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*Status: Point in time view as at 04/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes Act 1973, Part II. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 1

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART II

##### 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 <sup>M1</sup>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<sup>F1</sup> or
  - (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;

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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.

[<sup>F2</sup>(3A) The court shall not grant a decree of nullity 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 a decree of nullity has not been granted.

#### Textual Amendments

**F1** 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**

**F2** 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**

#### Marginal Citations

**M1** 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 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 <sup>M2</sup>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

**M2** 1958 c. 40.

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