

Matrimonial Proceedings and Property Act 1970

CHAPTER 45

ARRANGEMENT OF SECTIONS

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41. Abolition of wife's agency of necessity.

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SCHEDULES:

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ELIZABETH II



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An Act to make fresh provision for empowering the court in matrimonial proceedings to make orders ordering either spouse to make financial provision for, or transfer property to, the other spouse or a child of the family, orders for the variation of ante-nuptial and post-nuptial settlements, orders for the custody and education of children and orders varying, discharging or suspending orders made in such proceedings; to make other amendments of the law relating to matrimonial proceedings; to abolish the right to claim restitution of conjugal rights; to declare what interest in property is acquired by a spouse who contributes to its improvement; to make provision as to a spouse's rights of occupation under section 1 of the Matrimonial Homes Act 1967 in certain cases; to extend section 17 of the Married Women's Property Act 1882 and section 7 of the Matrimonial Causes (Property and Maintenance) Act 1958; to amend the law about the property of a person whose marriage is the subject of a decree of judicial separation dying intestate; to abolish the agency of necessity of a wife; and for purposes connected with the matters aforesaid.

[29th May 1970]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PROVISIONS WITH RESPECT TO ANCILLARY AND OTHER RELIEF
IN MATRIMONIAL CAUSES AND TO CERTAIN
OTHER MATRIMONIAL PROCEEDINGS*Maintenance pending suit in cases of divorce, etc.*

Maintenance
pending suit
in cases of
divorce, etc.

1. On a petition for divorce, nullity of marriage or judicial separation, the court may order either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

Powers of court in cases of divorce, etc., to make orders with respect to financial provision for parties to the marriage and children of the family

Financial
provision for
party to a
marriage in
cases of
divorce, etc.

2.—(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of section 24(1) of this Act, make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order ;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court, such periodical payments and for such term as may be so specified ;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.

(2) Without prejudice to the generality of subsection (1)(c) above, an order under this section that a party to a marriage shall pay a lump sum to the other party—

- (a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section ;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

3.—(1) Subject to the provisions of section 8 of this Act, in proceedings for divorce, nullity of marriage or judicial separation, the court may make any one or more of the orders mentioned in subsection (2) below—

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provision for
child of the
family in
cases of
divorce, etc.

- (a) before or on granting the decree of divorce, of nullity of marriage or of judicial separation, as the case may be, or at any time thereafter ;
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(2) The orders referred to in subsection (1) above are—

- (a) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified ;
- (b) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments and for such term as may be so specified ;
- (c) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.

(3) Without prejudice to the generality of subsection (2)(c) above, an order under this section for the payment of a lump sum to any person for the benefit of a child of the family, or to such a child, may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met.

(4) An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a) above, it may exercise that power from time to time ; and where the court makes an order by virtue of subsection (1)(b) above in relation to a child it may from time to time make a further order under this section in relation to him.

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Orders for transfer and settlement of property and for variation of settlements in cases of divorce, etc.

4. On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of sections 8 and 24(1) of this Act, make any one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion ;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them ;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage ;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement ;

and the court may make an order under paragraph (c) above notwithstanding that there are no children of the family.

Matters to which court is to have regard in deciding what orders to make under ss. 2, 3 and 4.

5.—(1) It shall be the duty of the court in deciding whether to exercise its powers under section 2 or 4 of this Act in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future ;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future ;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage ;
- (d) the age of each party to the marriage and the duration of the marriage ;

- (e) any physical or mental disability of either of the parties to the marriage ;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family ;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring ;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3) below, it shall be the duty of the court in deciding whether to exercise its powers under section 3 or 4 of this Act in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the financial needs of the child ;
- (b) the income, earning capacity (if any), property and other financial resources of the child ;
- (c) any physical or mental disability of the child ;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage ;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained ;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) above, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under the said section 3 or 4 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)—

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to

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which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility ;

- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own ;
- (c) to the liability of any other person to maintain the child.

Additional powers of court to make orders requiring party to marriage to make payments to other party, etc.

Neglect by party to marriage to maintain other party or child of the family.

6.—(1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)—

- (a) being the husband, has wilfully neglected—
 - (i) to provide reasonable maintenance for the applicant, or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies ;
- (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—
 - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or
 - (ii) for any child of the family to whom this section applies.

(2) The court shall not entertain an application under this section unless it would have jurisdiction to entertain proceedings by the applicant for judicial separation.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—

- (a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child, and

- (b) what order, if any, to make under this section in favour or for the benefit of the child,

the court shall have regard to the matters mentioned in section 5(3) of this Act.

(5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may order the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, then, subject to the provisions of section 8 of this Act, the court may make such one or more of the following orders as it thinks just, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments and for such term as may be specified in the order ;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments and for such term as may be so specified ;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified ;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such term as may be so specified ;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments and for such term as may be so specified ;
- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified.

(7) Without prejudice to the generality of subsection (6)(c) and (f) above, an order under this section that the respondent shall pay a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met ;

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- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

Further provisions relating to orders under sections 2, 3, 4 and 6

Duration of certain orders made in favour of party to marriage and effect of remarriage.

7.—(1) The term to be specified in any order made by virtue of section 2(1)(a) or (b) of this Act or section 6(6)(a) or (b) thereof shall be such term, being a term beginning not earlier than the date of the making of an application for the order in question and lasting not longer than the maximum term, as the court thinks fit.

