

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS TO THE MATRIMONIAL CAUSES ACT 1973

- 1 The Matrimonial Causes Act 1973 is amended as follows.
- 2 Omit section 2 (supplemental provisions as to facts raising presumption of breakdown).
- 3 In section 3 (bar on petitions for divorce within one year of marriage)—
 - (a) in the heading, for “petitions for divorce” substitute “applying for a divorce order”;
 - (b) in subsection (1), for “No petition for divorce shall be presented to the court” substitute “An application for a divorce order may not be made”;
 - (c) omit subsection (2).
- 4 Omit section 4 (divorce not precluded by previous judicial separation).
- 5 Omit section 5 (refusal of decree in five year separation cases on grounds of grave hardship to respondent).
- 6 In section 6 (attempts at reconciliation of parties to marriage)—
 - (a) in subsection (1), for the words from “a petitioner” to “him” substitute “an applicant for a divorce order to certify whether the representative has discussed with the applicant the possibility of reconciliation and given the applicant”;
 - (b) in subsection (2), for “divorce” substitute “a divorce order”.
- 7 In section 7 (consideration by the court of certain agreements or arrangements)—
 - (a) for “either before or after the presentation of a petition for divorce,” substitute “when proceedings for a divorce order are contemplated or have begun,”;
 - (b) for the words from “proceedings” to “have begun,” substitute “proceedings,”.
- 8 In section 8 (intervention of Queen’s Proctor)—
 - (a) in subsection (1), in the words before paragraph (a), for “a petition for divorce” substitute “an application for a divorce order”;
 - (b) in subsection (1)(b), for “decree nisi is made absolute” substitute “divorce order is made final”;
 - (c) in subsection (2), for “decree nisi in any proceedings for divorce,” substitute “conditional order in any proceedings for a divorce order,”.
- 9 In section 9 (proceedings after decree nisi: general powers of court)—
 - (a) in the heading, for “after decree nisi” substitute “before divorce order has been made final”;
 - (b) in subsection (1), in the words before paragraph (a)—
 - (i) for “decree of divorce has been granted but not made absolute” substitute “divorce order has been made but not made final”;

Status: This is the original version (as it was originally enacted).

- (ii) for “decree should not be made absolute” substitute “order should not be made final”;
 - (c) in subsection (1)(a), for “section 1(5)” substitute “section 1(4)” and for “decree absolute” substitute “order final”;
 - (d) in subsection (1)(b), for “decree” substitute “order”;
 - (e) in subsection (2)—
 - (i) for the words from the beginning to the second “granted,” substitute “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.”;
 - (ii) for “the party against whom it was granted” substitute “the other party to the marriage”.
- 10 In section 10 (proceedings after decree nisi: special protection for respondent in separation cases)—
- (a) for the heading substitute “Proceedings before divorce order made final: special protection for respondent”;
 - (b) omit subsection (1);
 - (c) for subsections (2) and (3) substitute—
 - “(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.”;
 - (d) in subsection (4)—

Status: This is the original version (as it was originally enacted).

- (i) in the words before paragraph (a), for “decree absolute” substitute “divorce order final”;
 - (ii) in paragraph (a), for “decree should be made absolute” substitute “order should be made final”;
 - (iii) in paragraph (b), for “petitioner that he will make such financial provision” substitute “applicant that they will make such financial provision”.
- 11 In section 10A (proceedings after decree nisi: religious marriage)—
 - (a) in the heading, for “after decree nisi” substitute “before divorce order has been made final”;
 - (b) in subsection (1)—
 - (i) for “decree of divorce has been granted” substitute “divorce order has been made”;
 - (ii) for “absolute” substitute “final”;
 - (c) in subsection (2)—
 - (i) for “decree of divorce” substitute “divorce order”;
 - (ii) for “absolute” substitute “final”;
 - (d) in subsection (5), for “decree of divorce” substitute “divorce order”.
- 12 After section 12A insert—

“12B The period before nullity of marriage orders may be made final

- (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.”
- 13 (1) Section 13 (bars to relief where marriage is voidable) is amended as follows.
- (2) In subsection (1)—
 - (a) in the words before paragraph (a), for the words from “not” to “nullity” substitute “not make a nullity of marriage order”;
 - (b) in paragraph (a), for “petitioner” substitute “applicant”;
 - (c) in paragraph (b), for “grant the decree” substitute “make the order”.
 - (3) In subsection (2), for “grant a decree of nullity” substitute “make a nullity of marriage order”.

