



# Family Law Act 1996

CHAPTER 27

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# Family Law Act 1996

## CHAPTER 27

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# Family Law Act 1996

## 1996 CHAPTER 27

An Act to make provision with respect to: divorce and separation; legal aid in connection with mediation in disputes relating to family matters; proceedings in cases where marriages have broken down; rights of occupation of certain domestic premises; prevention of molestation; the inclusion in certain orders under the Children Act 1989 of provisions about the occupation of a dwelling-house; the transfer of tenancies between spouses and persons who have lived together as husband and wife; and for connected purposes. [4th July 1996]

**B**E 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

#### PRINCIPLES OF PARTS II AND III

1. The court and any person, in exercising functions under or in consequence of Parts II and III, shall have regard to the following general principles—

- (a) that the institution of marriage is to be supported;
- (b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
- (c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end—
  - (i) with minimum distress to the parties and to the children affected;
  - (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and

The general principles underlying Parts II and III.

## PART I

- (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
- (d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.

## PART II

## DIVORCE AND SEPARATION

*Court orders*

Divorce and separation.

- 2.—(1) The court may—
- (a) by making an order (to be known as a divorce order), dissolve a marriage; or
  - (b) by making an order (to be known as a separation order), provide for the separation of the parties to a marriage.
- (2) Any such order comes into force on being made.
- (3) A separation order remains in force—
- (a) while the marriage continues; or
  - (b) until cancelled by the court on the joint application of the parties.

Circumstances in which orders are made.

- 3.—(1) If an application for a divorce order or for a separation order is made to the court under this section by one or both of the parties to a marriage, the court shall make the order applied for if (but only if)—
- (a) the marriage has broken down irretrievably;
  - (b) the requirements of section 8 about information meetings are satisfied;
  - (c) the requirements of section 9 about the parties' arrangements for the future are satisfied; and
  - (d) the application has not been withdrawn.
- (2) A divorce order may not be made if an order preventing divorce is in force under section 10.
- (3) If the court is considering an application for a divorce order and an application for a separation order in respect of the same marriage it shall proceed as if it were considering only the application for a divorce order unless—
- (a) an order preventing divorce is in force with respect to the marriage;
  - (b) the court makes an order preventing divorce; or
  - (c) section 7(6) or (13) applies.

Conversion of separation order into divorce order.

- 4.—(1) A separation order which is made before the second anniversary of the marriage may not be converted into a divorce order under this section until after that anniversary.
- (2) A separation order may not be converted into a divorce order under this section at any time while—
- (a) an order preventing divorce is in force under section 10; or



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- (b) subsection (4) applies.
- (3) Otherwise, if a separation order is in force and an application for a divorce order—
- (a) is made under this section by either or both of the parties to the marriage, and
  - (b) is not withdrawn,
- the court shall grant the application once the requirements of section 11 have been satisfied.
- (4) Subject to subsection (5), this subsection applies if—
- (a) there is a child of the family who is under the age of sixteen when the application under this section is made; or
  - (b) the application under this section is made by one party and the other party applies to the court, before the end of such period as may be prescribed by rules of court, for time for further reflection.
- (5) Subsection (4)—
- (a) does not apply if, at the time when the application under this section is made, there is an occupation order or a non-molestation order in force in favour of the applicant, or of a child of the family, made against the other party;
  - (b) does not apply if the court is satisfied that delaying the making of a divorce order would be significantly detrimental to the welfare of any child of the family;
  - (c) ceases to apply—
    - (i) at the end of the period of six months beginning with the end of the period for reflection and consideration by reference to which the separation order was made; or
    - (ii) if earlier, on there ceasing to be any children of the family to whom subsection (4)(a) applied.

*Marital breakdown*

- 5.—(1) A marriage is to be taken to have broken down irretrievably if (but only if)—
- (a) a statement has been made by one (or both) of the parties that the maker of the statement (or each of them) believes that the marriage has broken down;
  - (b) the statement complies with the requirements of section 6;
  - (c) the period for reflection and consideration fixed by section 7 has ended; and
  - (d) the application under section 3 is accompanied by a declaration by the party making the application that—
    - (i) having reflected on the breakdown, and
    - (ii) having considered the requirements of this Part as to the parties' arrangements for the future,
 the applicant believes that the marriage cannot be saved.
- (2) The statement and the application under section 3 do not have to be made by the same party.

Marital  
breakdown.

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(3) An application may not be made under section 3 by reference to a particular statement if—

- (a) the parties have jointly given notice (in accordance with rules of court) withdrawing the statement; or
- (b) a period of one year (“the specified period”) has passed since the end of the period for reflection and consideration.

(4) Any period during which an order preventing divorce is in force is not to count towards the specified period mentioned in subsection (3)(b).