(2) In subsection (1) above “the maximum term” means—

- (a) in the case of an order made by virtue of the said section 2(1)(a) in proceedings for divorce or nullity of marriage, the joint lives of the parties to the marriage or a term ending with the date of the remarriage of the party in whose favour the order is made, whichever is the shorter ;
- (b) in the case of an order made by virtue of the said section 2(1)(b) in any such proceedings, the life of that party or a term ending with the date of the remarriage of that party, whichever is the shorter ;
- (c) in the case of an order made by virtue of the said section 2(1)(a) in proceedings for judicial separation or made by virtue of the said section 6(6)(a), the joint lives of the parties to the marriage ;
- (d) in the case of an order made by virtue of the said section 2(1)(b) in proceedings for judicial separation or made by virtue of the said section 6(6)(b), the life of the party in whose favour the order is made.

(3) Where an order is made by virtue of the said section 2(1)(a) or (b) in proceedings for judicial separation or by virtue of the said section 6(6)(a) or (b) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage.

(4) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under section 2 or 4 of this Act against the person to whom he or she was married immediately before the grant of that decree unless the remarriage is with that person and that marriage is also dissolved or annulled or a decree of judicial separation is made on a petition presented by either party to that marriage.

8.—(1) Subject to subsection (3) below—

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- (a) no order under section 3, 4(a) or 6 of this Act shall be made in favour of a child who has attained the age of eighteen ; and
- (b) the term for which by virtue of an order under the said section 3 or 6 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date when the child will attain the age of eighteen.

Provisions as to powers of court to make orders in favour of children and duration of such orders.

(2) The term for which by virtue of an order under the said section 3 or 6 any payments are to be made or secured to or for the benefit of a child shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the court which makes the order thinks it right in the circumstances of the case to specify a later date therein.

For the purposes of this subsection the upper limit of the compulsory school age means the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order in Council made under that section. 1944 c. 31.

(3) The court may make such an order as is mentioned in subsection (1)(a) above in favour of a child who has attained the age of eighteen, and may include in an order made under the said section 3 or 6 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child, if it appears to the court that—

- (a) that child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment ; or
- (b) there are special circumstances which justify the making of the order or provision.

(4) Any order made by virtue of section 3(2)(a) of this Act or section 6(6)(d) thereof shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of such death.

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Provisions as to variation, discharge and enforcement of certain orders

Variation, discharge, etc., of orders for financial provision.

9.—(1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say—

- (a) any order under section 1 of this Act ;
- (b) any order made by virtue of section 2(1)(a) or (b) or 2(2)(b) of this Act ;
- (c) any order made by virtue of section 3(2)(a) or (b) or 3(4) of this Act ;
- (d) any order made by virtue of section 4(b), (c) or (d) of this Act on or after granting a decree of judicial separation ; and
- (e) any order made by virtue of section 6(5), 6(6)(a), (b), (d) or (e) or 6(7)(b) of this Act.

(3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this section in relation to any order made by virtue of the said section 4(b), (c) or (d) on or after granting a decree of judicial separation except on an application made in proceedings—

- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) No such order as is mentioned in section 4 of this Act shall be made on an application for the variation of an order made by virtue of the said section 2(1)(a) or (b) or the said section 3(2)(a) or (b), and no order for the payment of a lump sum shall be made on an application for the variation of an order made by virtue of the said section 2(1)(a) or (b) or of the said section 6(6)(a) or (b).

(6) Where the person liable to make payments under an order made by virtue of the said section 2(1)(b), the said section 3(2)(b) or the said section 6(6)(b) or (e) has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The personal representatives of a deceased person against whom any such order as is referred to in subsection (6) above was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in that subsection on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

10.—(1) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order made by virtue of section 1, 2(1), 3(2), 6(5) or 6(6) of this Act without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

Payment of certain arrears unenforceable without the leave of the court.

(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or of any part thereof.

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

11.—(1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—

Power of court to order sums paid under certain orders to be repaid in certain cases.

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or

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(b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

This section applies to an order made by virtue of section 1, 2(1)(a) or (b), 3(2)(a) or (b), 6(5) or 6(6)(a), (b), (d) or (e) of this Act.

(2) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(3) An application under this section may be made in proceedings in the High Court or a county court for—

(a) the variation or discharge of the order to which this section applies, or

(b) leave to enforce, or the enforcement of, the payment of arrears under that order ;

but except as aforesaid such an application shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Application of
Maintenance
Orders Acts
to orders
under ss. 1,
2, 3 and 6.
1950 c. 37.
1958 c. 39.

12.—(1) Any order made by virtue of section 1, 2, 3 or 6 of this Act or any corresponding enactment of the Parliament of Northern Ireland shall be included among the orders to which section 16 of the Maintenance Orders Act 1950 applies (which section specifies the orders enforceable under Part II of that Act); and any order made by virtue of the said section 1, 2, 3 or 6 shall be a maintenance order within the meaning of the Maintenance Orders Act 1958.

(2) This section, so far as it affects Part II of the Maintenance Orders Act 1950, shall extend to Scotland and Northern Ireland.

Maintenance agreements

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13.—(1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then— Validity of maintenance agreements.

- (a) that provision shall be void ; but
- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 14 and 15 of this Act), be binding on the parties to the agreement.

(2) In this and the next following section—

“ maintenance agreement ” means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being—

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage ; or

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements ;

“ financial arrangements ” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

14.—(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (3) below, either party may apply to the court or to a magistrates’ court for an order under this section. Alteration of agreements by court during lives of parties.

