

8 In section 7 of the ^{M23}Family Law Reform Act 1969 (committal of wards of court to care of local authority and supervision of wards of court)—

- (a) in subsection (3), for the words “section 36 of the Matrimonial Causes Act 1965” there shall be substituted the words “ section 43 of the Matrimonial Causes Act 1973 ”;
- (b) in subsection (4), for the words from “subsections (2)” to “1965” there shall be substituted the words “ section 44(2) of the Matrimonial Causes Act 1973 ”.

Marginal Citations

M23 1969 c. 46.

F345g

Textual Amendments

F345 Sch. 2 para. 9 repealed by Child Care Act 1980 (c. 5), Sch. 6

10 F346(1)

(2) In Schedule 8 to that Act (as it applies to define maintenance orders both for the purposes of Part II of that Act and for the purposes of the ^{M24}Maintenance Orders Act 1958) the following paragraph shall be inserted after paragraph 2:—

“2A An order for periodical or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1973”.

Status: Point in time view as at 06/04/2022.

Changes to legislation: Matrimonial Causes Act 1973 is up to date with all changes known to be in force on or before 17 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F346 Sch. 2 para. 10(1) repealed by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), **Sch. 7**

Marginal Citations

M24 1958 c. 39.

F347¹¹

Textual Amendments

F347 Sch. 2 para. 11 repealed (14. 10. 1991) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**); S.I. 1991/828, **art. 3(2)**.

F348¹²

Textual Amendments

F348 Sch. 2 para. 12 repealed by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(3), 48(2), **Sch. 3**

13 In Schedule 1 to the ^{M25}Attachment of Earnings Act 1971 (maintenance orders to which the Act applies) for paragraph 3 there shall be substituted the following paragraph—

“3 An order for periodical or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1973”.

Marginal Citations

M25 1971 c. 32

F349 SCHEDULE 3 **E+W**

Textual Amendments

F349 Sch. 3 repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. Pt. VII**

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Status:

Point in time view as at 06/04/2022.

Changes to legislation:

Matrimonial Causes Act 1973 is up to date with all changes known to be in force on or before 17 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.