(5) Subsection (6) applies if, before the end of the specified period, the parties jointly give notice to the court that they are attempting reconciliation but require additional time.

(6) The specified period—

- (a) stops running on the day on which the notice is received by the court; but
- (b) resumes running on the day on which either of the parties gives notice to the court that the attempted reconciliation has been unsuccessful.

(7) If the specified period is interrupted by a continuous period of more than 18 months, any application by either of the parties for a divorce order or for a separation order must be by reference to a new statement received by the court at any time after the end of the 18 months.

(8) The Lord Chancellor may by order amend subsection (3)(b) by varying the specified period.

Statement of  
marital  
breakdown.

6.—(1) A statement under section 5(1)(a) is to be known as a statement of marital breakdown; but in this Part it is generally referred to as “a statement”.

(2) If a statement is made by one party it must also state that that party—

- (a) is aware of the purpose of the period for reflection and consideration as described in section 7; and
- (b) wishes to make arrangements for the future.

(3) If a statement is made by both parties it must also state that each of them—

- (a) is aware of the purpose of the period for reflection and consideration as described in section 7; and
- (b) wishes to make arrangements for the future.

(4) A statement must be given to the court in accordance with the requirements of rules made under section 12.

(5) A statement must also satisfy any other requirements imposed by rules made under that section.

(6) A statement made at a time when the circumstances of the case include any of those mentioned in subsection (7) is ineffective for the purposes of this Part.

(7) The circumstances are—

- (a) that a statement has previously been made with respect to the marriage and it is, or will become, possible—

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- (i) for an application for a divorce order, or
- (ii) for an application for a separation order,  
to be made by reference to the previous statement;
- (b) that such an application has been made in relation to the marriage and has not been withdrawn;
- (c) that a separation order is in force.

*Reflection and consideration*

- 7.—(1) Where a statement has been made, a period for the parties— Period for reflection and consideration.
- (a) to reflect on whether the marriage can be saved and to have an opportunity to effect a reconciliation, and
  - (b) to consider what arrangements should be made for the future,
- must pass before an application for a divorce order or for a separation order may be made by reference to that statement.
- (2) That period is to be known as the period for reflection and consideration.
- (3) The period for reflection and consideration is nine months beginning with the fourteenth day after the day on which the statement is received by the court.
- (4) Where—
- (a) the statement has been made by one party,
  - (b) rules made under section 12 require the court to serve a copy of the statement on the other party, and
  - (c) failure to comply with the rules causes inordinate delay in service,
- the court may, on the application of that other party, extend the period for reflection and consideration.
- (5) An extension under subsection (4) may be for any period not exceeding the time between—
- (a) the beginning of the period for reflection and consideration; and
  - (b) the time when service is effected.
- (6) A statement which is made before the first anniversary of the marriage to which it relates is ineffective for the purposes of any application for a divorce order.
- (7) Subsection (8) applies if, at any time during the period for reflection and consideration, the parties jointly give notice to the court that they are attempting a reconciliation but require additional time.
- (8) The period for reflection and consideration—
- (a) stops running on the day on which the notice is received by the court; but
  - (b) resumes running on the day on which either of the parties gives notice to the court that the attempted reconciliation has been unsuccessful.
- (9) If the period for reflection and consideration is interrupted under subsection (8) by a continuous period of more than 18 months, any

## PART II

application by either of the parties for a divorce order or for a separation order must be by reference to a new statement received by the court at any time after the end of the 18 months.

(10) Where an application for a divorce order is made by one party, subsection (13) applies if—

- (a) the other party applies to the court, within the prescribed period, for time for further reflection; and
- (b) the requirements of section 9 (except any imposed under section 9(3)) are satisfied.

(11) Where any application for a divorce order is made, subsection (13) also applies if there is a child of the family who is under the age of sixteen when the application is made.

(12) Subsection (13) does not apply if—

- (a) at the time when the application for a divorce order is made, there is an occupation order or a non-molestation order in force in favour of the applicant, or of a child of the family, made against the other party; or
- (b) the court is satisfied that delaying the making of a divorce order would be significantly detrimental to the welfare of any child of the family.

(13) If this subsection applies, the period for reflection and consideration is extended by a period of six months, but—

- (a) only in relation to the application for a divorce order in respect of which the application under subsection (10) was made; and
- (b) without invalidating that application for a divorce order.

(14) A period for reflection and consideration which is extended under subsection (13), and which has not otherwise come to an end, comes to an end on there ceasing to be any children of the family to whom subsection (11) applied.

Attendance at  
information  
meetings.

8.—(1) The requirements about information meetings are as follows.

(2) A party making a statement must (except in prescribed circumstances) have attended an information meeting not less than three months before making the statement.

(3) Different information meetings must be arranged with respect to different marriages.

(4) In the case of a statement made by both parties, the parties may attend separate meetings or the same meeting.