(2) If the court to which the application is made is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the

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agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the family, then, subject to subsections (3), (4) and (5) below, that court may by order make such alterations in the agreement—

(i) by varying or revoking any financial arrangements contained in it, or

(ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 5(3) of this Act; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A magistrates' court shall not entertain an application under subsection (1) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which the court acts, and shall not have power to make any order on such an application except—

(a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;

(b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made under the agreement as altered by the order shall be such term as the court may specify, but that term shall not exceed—

(a) where the payments will not be secured, the joint lives of the parties to the agreement or a term ending with

the remarriage of the party to whom the payments are to be made, whichever is the shorter ;

(b) where the payments will be secured, the life of that party or a term ending with the remarriage of that party, whichever is the shorter.

(5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made or secured for the benefit of the child, the court shall apply the provisions of section 8(1), (2) and (3) of this Act as if the order to which this subsection relates were an order under section 3 of this Act.

(6) For the avoidance of doubt it is hereby declared that nothing in this or the last foregoing section affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

15.—(1) Where a maintenance agreement within the meaning of section 13 of this Act provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 14 of this Act.

Alteration of agreements by court after death of one party.

(2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of section 7 of the Family Provision Act 1966 (which confers jurisdiction on county courts in proceedings under the Inheritance (Family Provision) Act 1938 or section 26 of the Matrimonial Causes Act 1965 if the value of the deceased's

1966 c. 35.
1938 c. 45.
1965 c. 72.

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net estate does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under the said section 26 (application for maintenance out of deceased's estate by former spouse) in relation to the deceased's estate.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(5) Section 9(9) of this Act shall apply for the purposes of subsection (2) of this section as it applies for the purposes of subsection (6) of the said section 9.

1966 c. 35.

(6) Subsection (3) of section 7 of the Family Provision Act 1966 (transfer to county court of proceedings commenced in the High Court) and paragraphs (a) and (b) of subsection (5) thereof (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to any such proceedings as are referred to in subsection (1) of the said section 7.

Avoidance of transactions intended to defeat certain claims

Avoidance of transactions intended to defeat certain claims.

16.—(1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as “financial provision”) are brought by a person (hereafter in this section referred to as “the applicant”) against any other person (hereafter in this section referred to as “the other party”), the court may, on an application by the applicant—

(a) if it is satisfied that the other party is, with the intention of defeating the claim for financial provision, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

- (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial provision or different financial provision would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);
- (c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in paragraph (b) above;

and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial provision in question.

(2) Paragraphs (b) and (c) of subsection (1) above apply respectively to any disposition made by the other party (whether before or after the commencement of the proceedings for financial provision), not being a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as aforesaid on the part of the other party.

(3) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or to a disposition or other dealing with property which is about to take place and the court is satisfied—

- (a) in a case falling within subsection (1)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or
- (b) in a case falling within subsection (1)(c) above, that the disposition has had the consequence,

of defeating the applicant's claim for financial provision, it shall be presumed, unless the contrary is shown, that the other party disposed of the property with the intention aforesaid or, as the case may be, is, with that intention, about to dispose of or deal with the property.

(4) In this section—

“disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any

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description, whether made by an instrument or otherwise ;

“ the relevant provisions of this Act ” means any of the provisions of the following enactments, that is to say, sections 1, 2, 3, 4, 6, 9 (except subsection (6)) and 14 of this Act ;

and any reference to defeating an applicant’s claim for financial provision is a reference to preventing financial provision from being granted to the applicant, or to the applicant for the benefit of a child of the family, or reducing the amount of any financial provision which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of the applicant under the relevant provisions of this Act.

(5) The provisions of this section shall not apply to a disposition made more than three years before the commencement of this Act.

Protection, custody, etc., of children

Restrictions on decrees for dissolution, annulment or separation affecting children.

17.—(1) The court shall not make absolute a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the court, by order, has declared that it is satisfied—

- (a) that for the purposes of this section there are no children of the family to whom this section applies ; or
- (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances ; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements ; or
- (c) that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.

(2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) above unless it has obtained a satisfactory undertaking from either or both of the

parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

(3) If the court makes absolute a decree nisi of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.

(4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children of the family, that is to say—

(a) any minor child of the family who at the date of the order under subsection (1) above is—

(i) under the age of sixteen, or

(ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment ; and

(b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply ;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to it.

(6) In this section “welfare”, in relation to a child, includes the custody and education of the child and financial provision for him.

18.—(1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—

(a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree ;

(b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal ;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.

Orders for custody and education of children affected by matrimonial suits.

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(2) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(3) Where the court makes or makes absolute a decree of divorce or makes a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) While the court has power to make an order in any proceedings by virtue of paragraph (a) of subsection (1) above, it may exercise that power from time to time; and where the court makes an order by virtue of paragraph (b) of that subsection with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.

(6) The court shall have power to discharge or vary an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

Orders for custody of children in cases of neglect to maintain.

19.—(1) Where the court makes an order under section 6 of this Act, the court shall also have power from time to time to make such orders as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this section and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(2) Section 18(2) and (6) of this Act shall apply in relation to an order made under this section as they apply in relation to an order made under that section.

Abolition of right to claim restitution of conjugal rights

Abolition of right to claim restitution of conjugal rights.

20. No person shall after the commencement of this Act be entitled to petition the High Court or any county court for restitution of conjugal rights.

