

SCHEDULES

SCHEDULE 1

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

MISCELLANEOUS AND GENERAL

General transitional provisions and savings

- 1 Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals)—
 - (a) nothing in any repeal made by this Act shall affect any order or rule made, direction given or thing done, or deemed to have been made, given or done, under any enactment repealed by this Act, and every such order, rule, direction or thing shall, if in force at the commencement of this Act, continue in force and, so far as it could have been made, given or done under this Act, be deemed to have been made, given or done under the corresponding provisions of this Act; and
 - (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.
- 2 Without prejudice to paragraph 1 above, but subject to paragraph 3 below, any application made or proceeding begun, or deemed to have been made or begun, under any enactment repealed by this Act, being an application or proceeding which is pending at the commencement of this Act, shall be deemed to have been made or begun under the corresponding provision of this Act.
- 3 Nothing in Part I of this Act shall apply in relation to any petition for divorce or judicial separation presented before 1st January 1971 and notwithstanding any repeal or amendment made by this Act the Matrimonial Causes Act 1965 (hereafter in this Schedule referred to as the Act of 1965) and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Act as they had effect immediately before the commencement of this Act.
- 4 Notwithstanding any repeal or amendment made by this Act, the Act of 1965 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—
 - (a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before 1st January 1971 which are pending at the commencement of this Act, and

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- (b) any proceedings for relief under section 21 or 34(l)(c) of the Act of 1965 brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Act,

as they had effect immediately before the commencement of this Act; and nothing in Schedule 2 below shall affect the operation of any other enactment in relation to any such proceedings.

- 5 Nothing in any repeal made by this Act shall affect any order made, or deemed to have been made, under the Act of 1965 which was continued in force by paragraph 1 of Schedule 1 to the Matrimonial Proceedings and Property Act 1970 notwithstanding the repeal by the last-mentioned Act of the provision of the Act of 1965 under which the order had effect, and every such order shall, if in force at the commencement of this Act, continue in force subject to the provisions of this Act.

- 6 Nothing in sections 11 to 14 or 16 of this Act affects any law or custom relating to the marriage of members of the Royal Family.

- 7 Nothing in section 50(1)(a) or (c) above affects—

- (a) any rules of court made under the Supreme Court of Judicature (Consolidation) Act 1925 for the purposes of proceedings under section 39 of the Act of 1965 and having effect by virtue of paragraph 1(b) above in relation to proceedings under section 45 above ;
- (b) any rules of court so made for the purposes of proceedings under section 17 of the Married Women's Property Act 1882 or under section 1 of the Matrimonial Homes Act 1967 ; or
- (c) any rules of court so made for the purposes of the exercise by the High Court of its jurisdiction to grant declaratory relief in proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status;

but rules of court made under section 50 may revoke any rules of court made under the said Act of 1925 in so far as they apply for any such purposes.

Transitional provisions derived from the Act of 1965

- 8 Any agreement between the petitioner and the respondent to live separate and apart, whether or not made in writing, shall be disregarded for the purposes of section 1(2) (c) above (including that paragraph as it applies, by virtue of section 17 above, to proceedings for judicial separation) if the agreement was entered into before 1st January 1938 and either—

- (a) at the time when the agreement was made the respondent had deserted the petitioner without cause ; or
- (b) the court is satisfied that the circumstances in which the agreement was made and the parties proceeded to live separate and apart were such as, but for the agreement, to amount to desertion of the petitioner by the respondent.

- 9 Where the party chargeable under a maintenance agreement within the meaning of section 34 above died before 17th August 1957, then—

- (a) subsection (1) of that section shall not apply to the agreement unless there remained undistributed on 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

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- 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.
- 10 No right or liability shall attach by virtue of section 34(1) above 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.

PART II

PRESERVATION FOR LIMITED PURPOSES OF CERTAIN PROVISIONS OF PREVIOUS ENACTMENTS

Nullity

- 11 (1) Subject to sub-paragraphs (2) and (3) below, a marriage celebrated before 1st August 1971 shall (without prejudice to any other grounds on which a marriage celebrated before that date is by law void or voidable) be voidable on the ground—
- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage—
- (i) was of unsound mind, or
- (ii) was suffering from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or
- (iii) was subject to recurrent attacks of insanity or epilepsy; or
- (c) that the respondent was at (the time of the marriage suffering from venereal disease in a communicable form ; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) In relation to a marriage celebrated before 1st November 1960, for heads (ii) and (iii) of sub-paragraph (1)(b) above there shall be substituted the following heads—
- “(ii) was a mental defective within the meaning of the Mental Deficiency Acts 1913 to 1938, or
- (iii) was subject to recurrent fits of insanity or epilepsy ; or”.
- (3) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1) (b), (c) or (d) above unless it is satisfied that—
- (a) the petitioner was at the time of the marriage ignorant of the facts alleged ; and
- (b) proceedings were instituted within a year from the date of the marriage ; and
- (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree ;
- and where the proceedings with respect to the marriage are instituted after 31st July 1971 the application of section 13(1) above in relation to the marriage shall be without prejudice to the preceding provisions of this sub-paragraph.

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- (4) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.
- 12 Where a decree of nullity was granted on or before 31st July 1971 in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

Succession on intestacy in case of judicial separation

- 13 Section 18(2) above shall not apply in a case where the death occurred before 1st August 1970, but section 20(3) of the Act of 1965 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death intestate, as if her husband had then been dead) shall continue to apply in any such case.

