Matrimonial Causes Act 1973

1973 CHAPTER 18

PART I

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

1 Divorce on breakdown of marriage.

[F1(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.

(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

F1 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

F2 Words substituted (with saving) by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), Sch. 1, **Sch. 2 para. 10**

F3 S. 1(6) inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 3(2)**; S.I. 2014/93, art. 3(j)(i)

2 Supplemental provisions as to facts raising presumption of breakdown.

(1) One party to a marriage shall not be entitled to rely for the purposes of section 1(2)(a) above on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.

(2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) above does not apply, in any proceedings for divorce in which the petitioner relies on that adultery the fact that the parties have lived with each other after that time shall be disregarded in determining for the purposes of section 1(2)(a) above whether the petitioner finds it intolerable to live with the respondent.

(3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 1(2)(b) above whether the petitioner cannot reasonably be

expected to live with the respondent if the length of that period or of those periods together was six months or less.

(4) For the purposes of section 1(2)(c) above the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) In considering for the purposes of section 1(2) above whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) For the purposes of section 1(2)(d) and (e) above and this section a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of section 1(2)(d) above the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

[F4 3 Bar on petitions for divorce within one year of marriage.

(1) No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage.

(2) Nothing in this section shall prohibit the presentation of a petition based on matters which occurred before the expiration of that period.]

Textual Amendments

F4 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**

4 Divorce not precluded by previous judicial separation.

(1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the M1Matrimonial Proceedings (Magistrates' Courts) Act 1960 [F5or Part I of the M2Domestic Proceedings and Magistrates' Courts Act 1978] or any corresponding enactments in force in Northern Ireland, the Isle of Man or any of the Channel Islands.

(2) On a petition for divorce in such a case as is mentioned in subsection (1) above, the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) Where a petition for divorce in such a case follows a decree of judicial separation or **[**F6(subject to sub-section (5) below)**]** an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

[F7(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say—

(a) any period during which there is in force an injunction granted by the High Court **[**F8, the family court or the county court**]** which excludes the respondent from the matrimonial home;

(b) any period during which there is in force an order made by the High Court or a county court under **[**F9section 1 or 9 of the Matrimonial Homes Act 1983**]**

(c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the M3Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

(5) Where—

(a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and

(b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date,

then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.**]**

Textual Amendments

F5 Words inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 89(2), **Sch. 2 para. 38**

F6 Words inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 62(a)**, 89(2)

F7 S. 4(4)(5) added by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 62(b)**, 89(2)

F8 Words in s. 4(4)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 11 para. 59**; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F9 Words substituted for s. 4(4)(*b*)(i) and (ii) by Matrimonial Homes Act 1983 (c. 19, SIF 49:5), ss. 12, 13, **Sch. 2**

Marginal Citations

M1 1960 c. 48.

M2 1978 c. 22

M3 1978 c. 22.

5 Refusal of decree in five year separation cases on grounds of grave hardship to respondent.

(1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 1(2) above, and

(b) if apart from this section the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

6 Attempts at reconciliation of parties to marriage.

(1) Provision shall be made by rules of court for requiring the **[**[F10]legal representative**]** acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

(2) If at any stage of proceedings for divorce 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)

7 Consideration by the court of certain agreements or arrangements.

Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, 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 proceedings for divorce which are contemplated or, as the case may be, have begun, 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.

8 Intervention of Queen's Proctor.

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

(a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen's Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;

(b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.

(2) Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.

(3) The 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).

9 Proceedings after decree nisi: general powers of court.

(1) Where a decree of divorce has been granted but not made absolute, 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 decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—

(a) notwithstanding anything in section 1(5) above (but subject to **[**F11section**]** 10(2) to (4) F12... below) make the decree absolute; or

(b) rescind the decree; or

(c) require further inquiry; or

(d) otherwise deal with the case as it thinks fit.

(2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above.

Textual Amendments

F11 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)

F12 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)

10 Proceedings after decree nisi: special protection for respondent in separation cases.

(1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in section 1(2) above, the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.

(2) The following provisions of this section apply where—

(a) the respondent to a petition for divorce in which the petitioner alleged two years' or five years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under subsection (3) below of his financial position after the divorce; and

(b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation (as the case may be) and has made no such finding as to any other fact mentioned in section 1(2) above.

(3) The court hearing an application by the respondent under subsection (2) above shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent, as having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and, subject to subsection (4) below, the court shall not make the decree absolute unless it is satisfied—

(a) that the petitioner should not be required to make any financial provision for the respondent, or

(b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(4) The court may if it thinks fit makes the decree absolute notwithstanding the requirements of subsection (3) above if—

(a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay, and

(b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

[F13 10A Proceedings after decree nisi: religious marriage

(1) This section applies if a decree of divorce has been granted but not made absolute 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 decree of divorce is not to be made absolute 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 decree of divorce 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 **[**F14after 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.

F15(8) **[** The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]]**

Textual Amendments

F13 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**

F14 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)

F15 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)

Status:
Point in time view as at 25/06/2020.

Changes to legislation:
There are currently no known outstanding effects for the Matrimonial Causes Act 1973, Cross Heading: Divorce.