Remarriage of party entitled to payments under certain orders, etc.

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21.—(1) An order made, or deemed to have been made, under section 16(1)(a) or (b) of the Matrimonial Causes Act 1965 shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

Orders for maintenance of party to marriage under Matrimonial Causes Act 1965 to cease to have effect on remarriage of that party. 1965 c. 72.

(2) An order for the payment of alimony made, or deemed to have been made, under section 20 of the said Act of 1965, and an order made, or deemed to have been made, under section 21 or 22 of that Act, shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the said commencement of the party in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

22.—(1) Where—

- (a) an order to which this section applies has ceased to have effect by reason of the remarriage of the person entitled to payments under the order, and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of such remarriage in the mistaken belief that the order was still subsisting,

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above shall be maintainable by the person so liable or his or her personal representatives against the person so entitled or her or his personal representatives; but on an application made under this section the court may exercise the powers conferred on it by subsection (2) below.

This section applies to an order made by virtue of section 2(1)(a) or (b) or 6(6)(a) or (b) of this Act and to any such order as is referred to in subsection (1) or (2) of section 21 thereof.

(2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

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(3) Subsections (2) to (4) of section 11 of this Act shall apply to an application made under this section and to an order made on such an application as they apply to an application made under that section and to an order made on the last mentioned application, and the references to the court in this section shall be construed in accordance with subsection (3) of that section as applied by this subsection.

(4) The clerk of a magistrates' court to whom any payments under an order to which this section applies are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under the first mentioned order, shall not be liable—

- (a) in the case of that clerk, for any act done by him in pursuance of the first mentioned order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
- (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the first mentioned order not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first mentioned order or the personal representatives of either of those persons.

(5) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates' court to whom a person makes payments in compliance with the order.

Miscellaneous and supplemental

23. The fact that a settlement or transfer of property had to be made in order to comply with an order of the court under section 4 of this Act shall not prevent that settlement or transfer from being a settlement of property to which section 42(1) of the Bankruptcy Act 1914 (avoidance of certain settlements) applies.

Settlement, etc., made in compliance with order under s. 4 may be avoided on bankruptcy of settlor.
1914 c. 59.

24.—(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings under section 1, 2, 3 or 4 of this Act may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition ; but—

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Commence-
ment of
proceedings
for financial
provision
orders, etc.

- (a) no order under section 2 or 4 of this Act shall be made unless a decree nisi of divorce or of nullity of marriage or a decree of judicial separation, as the case may be, has been granted ;
- (b) without prejudice to the power to give a direction under section 25 of this Act, no such order made on or after granting a decree nisi of divorce or of nullity of marriage, and no settlement made in pursuance of such an order, shall take effect unless the decree has been made absolute.

(2) Rules of court may provide, in such cases as may be prescribed by the rules—

- (a) that applications for ancillary relief shall be made in the petition or answer ; and
- (b) that applications for ancillary relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

In this subsection “ ancillary relief ” means relief under any of the following provisions of this Act, that is to say, sections 1, 2, 3 and 4.

25. Where the court decides to make an order under this Part of this Act requiring any payments to be secured or an order under section 4 of this Act—

Direction for
instrument to
be settled by
conveyancing
counsel.

- (a) it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties ; and
- (b) in the case of an order under section 2, 3 or 4 of this Act, it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

26. Where the court makes an order under this Part of this Act requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1959, of managing and administering his or her property and affairs,

Payments,
etc., under
order made
in favour of
person
suffering from
mental
disorder.
1959 c. 72.

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then, subject to any order, direction or authority made or given in relation to that person under Part VIII of the said Act of 1959, the court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

Interpretation. **27.**—(1) In this Part of this Act—

“adopted” means adopted in pursuance of—

1958 c. 5.
(7 & 8 Eliz. 2.)
1968 c. 53.

(a) an adoption order made under the Adoption Act 1958, any previous enactment relating to the adoption of children, the Adoption Act 1968 or any corresponding enactment of the Parliament of Northern Ireland ; or

(b) an adoption order made in the Isle of Man or any of the Channel Islands ; or

(c) subject to sections 5 and 6 of the Adoption Act 1968, an overseas adoption within the meaning of section 4 of that Act ;

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties ;

“child of the family”, in relation to the parties to a marriage, means—

(a) a child of both of those parties ; and

(b) any other child, not being a child who has been boarded-out with those parties by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family ;

1967 c. 56.

“the court” (except where the context otherwise requires) means the High Court or, where a county court has jurisdiction by virtue of the Matrimonial Causes Act 1967, a county court ;

“custody”, in relation to a child, includes access to the child ;

“education” includes training.

(2) For the avoidance of doubt it is hereby declared that references in this Part of this Act to remarriage include references to a marriage which is by law void or voidable.

(3) Any reference in this Part of this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment, including this Act.

Transitional provisions, savings, etc.

PART I

28. Schedule 1 to this Act shall have effect for the purpose of the transition to the provisions of this Part of this Act from the law in force before the commencement of this Act and with respect to the application of certain provisions of this Part of this Act to orders made, or deemed to have been made, under the Matrimonial Causes Act 1965.

Transitional provisions and savings.

1965 c. 72.