Status: This is the original version (as it was originally enacted).

- (4) In subsection (2A), for “grant a decree of nullity” substitute “make a nullity of marriage order”.
 - (5) In subsection (3)—
 - (a) for “grant a decree of nullity” substitute “make a nullity of marriage order”, and
 - (b) for “petitioner” substitute “applicant”.
 - (6) In subsection (4)—
 - (a) in the words before paragraph (a), for “grant of a decree of nullity” substitute “making of a nullity of marriage order”;
 - (b) in paragraph (a), for “petitioner” substitute “applicant”.
- 14 For section 15 (application of sections 1(5), 8 and 9 to nullity proceedings) substitute—

“15 Application of sections 8 and 9 to proceedings for a nullity of marriage order

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 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.”

- 15 (1) Section 16 (effect of decree of nullity in case of voidable marriage) is amended as follows.
- (2) In the heading, for “decree of nullity” substitute “annulment”.
 - (3) The existing text becomes subsection (1).
 - (4) In subsection (1)—
 - (a) for the words from the beginning to “1971” substitute “A nullity of marriage order granted”;
 - (b) for “decree has been made absolute,” substitute “order has been made final,”;
 - (c) for “notwithstanding the decree,” substitute “notwithstanding the order,”.
 - (5) After subsection (1) insert—
 - “(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,”.
- 16 In section 18 (effects of judicial separation)—
- (a) omit subsection (1);
 - (b) in subsection (2), after “decree of judicial separation” insert “or judicial separation order”.
- 17 Omit section 20 (relief for respondent in divorce proceedings) and the heading before it.

Status: This is the original version (as it was originally enacted).

