



Matrimonial Causes Act 1965

1965 CHAPTER 72

PART IV

MISCELLANEOUS AND GENERAL

Miscellaneous

39 **Declarations of legitimacy, etc.**

- (1) Any person who is a British subject, or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in England or Northern Ireland or claims any real or personal estate situate in England, apply by petition to the court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.
- (2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the court, or may apply to a county court in the manner prescribed by county court rules, for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimacy Act 1926, and includes a person recognised under section 8 of that Act as legitimated.

- (3) Where an application under the last foregoing subsection is made to a county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court; and on such a transfer the proceeding shall be continued in the High Court as if it had been originally commenced by petition to the court.

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- (4) Any person who is domiciled in England or Northern Ireland or claims any real or personal estate situate in England may apply to the court for a decree declaring his right to be deemed a British subject.
- (5) Applications to the court (but not to a county court) under the foregoing provisions of this section may be included in the same petition, and on any application under the foregoing provisions of this section (including an application to a county court) the court or the county court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person—
 - (a) if it is subsequently proved to have been obtained by fraud or collusion ; or
 - (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.
- (6) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Attorney-General at least one month before the application is made, and the Attorney-General shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.
- (7) Where any application is made under this section, such persons as the court or county court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.
- (8) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

40 Additional jurisdiction in proceedings by a wife

- (1) Without prejudice to any jurisdiction exercisable by, the court apart from this section, the court shall have jurisdiction to entertain proceedings by a wife, notwithstanding that the husband is not domiciled in England,—
 - (a) in the case of any proceedings under this Act (other than proceedings under section 14 or sections 23 to 28), if—
 - (i) the wife has been deserted by her husband, or
 - (ii) the husband has been deported from the United Kingdom under any law for the time being in force relating to deportation,
 and the husband was immediately before the desertion or deportation domiciled in England;
 - (b) in the case of proceedings for divorce or nullity of marriage, if—
 - (i) the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and
 - (ii) the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.
- (2) In any proceedings in which the court has jurisdiction by virtue of the foregoing subsection the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England at the time of the proceedings.

41 Damages for adultery

- (1) A husband may, on a petition for divorce or for judicial separation or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner.
- (2) A claim for damages on the ground of adultery shall, subject to the provisions of any enactment relating to trial by jury in the court, be tried on the same principles and in the same manner as actions for criminal conversation were tried immediately before the commencement of the Matrimonial Causes Act 1857, and the provisions of this Act with reference to the hearing and decision of petitions shall so far as may be necessary apply to the hearing and decision of petitions on which damages are claimed.
- (3) The court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

42 Condonation

- (1) Any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.
- (2) For the purposes of this Act and the Matrimonial Proceedings (Magistrates' Courts) Act 1960, adultery or cruelty shall not be deemed to have been condoned by reason only of a continuation or resumption of cohabitation between the parties for one period not exceeding three months, or of anything done during such cohabitation, if it is proved that cohabitation was continued or resumed, as the case may be, with a view to effecting a reconciliation.
- (3) Adultery which has been condoned shall not be capable of being revived.

43 Evidence

- (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; but a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.
- (2) The parties to any proceedings instituted in consequence" of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings ; but no witness in any such proceedings, whether a party to the proceedings or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.
- (3) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

44 Power to allow intervention on terms

In every case in which any person is charged with adultery with any party to a suit or in which the court may consider, in the interest of any person not already a party to

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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.

General

45 Transitional provisions and repeals

The foregoing provisions of this Act shall have effect subject to the provisions of Schedule 1 to this Act (which contains transitional provisions required in consequence of the repeals made by this Act); and, subject to the provisions of the said Schedule 1, the enactments mentioned in the first and second columns of Schedule 2 to this Act are hereby repealed to the extent shown in the third column of that Schedule.

46 Short title, interpretation, commencement and extent

(1) This Act may be cited as the Matrimonial Causes-Act 1965.

(2) In this Act—

" adopted ", except in section 23(2), means adopted in pursuance of an adoption order made under the Adoption Act 1958, any previous enactment relating to the adoption of children or any corresponding enactment of the Parliament of Northern Ireland or made in the Isle of Man or any of the Channel Islands; and

" relevant child " means a child who is—

(a) a child of both parties to the marriage in question; or

(b) a child of one party to the marriage who has been accepted as one of the family by the other party,

and in paragraphs (a) and (b) of this definition " child " includes illegitimate child and adopted child ; and references to a child of the marriage in sections 17, 21(3), 22(2), 34(2) and 41(3) of this Act include references to a child adopted by both parties to the marriage.

(3) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.

(4) Subject to the provisions of section 38(2) of this Act, this Act does not extend to Scotland or Northern Ireland.