29. Any decree of divorce, nullity of marriage or judicial separation which, apart from this section, would be void or voidable on the ground only that the provisions of section 33 of the Matrimonial Causes Act 1965 (which restricts the making of decrees of dissolution or separation where children are affected) or of section 2 of the Matrimonial Proceedings (Children) Act 1958 (corresponding provision replaced by the said 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—

Validation of certain void or voidable decrees.

1958 c. 40.

- (a) before the commencement of this Act the court declared the decree to be void ; or
- (b) in proceedings for the annulment of the decree pending at the said commencement the court declares the decree to be void.

PART II

MISCELLANEOUS PROVISIONS

Provisions relating to orders made by magistrates' courts in matrimonial proceedings

30.—(1) At the end of section 7 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 there shall be added the following subsections—

Order for maintenance of party to marriage made by magistrates' court to cease to have effect on remarriage of that party.

1960 c. 48.

“(4) Where after the making by a magistrates' court of a matrimonial order consisting of or including a provision such as is mentioned in paragraph (b) or (c) of section 2(1) of this Act the marriage of the parties to the proceedings in which that order was made is dissolved or annulled but the order continues in force, then, subject to subsection (5) of this section, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.

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(5) Subsection (4) of this section shall not apply where the party in whose favour such an order as is therein mentioned was made remarried before the commencement of the Matrimonial Proceedings and Property Act 1970.

(6) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.”

1960 c. 48.

(2) Subsections (4), (5) and (6) of section 7 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 shall apply in relation to an order consisting of or including a provision such as is mentioned in section 2(1)(b) or (c) of that Act made by a magistrates' court and confirmed in accordance with section 3 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (which enables a magistrates' court to make a maintenance order against a person resident in a part of Her Majesty's dominions outside the United Kingdom but provides that the order shall have no effect unless and until confirmed by a competent court in that part) as they apply in relation to such an order as is referred to in the said subsection (4), but with the modification that for the reference to the making of such an order as is referred to in that subsection there shall be substituted a reference to the confirmation in accordance with the said section 3 of the order referred to in this subsection.

1920 c. 33.

Sums paid after cessation of order of magistrates' court by reason of remarriage may be ordered to be repaid in certain cases.

31. After section 13 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 there shall be inserted the following section—

Orders for repayment in certain cases of sum paid after cessation of order by reason of remarriage.

13A.—(1) Where—

- (a) an order to which this section applies or a provision thereof has ceased to have effect by reason of the remarriage of the person entitled to payments under the order, and
- (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of such remarriage in the mistaken belief that the order or provision was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above shall be maintainable by the person so liable or his or her personal representatives against the person so entitled or her or his personal representatives, but on an application made under this section the court may exercise the powers conferred on it by the following subsection.

This section applies to an order in relation to which subsection (4) of section 7 of this Act, as amended by the Matrimonial Proceedings and Property Act 1970, applies.

(2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) of this section or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this section may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, the payment of arrears under an order to which this section applies, but except as aforesaid such an application shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.

(5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(6) The jurisdiction conferred on a county court by this section shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application under this section the jurisdiction would not but for this subsection be exercisable by a county court.

(7) Section 13(1) and (2) of this Act shall not apply to an order under this section.

(8) The clerk of a magistrates' court to whom any payments under an order to which this section applies are required to be made, and the collecting officer under an attachment of earnings order made

PART II

to secure payments under the first mentioned order, shall not be liable—

- (a) in the case of that clerk, for any act done by him in pursuance of the first mentioned order after the date on which that order or a provision thereof ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
- (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the first mentioned order or a provision thereof not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first mentioned order or the personal representatives of either of those persons.

(9) In this section “collecting officer”, in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates’ court to whom a person makes payments in compliance with the order.

Restriction on enforcement in High Court or county court of certain orders of magistrates’ courts.

1960 c. 48.

32. At the end of section 13 of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 there shall be added the following subsections:—

“(5) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order made by virtue of this Act without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(6) The court hearing an application for the grant of leave under subsection (5) of this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or any part thereof.

(7) An application for the grant of leave under the said subsection (5) shall be made in such manner as may be prescribed by rules of court”.

PART II

33. Section 7(3) of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (which provides that where after the making by a magistrates’ court of a matrimonial or interim order proceedings between, and relating to the marriage of, the parties to the proceedings in which the order was made have been begun in the High Court, the High Court may direct that the order shall cease to have effect on a date specified by that court) shall be amended as follows:—

Minor corrections of Matrimonial Proceedings (Magistrates’ Courts) Act 1960, s. 7(3). 1960 c. 48.

- (a) after the words “ the High Court ”, where first occurring, there shall be inserted the words “ or a county court ”;
- (b) for the words “ the High Court ”, where next occurring, there shall be substituted the words “ the court in which the proceedings or any application made therein are or is pending ”; and
- (c) for the words “ the High Court may specify ” there shall be substituted the words “ may be specified in the direction ”.

Provisions relating to certain proceedings in county courts

34.—(1) The jurisdiction conferred on a county court by section 11 or section 22 of this Act or paragraph 5 of Schedule 1 thereto shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application made under either of those sections or the said paragraph 5, as the case may be, the jurisdiction would not but for this subsection be exercisable by a county court.

Jurisdiction of, and appeal on question of fact from, county courts.

(2) At the end of subsection (2) of section 109 of the County Courts Act 1959 (appeals on questions of fact) there shall be inserted the following paragraph:—

1959 c. 22.

“(g) any proceedings on an application for an order under section 13A of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960, section 11 of the Matrimonial Proceedings and Property Act 1970, section 15 of that Act, section 22 thereof or paragraph 5 of Schedule 1 thereto.”