- 18 In section 21 (financial provision and property adjustment orders)—
- (a) in subsection (2), for “grant of a decree of divorce, nullity of marriage or judicial separation,” substitute “making of a divorce, nullity of marriage or judicial separation order,”;
 - (b) at the end insert—
 - “(3) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 19 In section 22 (maintenance pending suit), in subsection (1)—
- (a) for “a petition for divorce, nullity of marriage or judicial separation,” substitute “an application for a divorce, nullity of marriage or judicial separation order,”;
 - (b) for “presentation of the petition” substitute “making of the application”.
- 20 (1) Section 23 (financial provision orders in connection with divorce proceedings etc) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “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),”.
 - (3) In subsection (2)(a), for “granting a decree,” substitute “making a divorce order, nullity of marriage order or judicial separation order (as the case may be);”.
 - (4) In subsection (5), for the words from “granting” to the end substitute “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.”
 - (5) At the end insert—
 - “(7) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 21 (1) Section 24 (property adjustment orders in connection with divorce proceedings etc) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “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),”.
 - (3) In subsection (3), for the words from “granting” to the end substitute “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.”
 - (4) At the end insert—
 - “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 22 (1) Section 24A (orders for sale of property) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (3), for the words from “grant” to the end substitute “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.”
- (3) At the end insert—
- “(7) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 23 (1) Section 24B (pension sharing orders in connection with divorce proceedings etc) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “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),”.
- (3) In subsection (2), for the words from “decree” to the end substitute “divorce or nullity of marriage order on or after which it is made has been made final.”
- (4) At the end insert—
- “(6) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 24 (1) Section 24E (pension compensation sharing orders in connection with divorce proceedings) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “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),”.
- (3) In subsection (2), for the words from “decree” to the end substitute “divorce or nullity of marriage order on or after which it is made has been made final.”
- (4) At the end insert—
- “(11) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 25 (1) Section 25A (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage) is amended as follows.
- (2) In the heading, for “decree of divorce or nullity of marriage” substitute “divorce or nullity of marriage order”.
- (3) In subsection (1)—
- (a) for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”;
- (b) for “grant of the decree” substitute “making of the order”.
- (4) In subsection (3), for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”.
- (5) At the end insert—
- “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 26 In section 26 (commencement of proceedings for ancillary relief etc)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (1)—
 - (i) for the words from “a petition” to “presented,” substitute “an application for a divorce, nullity of marriage or judicial separation order has been made,”;
 - (ii) for “presentation of the petition” substitute “presentation of the application”;
 - (b) in subsection (2)(a), for “petition or answer” substitute “application or response”;
 - (c) in subsection (2)(b) for “presentation of the petition or filing of the answer” substitute “presentation of the application or filing of the response”.
- 27 (1) Section 28 (duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage or formation of civil partnership) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a), for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”;
 - (b) in paragraph (a), for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,” and after “favour the” insert “periodical payments”;
 - (c) in paragraph (b)—
 - (i) for “grant of such a decree,” substitute “making of a divorce or nullity of marriage order,”;
 - (ii) after “favour the” insert “secured periodical payments”.
- (3) In subsection (1A)—
- (a) for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,”;
 - (b) after “in the” insert “periodical payments or secured periodical payments”.
- (4) In subsection (2)—
- (a) for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,”;
 - (b) for “order continues in force, the order” substitute “periodical payments or secured periodical payments order continues in force, that order”.
- (5) In subsection (3)—
- (a) for “grant of a decree” substitute “grant or making of a decree or order”;
 - (b) for “grant of that decree,” substitute “grant or making of that decree or order,”.
- (6) At the end insert—
- “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 28 In section 30 (direction for settlement of instrument for securing payments or effecting property adjustment), in paragraph (b), for “grant of the decree in question” substitute “making of the divorce, nullity of marriage or judicial separation order”.
- 29 (1) Section 31 (variation, discharge etc of certain orders for financial relief) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (2)(e), for “grant of a decree of judicial separation;” substitute “making of a judicial separation order;”.
- (3) In subsection (2)(g), for “decree has been made absolute” substitute “divorce or nullity of marriage order has been made final”.
- (4) In subsection (4)(a), for “decree of judicial separation” substitute “judicial separation order”.
- (5) In subsection (4A)(a)(ii), for “decree has not been made absolute” substitute “divorce or nullity of marriage order has not been made final”.
- (6) In subsection (4B), for “decree is made absolute” substitute “divorce or nullity of marriage order is made final”.
- (7) In subsection (7)(a), for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,”.
- (8) At the end insert—
- “(16) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 30 In section 47 (matrimonial relief and declarations of validity in respect of polygamous marriages)—
- (a) in subsection (2)(a), for “decree” substitute “order”;
- (b) in paragraph (d) omit “decree or”.
- 31 (1) Section 49 (parties to proceedings under this Act) is amended as follows.
- (2) Omit subsections (1) to (3).
- (3) In subsection (4)—
- (a) omit “, in cases not falling within subsection (1) above,”;
- (b) omit “adultery or other”.
- (4) In subsection (5), for the words from the beginning to “suit or” substitute “In every case”.
- 32 After section 52 insert—
- “52A Interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders**
- (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) a reference to a divorce order includes a decree of divorce,
- (b) a reference to a nullity of marriage order includes a decree of nullity of marriage;
- (c) a reference to a judicial separation order includes a decree of judicial separation;
- (d) a reference to making includes granting;
- (e) a reference to an order being made final includes a decree being made absolute.”
- 33 In Schedule 1 (transitional provisions and savings)—

Status: This is the original version (as it was originally enacted).

- (a) omit paragraph 8;
- (b) in paragraph 11(3A), for “grant a decree of nullity” substitute “make a nullity of marriage order”;
- (c) in paragraph 11(4), for “a decree of nullity has not been granted” substitute “no decree of nullity or nullity of marriage order has been made”.