

SCHEDULES

SCHEDULE 1

TRANSITIONAL PROVISIONS AND SAVINGS

PART III

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

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

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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, 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.