Amendments of the Matrimonial Causes Act 1965

35. In section 2(2) of the Matrimonial Causes Act 1965 (which provides that in determining an application to allow the presentation of a petition for divorce within three years from the date of the marriage the judge shall have regard to the interests of any relevant child) for the words “ relevant

Amendment of reference to child in 1965 c. 72, s. 2.

PART II

child ” there shall be substituted the words “ child of the family within the meaning of Part I of the Matrimonial Proceedings and Property Act 1970 ”.

Construction of references to remarriage in 1965 c. 72, s. 26.

36. Section 26 of the Matrimonial Causes Act 1965 (which authorises the making of orders for maintenance out of a deceased’s estate for a former spouse who has not remarried and provides that maintenance by way of periodical payments out of the estate shall terminate not later than his or her death or remarriage) shall have effect, and be deemed always to have had effect, as if after subsection (5) there were inserted the following subsection:—

“ (5A) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.”

Provisions relating to property of married persons

Contributions by spouse in money or money’s worth to the improvement of property.

37. It is hereby declared that where a husband or wife contributes in money or money’s worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings).

Rights of occupation under Matrimonial Homes Act 1967 of spouse with equitable interest in home, etc. 1967 c. 75.

38. There shall be inserted in section 1 of the Matrimonial Homes Act 1967 (which protects against eviction from the home the spouse not entitled by virtue of any estate or interest, etc., to occupy it) a new subsection—

“ (9) It is hereby declared that a spouse who has an equitable interest in a dwelling house or in the proceeds of sale thereof, not being a spouse in whom is vested (whether solely or as a joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling house, is to be treated for the purpose only of determining whether he or she has rights of occupation under this section as not being entitled to occupy the dwelling house by virtue of that interest ”.

39. An application may be made to the High Court or a county court under section 17 of the Married Women's Property Act 1882 (powers of the court in disputes between husband and wife about property) (including that section as extended by section 7 of the Matrimonial Causes (Property and Maintenance) Act 1958) by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of three years beginning with the date on which the marriage was dissolved or annulled; and references in the said section 17 and the said section 7 to a husband or a wife shall be construed accordingly.

PART II
Extension of
s. 17 of
Married
Women's
Property Act
1882.
1882 c. 75.
1958 c. 35.

40.—(1) If while a decree of judicial separation is in force and the separation is continuing either of the parties whose marriage is the subject of the decree dies after the commencement of this Act intestate as respects all or any of his or her real or personal property, the property of that party as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

Judicially
separated
spouses not
entitled to
claim in
intestacy of
each other.

(2) Notwithstanding anything in section 2(1)(a) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, a provision in force in an order made, or having effect as if made, under that section that a party to a marriage be no longer bound to cohabit with the other party to the marriage shall not have effect as a decree of judicial separation for the purposes of this section.

1960 c. 48.

(3) Section 20(3) of the Matrimonial Causes Act 1965 (which provides that in a case of judicial separation certain property of the wife shall, if she dies intestate, devolve as if her husband had then been dead) shall cease to have effect except in relation to a case where the death occurred before the commencement of this Act.

1965 c. 72.

Abolition of wife's agency of necessity

41.—(1) Any rule of law or equity conferring on a wife authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit is hereby abrogated.

Abolition of
wife's agency
of necessity.

(2) Section 20(4) of the Matrimonial Causes Act 1965 (which provides that if in a case of judicial separation alimony has been ordered but has not been paid by the husband he shall be liable for necessaries supplied for the use of the wife) shall cease to have effect.

PART III

SUPPLEMENTARY

42.—(1) The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule.

Minor and
consequential
amendments
and repeals.

PART III

(2) Subject to the provisions of Schedule 1 to this Act, the enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Citation,
commence-
ment and
extent.

1965 c. 72.

43.—(1) This Act may be cited as the *Matrimonial Proceedings and Property Act 1970*.

(2) The following provisions of this Act, that is to say, this section, sections 33, 36 to 41 and 42(2), so far as it repeals section 20(3) and (4) of the *Matrimonial Causes Act 1965*, shall come into force on 1st August 1970 and the other provisions of this Act shall come into force on 1st January 1971.

(3) Any reference in any provision of this Act, or in any enactment amended by a provision of this Act, to the commencement of this Act shall be construed as a reference to the date on which that provision comes into force.

(4) Subject to the provisions of section 12(2) of this Act, this Act does not extend to Scotland or Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 28.

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

1. Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals), nothing in any repeal made by this Act shall affect any application made, proceeding begun, order made or deemed to have been made, or direction given or deemed to have been given, under any enactment repealed by this Act, and subject to the provisions of this Act—

- (a) every such application or proceeding which is pending at the commencement of this Act shall have effect as if made or begun under the corresponding provision of this Act; and
- (b) every such order or direction shall, if in force at the commencement of this Act, continue in force.

Provisions relating to proceedings for restitution of conjugal rights

2.—(1) Sections 13, 15, 21, 30(1), 31, 34(1), (4) and (5) and 46(2) of the Matrimonial Causes Act 1965 (hereinafter referred to as “the Act of 1965”) shall continue to apply in relation to proceedings for restitution of conjugal rights begun before the commencement of this Act and in relation to decrees and orders made in such proceedings so begun.

