

Status: Point in time view as at 01/02/1991.

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SCHEDULES

SCHEDULE 1

Section 28(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Extent Information

- E1** Sch. 1: so much of s. 28 and Sch. 1 as affects the operation of 1950 c. 37 and 1972 c. 18 extends to England, Wales, Scotland and Northern Ireland, see s. 29(4)

The Sheriff Courts (Scotland) Act 1907 (c. 51)

- 1 In section 5 of the Sheriff Courts (Scotland) Act 1907 (jurisdiction), for subsection (2) there shall be substituted the following subsection—

“(2) Actions for aliment or separation (other than any action mentioned in subsection (2A) below) and actions for regulating the custody of children:”.

The Guardianship of Infants Act 1925 (c. 45)

- 2 In section 3(3) of the Guardianship of Infants Act 1925 (orders for custody and access not enforceable while parents living together), for the words from the beginning to the word “accrue” there shall be substituted the words “No such order for custody or education shall be enforceable”.

The Maintenance Orders Act 1950 (c. 37)

- 3 In section 16(2)(b)(i) of the Maintenance Orders Act 1950 (enforcement of maintenance orders in other parts of the United Kingdom), at the end there shall be added the words “or an order for financial provision in the form of a monetary payment under section 8 of the Family Law (Scotland) Act 1985”.

The Succession (Scotland) Act 1964 (c. 41)

- 4 In section 33(2) of the Succession (Scotland) Act 1964 (construction of references to legal rights in marriage contracts), at the end there shall be added the words “or section 8 of the Family Law (Scotland) Act 1985”.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c. 19)

- 5 In section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (variation and recall of certain orders regarding custody and maintenance), at the end of paragraph (c) there shall be added the words “or section 8 of the Family Law (Scotland) Act 1985”.

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The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)

6 In section 31 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (application by person in convention country for recovery of maintenance in Scotland—

(a) for subsection (1A) there shall be substituted the following subsections—

“(1A) Proceedings arising out of an application under subsection (1) above shall be treated as an action for aliment within the meaning of the Family Law (Scotland) Act 1985 and, subject to subsections (1B) to (1D) below, the provisions of that Act relating to aliment shall apply in relation to claims for maintenance in such proceedings and decrees therein.

(1B) Without prejudice to subsection (2) below, any proceedings mentioned in subsection (1A) above shall be brought in the sheriff court.

(1C) In its application to proceedings mentioned in subsection (1A) above, section 5 of the said Act of 1985 (power to vary or recall decree of aliment) shall be subject to section 34(1) of this Act.

(1D) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant—

(a) then, for the purposes of the said Act of 1985, there shall be assumed to be an obligation of aliment within the meaning of that Act owed by the former spouse to the applicant;

(b) section 2(7) and (8) of that Act shall not apply; and

(c) an order for payment of maintenance in proceedings arising out of the application—

(i) shall, if subsisting at the death of the party making the payment, continue to operate against that party’s estate, but without prejudice to the power of the court to vary or recall the order; and

(ii) shall cease to have effect on the re-marriage or death of the party receiving payment, except in relation to any arrears due under it”;

(b) after subsection (4) there shall be inserted the following new subsection—

“(4A) In subsection (4)(i) above the reference to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of a purported marriage and any reference to a marriage, a divorce, a divorced person, a former spouse or divorce proceedings shall be construed accordingly.”; and

(c) subsection (5) shall cease to have effect.

7 In section 39 of that Act, in the definition of “maintenance”, for the words “as a periodical allowance” there shall be substituted the words “by one former spouse for the support of the other”.

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The Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c. 38)

- 8 In section 2(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 (decrees in respect of polygamous marriages)—
- (a) for paragraphs (d) and (e) there shall be substituted the following paragraphs—
 - “(d) a decree of separation;
 - (e) a decree of aliment;”;
 - (b) after the word “ancillary” there shall be inserted the words “or incidental”.

The Domicile and Matrimonial Proceedings Act 1973 (c. 45)

- 9 In Schedule 2 to the Domicile and Matrimonial Proceedings Act 1973 (ancillary and collateral orders)—
- (a) before paragraph 3, there shall be inserted the following paragraph—

“2A Any enactment or rule of law empowering a court to make an order for payment of aliment (including interim aliment).”;
 - (b) after paragraph 12A, there shall be inserted the following paragraph—

“12B Section 8 (orders for financial provision on divorce), section 17(1) (financial provision on declarator of nullity of marriage) and section 18 (orders relating to avoidance transactions) of the Family Law (Scotland) Act 1985.”