Validation of certain void or voidable decrees

- 14 Any decree of divorce, nullity of marriage or judicial separation which, apart from this paragraph, would be void or voidable on the ground only that the provisions of section 33 of the Act of 1965 (restriction on the making of decrees of dissolution or separation where children are affected) or of section 2 of the Matrimonial Proceedings (Children) Act 1958 (corresponding provision replaced by section 33) had not been complied with when the decree was made absolute or granted, as the case may be, shall be deemed always to have been valid unless—
- (a) the court declared the decree to be void before 1st January 1971, or
 - (b) in proceedings for the annulment of the decree pending at that date the court has before the commencement of this Act declared or after that commencement declares the decree to be void.

PART III

ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ACT OF ORDERS MADE, ETC., UNDER THE ACT OF 1965, ETC.

*Cesser on remarriage of orders made, etc., under the Act
 of 1965 and recovery of sums mistakenly paid thereafter*

- 15 (1) An order made, or deemed to have been made, under section 16(1)(a) or (b) of the Act of 1965 (including either of those paragraphs as applied by section 16(3) or by section 19) 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 the remarriage.
- (2) An order for the payment of alimony made, or deemed to have been made, under section 20 of the 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 commencement of this Act of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

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- 16 Section 38 above shall apply in relation to an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) and by section 19), 20(1), 21 or 22 of the Act of 1965 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

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

- 17 (1) Subject to the provisions of this paragraph, section 31 above shall apply, as it applies to the orders mentioned in subsection (2) thereof, 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);
 - (b) section 16(1) (including 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).
- (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 II of this Act.
- (3) Section 31, as it applies by virtue of sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) 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) of that Act, in connection with the grant of 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 in question.
- (5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965.
- (6) In the case of an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 22 or 34(3) of the Act of 1965 and requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this section relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court,

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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”;

and in that section, as it so applies, the reference in subsection (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in subsection (6).

- (4) In relation to an order made before 16th December 1949 on or after granting a decree of divorce or nullity of marriage and deemed, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, to have been made under section 16(1)(a) of that Act (secured provision), 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 other order made by reference to that decree, being an order made, or deemed by virtue of that paragraph to have been made, under section 16(1)(b) of that Act (unsecured periodical payments).
- 18 (1) Subsections (1) and (3) of section 31 above 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, or under section 21 or 34(1)(c) of that Act, as they apply to the orders mentioned in subsection (2) of section 31.
- (2) 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).
- 19 Section 42(7) above 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 section 42.

Orders made under the Act of 1965 to count as orders under this Act for certain purposes

- 20 The power of the court under section 23(1) or (2)(a) or 42(1)(a) above to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 34(1)(a) of the Act of 1965 ; and where the court has made an order in relation to a child under section 34(1)(b) of that Act sections 23(4) and 42(6) above shall apply respectively in relation to that child as if the order were an order made under section 23(2)(b) or section 42(1)(b), as the case may be.
- 21 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 42 above with respect to the custody of any child of the family as it has where it makes an order under section 27 above.

Application of provisions of this Act with respect to enforcement of arrears and recovery of excessive payments to certain orders made, etc., under the Act of 1965

- 22 Section 32 above shall apply in relation to the enforcement, by proceedings begun after 1st January 1971 (whether before or after the commencement of this Act), 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—
- (a) section 15 ;

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- (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19) ;
- (c) section 20(1);
- (d) section 21 ;
- (e) section 22;
- (f) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3) ;

as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

- 23 Section 33 above 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 provisions of the Act of 1965 mentioned in paragraph 22 above as it applies to the orders mentioned in section 33(2).

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

- 24 (1) Section 37 above shall apply in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 continuing by virtue of paragraph 4(b) above as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 37(1).

- (2) Without prejudice to sub-paragraph (1) above, section 37 shall also apply where an order has been obtained under any of the following provisions of the Act of 1965, that is to say—

- (a) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
- (b) section 17(2) (including that subsection as applied by section 20(2));
- (c) section 20(1);
- (d) section 21 ;
- (e) section 22 ;
- (f) section 24 ;
- (g) section 31 ;
- (h) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);
- (i) section 35 ;

as it applies where an order has been obtained under any of the provisions of this Act specified in section 37(1).

Care and supervision of children

- 25 (1) Sections 43 and 44 above shall apply where the court has jurisdiction by virtue of paragraph 4(b) above to make an order for the custody of a child under section 34(1) (c) of the Act of 1965 as they apply where the court has jurisdiction to make an order for custody under Part III of this Act, but as if the reference in section 43(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.

- (2) Without prejudice to the effect of paragraph 1(a) of this Schedule in relation to an order made under section 36 or 37 of the Act of 1965 which could have been made

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under section 43 or, as the case may be, section 44 above, any order made under section 36 or 37 of that Act by virtue of the jurisdiction of the court to make an order for the custody of a child under section 34(1)(c) of that Act shall be deemed to have been made under section 43 or 44 above, as the case may require.

- 26 Section 44(4) above shall apply in relation to the jurisdiction possessed by a court to vary an order made or deemed to have been made with respect to a child's custody, maintenance or education under Part III of the Act of 1965 as it applies in relation to the jurisdiction possessed by a court to vary any financial provision order in a child's favour and any order made with respect to a child's custody or education under Part III of this Act.