(2) In subsection (2) of the said section 21, as applied by subparagraph (1) above, the reference to such a direction as is mentioned in section 16(2)(a) of the Act of 1965 shall be construed as a reference to such a direction as is mentioned in section 25(a) of this Act.

(3) Notwithstanding the repeal by this Act of section 29 of the Act of 1965, rules of court made by virtue of that section, in so far as they apply to applications for relief under subsection (1) or (2) of the said section 21 or for relief under subsection (1)(c) of the said section 34, shall continue to have effect.

Variation, etc. of certain orders made, etc. under the Act of 1965

3.—(1) Subject to the provisions of this paragraph, section 9 of this Act shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the following provisions of the Act of 1965, that is to say—

- (a) section 15, except in its application to proceedings for restitution of conjugal rights,

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- (b) section 16(1), that subsection as applied by section 16(3) and by section 19,
- (c) section 20(1) and section 17(2) as applied by section 20(2),
- (d) section 22,
- (e) section 34(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 34(3),

as it applies to the orders mentioned in subsection (2) of the said section 9.

(2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made or deemed to have been made under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part I of this Act.

(3) The said section 9, as applied by sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) thereof there were substituted the following subsections—

“(4) The court shall not exercise the powers conferred by this section in relation to an order made or deemed to have been made under section 17(2) of the Act of 1965, as applied by section 20(2) thereof, in proceedings for judicial separation except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation, or
- (b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) The court hearing an application for the variation of any order made or deemed to have been made under section 16(1), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965 or under the said section 16(1) as applied by section 16(3) of that Act or by section 19 thereof shall not have power to vary that order by making an order for the payment of a lump sum or any such order as is mentioned in section 4 of this Act.

(6) Where the person liable to make payments under a secured periodical payments order made or deemed to have been made under the said section 16(1), 22 or 34(3) or under the said section 16(1), as applied by the said section 16(3) or by the said section 19, has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

In this subsection ‘secured periodical payments order’ means an order requiring a person to secure an annual sum or periodical payments to some other person.”

(4) In relation to an order made before 16th December 1949 which, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, is deemed to have been made under section 16(1)(a) of that Act or the said paragraph (a) as applied by section 19 of that Act, the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any order made, or deemed as aforesaid to have been made, under section 16(1)(b) of that Act or that paragraph, as so applied, as the case may be.

(5) Section 9(1) and (3) of this Act shall apply to an order made or deemed to have been made under section 15 of the Act of 1965 in its application to proceedings for restitution of conjugal rights, under section 21 of that Act or under section 34(1)(c) thereof as they apply to the orders mentioned in subsection (2) of the said section 9, and in exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

4. Section 10 of this Act shall apply in relation to the enforcement of the payment of arrears due under an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say, sections 15, 16, 20, 21, 22 and 34 and section 16, as applied by section 19, where proceedings to enforce through the High Court or any county court the payment of such arrears are begun after the commencement of this Act as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

5. An application may be made under this paragraph in relation to an order to which this paragraph applies in the like circumstances as those in which an application may be made under section 11 of this Act, and the provisions of that section shall apply to such an application and to an order made on such an application as they apply to an application made under that section and to an order made on the last mentioned application.

This paragraph applies to an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say, sections 15, 16(1)(a) and (b), 20(1), 21 and 22, section 16(1)(a) and (b) as applied by section 16(3) and by section 19, section 34(1), in so far as it applies to maintenance, and section 34(3).

6. Section 18(6) of this Act shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 34 of the Act of 1965, and in relation to an order for the custody of a child made or deemed to have been made under section 35 of that Act, as it applies in relation to an order made under the said section 18.

Provisions with respect to certain maintenance agreements

7. Where the party chargeable under a maintenance agreement within the meaning of section 13 of this Act died before 17th August 1957, then—

(a) subsection (1) of that section shall not apply to the agreement

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unless there remained undistributed at that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of the funeral, testamentary and administrative expenses, debts and liabilities payable thereout (other than any liability arising by virtue of that subsection) ; and

- (b) nothing in that subsection shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.

8. No right or liability shall attach by virtue of section 13(1) of this Act in respect of any sum payable under a maintenance agreement within the meaning of that section in respect of a period before 17th August 1957.

Avoidance of transactions intended to defeat claims for relief under the Act of 1965

9.—(1) Section 16 of this Act shall apply in relation to proceedings for relief under any of the following provisions of the Act of 1965, that is to say, sections 16, 17(2), 20(1), 22, 24, 31, 34(1)(a) or (b), 34(3) and 35, section 16(1) as applied by section 19 and section 17(2) as applied by section 20(2), where the proceedings are pending at the commencement of this Act, and in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965, as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 16(4) of this Act.

(2) Without prejudice to sub-paragraph (1) above, the said section 16 shall apply in a case where an order has been obtained under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above as it applies in a case where an order has been obtained under any of the provisions of this Act specified in the said section 16(4).

Protection, custody, etc., of children

10. Section 33 of the Act of 1965 shall continue to apply, and section 17 of this Act shall not apply, in relation to any proceedings for divorce or nullity of marriage in which a decree nisi has been granted but not made absolute before the commencement of this Act.

11. Where in any such proceedings the court has made an order by virtue of section 34(1) of the Act of 1965 in relation to a child, the court shall have the like power to make a further order from time to time in relation to that child under section 3 or 18 of this Act as it has where it makes an order in relation to a child under

subsection (1) of the said section 3 or 18, but nothing in the foregoing provision shall be taken as affecting the power of the court in any such proceedings to make an order under either of those sections in relation to any other child, being a child of the family. SCH. 1

12. Where the court has made an order under section 22 of the Act of 1965 the court shall have the like power to make orders under section 19 of this Act with respect to the custody of any child of the family as it has where it makes an order under section 6 of this Act.