The Land Registration (Scotland) Act 1979 (c. 33)

- 10 In section 12(3)(b) of the Land Registration (Scotland) Act 1979 (circumstances in which there is no entitlement to indemnity for loss), at the end there shall be added the words “or has been set aside or varied by an order under section 18(2) (orders relating to avoidance transactions) of the Family Law (Scotland) Act 1985”.

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)

- 11 For section 13(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy) there shall be substituted the following subsection—
- “(2) In an action—
- (a) for divorce, the Court of Session or a sheriff;
 - (b) for nullity of marriage, the Court of Session,
- may, on granting decree or within such period as the court may specify on granting decree, make an order granting an application under subsection (1) above.”

The Matrimonial and Family Proceedings Act 1984 (c. 42)

- 12 After section 29 of the Matrimonial and Family Proceedings Act 1984 there shall be inserted the following new section—

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“29A Application of Part IV to annulled marriages.

This Part of this Act shall apply to an annulment, of whatever nature, of a purported marriage, as it applies to a divorce, and references to marriage and divorce shall be construed accordingly.”.

- 13 In section 30(1) of that Act (interpretation of Part IV), in the definition of “order for financial provision”, for the words from “paragraphs (a)” to “1976” there shall be substituted the words “section 8(1) of the Family Law (Scotland) Act 1985”.

SCHEDULE 2

Section 28(2).

REPEALS

Chapter	Short title	Extent of repeal
24 & 25 Vict. c. 86.	The Conjugal Rights (Scotland) Amendment Act 1861.	In section 6, the words from “be held and considered” to “as if she were unmarried, and”; the words “the same shall”; and the words from “provided that if any such wife” to the end of the section. In section 9, the word “maintenance”. Sections 15 and 16.
44 & 45 Vict. c. 21.	The Married Women’s Property (Scotland) Act 1881.	Sections 1 to 5. Section 8. The Schedule.
10 & 11 Geo. 5. c. 54.	The Married Women’s Property (Scotland) Act 1920.	The whole Act.
15 & 16 Geo. 5. c. 45.	The Guardianship of Infants Act 1925.	Section 3(2). In section 5(4), the words from “and may further order” to the end of the subsection. Section 8.
20 & 21 Geo. 5. c. 33.	The Illegitimate Children (Scotland) Act 1930.	Section 1. In section 2, in subsection (1), the words “or in any action for aliment for an illegitimate child”, and subsection (2).

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		Section 3.
		Section 5.
22 & 23 Geo. 5. c. 47.	The Children and Young Persons (Scotland) Act 1932.	Section 73(1)(b) and (3).
2 & 3 Geo. 6. c. 4.	The Custody of Children (Scotland) Act 1939.	In section 1, in subsection (1) the word “maintenance” and subsection (2).
14 Geo. 6. c. 37.	The Maintenance Orders Act 1950.	Section 6(2). In section 7, the words from “whether” to “maintenance of the pupil child”.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 41.	The Affiliation Orders Act 1952.	The whole Act.
6 & 7 Eliz. 2. c. 40.	The Matrimonial Proceedings (Children) Act 1958.	In section 7, in subsection (1), the word “maintenance”, and subsection (2). In section 9(1), the word “maintenance”.
1964 c. 19.	The Married Women’s Property Act 1964.	The whole Act.
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 31(5).
1973 c. 45.	The Domicile and Matrimonial Proceedings Act 1973.	In Schedule 2, paragraphs 1 and 2.
1976 c. 39.	The Divorce (Scotland) Act 1976.	Sections 5 to 8.
1978 c. 22.	The Domestic Proceedings and Magistrates’ Courts Act 1978.	Section 60(1)(a). In Schedule 2, paragraph 1(a).
1981 c. 59.	The Matrimonial Homes (Family Protection) (Scotland) Act 1981.	Section 7(5).
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	In paragraph 1 of Schedule 9, the words “for adherence and aliment or”.
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	In Schedule 1, paragraphs 21 and 23.

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1984 c. 15.

The Law Reform (Husband
and Wife) (Scotland) Act
1984.In Schedule 1, paragraphs 3,
4 and 6.

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