SCHEDULE 2

Section 42.

MINOR AND CONSEQUENTIAL AMENDMENTS

1.—(1) In section 26(4) of the Matrimonial Causes Act 1965 (matters to which court is to have regard on application for maintenance from estate of deceased spouse), after sub-paragraph (ii) there shall be inserted the following sub-paragraph— 1965 c. 72.

“ (iii) where the survivor is a former wife or a former husband of the deceased, for an order under section 2 or 4 of the Matrimonial Proceedings and Property Act 1970 ”.

(2) In subsection (1) of section 36 of the said Act of 1965 (power to commit children to care of local authority), and in subsection (1) of section 37 of that Act (power to provide for supervision of children), after the words “ this Act ” there shall be inserted the words “ or of the Matrimonial Proceedings and Property Act 1970 ”.

(3) In subsection (5) of the said section 37 after the words “ this Act ” there shall be inserted the words “ or under the Matrimonial Proceedings and Property Act 1970 ”.

2.—(1) Section 2 of the Matrimonial Causes Act 1967 (jurisdiction of divorce county court to exercise powers exercisable under certain provisions of the Matrimonial Causes Act 1965 relating to ancillary relief and the protection of children) shall be amended as follows— 1967 c. 56.

(a) in subsection (1), after the words “ Matrimonial Causes Act 1965 ” there shall be inserted the words “ or Part I of the Matrimonial Proceedings and Property Act 1970 ” and for the words from “ section 22 ” onwards there shall be substituted the words “ section 6 or section 14 of the said Act of 1970 ”; and

(b) for subsection (3) there shall be substituted the following subsection:—

“ (3) A divorce county court shall not by virtue of this section have jurisdiction to exercise any power under—

(a) section 26 or 27 of the Matrimonial Causes Act 1965 c. 72. 1965 ; or

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(b) section 10, 11, 15 or 22 of the Matrimonial Proceedings and Property Act 1970 or paragraph 5 of Schedule 1 thereto ;

1966 c. 35.

but without prejudice to the exercise by virtue of section 7 of the Family Provision Act 1966 of any power exercisable by a county court under the said section 26 or 27 or to the exercise by virtue of any such provision of the said Act of 1970 as is mentioned in paragraph (b) of this subsection of any power exercisable by a county court under that provision ” ; and

(c) in subsection (4), for the words from “section 24 ” onwards there shall be substituted the words “section 14 of the Matrimonial Proceedings and Property Act 1970 ”.

(2) In section 7(1) of the said Act of 1967 (which specifies the authority having power to make rules of court for the purposes of certain enactments) the word “or ” at the end of paragraph (b) shall be omitted and after paragraph (c) there shall be inserted the words “or

(d) without prejudice to the generality of paragraph (c) of this subsection, Part I of the Matrimonial Proceedings and Property Act 1970, and Schedule 1 thereto, except proceedings in the county court under section 10, 11, 15 or 22 or paragraph 5 of Schedule 1 ”.

1968 c. 63.

3. At the end of paragraph (b) of subsection (1) of section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (restriction of publicity for certain proceedings) there shall be inserted the word “and ” and the following paragraph shall be added at the end of that subsection—

“(c) proceedings under section 6 of the Matrimonial Proceedings and Property Act 1970 (which relates to proceedings by a wife against her husband, or by a husband against his wife, for financial provision) and any proceedings for the discharge or variation of an order made under that section or for the temporary suspension of any provision of any such order or the revival of the operation of any provision so suspended ”.

1969 c. 55.

4. In section 8(3) of the Divorce Reform Act 1969 (grant of decree of judicial separation) for the words “section 33 of the Matrimonial Causes Act 1965 ” there shall be substituted the words “section 17 of the Matrimonial Proceedings and Property Act 1970 ”.

1970 c. 31.

5. At the end of Schedule 8 to the Administration of Justice Act 1970 (maintenance orders to which Part II of that Act applies) there shall be inserted the following paragraph:—

“10. An order for periodical or other payments made under Part I of the Matrimonial Proceedings and Property Act 1970.”

SCHEDULE 3

Section 42.

REPEALS

Chapter	Short Title	Extent of Repeal
1965 c. 72.	The Matrimonial Causes Act 1965.	Section 13. Sections 15 to 19. In section 20, subsections (1) and (2), subsection (3) except in relation to a case where the death occurred before the commencement of this Act and subsection (4). Sections 21 to 25 except section 25(4) and (5) as applied by section 28(2) of that Act. Sections 29 to 35. Section 46(2) except so far as it applies for the interpretation of section 41(3) of that Act. In Schedule 1, paragraphs 5, 6, 7, 9, 10 and 11.
1966 c. 35.	The Family Provision Act 1966.	In section 5(3), the words "section 25(1) and in".
1968 c. 36.	The Maintenance Orders Act 1968.	In the Schedule, the entry relating to the Matrimonial Causes Act 1965.
1969 c. 46.	The Family Law Reform Act 1969.	Section 5(3).
1969 c. 55.	The Divorce Reform Act 1969.	In Schedule 1, paragraphs 4, 5, 6, 7, 9 and 10.

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