(5) Where one party has made a statement, the other party must (except in prescribed circumstances) attend an information meeting before—

- (a) making any application to the court—
  - (i) with respect to a child of the family; or
  - (ii) of a prescribed description relating to property or financial matters; or
- (b) contesting any such application.

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(6) In this section “information meeting” means a meeting organised, in accordance with prescribed provisions for the purpose—

- (a) of providing, in accordance with prescribed provisions, relevant information to the party or parties attending about matters which may arise in connection with the provisions of, or made under, this Part or Part III; and
- (b) of giving the party or parties attending the information meeting the opportunity of having a meeting with a marriage counsellor and of encouraging that party or those parties to attend that meeting.

(7) An information meeting must be conducted by a person who—

- (a) is qualified and appointed in accordance with prescribed provisions; and
- (b) will have no financial or other interest in any marital proceedings between the parties.

(8) Regulations made under this section may, in particular, make provision—

- (a) about the places and times at which information meetings are to be held;
- (b) for written information to be given to persons attending them;
- (c) for the giving of information to parties (otherwise than at information meetings) in cases in which the requirement to attend such meetings does not apply;
- (d) for information of a prescribed kind to be given only with the approval of the Lord Chancellor or only by a person or by persons approved by him; and
- (e) for information to be given, in prescribed circumstances, only with the approval of the Lord Chancellor or only by a person, or by persons, approved by him.

(9) Regulations made under subsection (6) must, in particular, make provision with respect to the giving of information about—

- (a) marriage counselling and other marriage support services;
- (b) the importance to be attached to the welfare, wishes and feelings of children;
- (c) how the parties may acquire a better understanding of the ways in which children can be helped to cope with the breakdown of a marriage;
- (d) the nature of the financial questions that may arise on divorce or separation, and services which are available to help the parties;
- (e) protection available against violence, and how to obtain support and assistance;
- (f) mediation;
- (g) the availability to each of the parties of independent legal advice and representation;
- (h) the principles of legal aid and where the parties can get advice about obtaining legal aid;
- (i) the divorce and separation process.

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(10) Before making any regulations under subsection (6), the Lord Chancellor must consult such persons concerned with the provision of relevant information as he considers appropriate.

(11) A meeting with a marriage counsellor arranged under this section—

- (a) must be held in accordance with prescribed provisions; and
- (b) must be with a person qualified and appointed in accordance with prescribed provisions.

1988 c. 34.

(12) A person who would not be required to make any contribution towards mediation provided for him under Part IIIA of the Legal Aid Act 1988 shall not be required to make any contribution towards the cost of a meeting with a marriage counsellor arranged for him under this section.

(13) In this section “prescribed” means prescribed by regulations made by the Lord Chancellor.

Arrangements for  
the future.

9.—(1) The requirements as to the parties’ arrangements for the future are as follows.

(2) One of the following must be produced to the court—

- (a) a court order (made by consent or otherwise) dealing with their financial arrangements;
- (b) a negotiated agreement as to their financial arrangements;
- (c) a declaration by both parties that they have made their financial arrangements;
- (d) a declaration by one of the parties (to which no objection has been notified to the court by the other party) that—
  - (i) he has no significant assets and does not intend to make an application for financial provision;
  - (ii) he believes that the other party has no significant assets and does not intend to make an application for financial provision; and
  - (iii) there are therefore no financial arrangements to be made.

(3) If the parties—

1949 c. 76.

- (a) were married to each other in accordance with usages of a kind mentioned in section 26(1) of the Marriage Act 1949 (marriages which may be solemnized on authority of superintendent registrar’s certificate), and
- (b) are required to co-operate if the marriage is to be dissolved in accordance with those usages,

the court may, on the application of either party, direct that there must also be produced to the court a declaration by both parties that they have taken such steps as are required to dissolve the marriage in accordance with those usages.

(4) A direction under subsection (3)—

- (a) may be given only if the court is satisfied that in all the circumstances of the case it is just and reasonable to give it; and
- (b) may be revoked by the court at any time.

(5) The requirements of section 11 must have been satisfied.

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(6) Schedule 1 supplements the provisions of this section.

(7) If the court is satisfied, on an application made by one of the parties after the end of the period for reflection and consideration, that the circumstances of the case are—

- (a) those set out in paragraph 1 of Schedule 1,
- (b) those set out in paragraph 2 of that Schedule,
- (c) those set out in paragraph 3 of that Schedule, or
- (d) those set out in paragraph 4 of that Schedule,

it may make a divorce order or a separation order even though the requirements of subsection (2) have not been satisfied.

(8) If the parties' arrangements for the future include a division of pension assets or rights under section 25B of the 1973 Act or section 10 of the Family Law (Scotland) Act 1985, any declaration under subsection (2) must be a statutory declaration. 1985 c. 37.

*Orders preventing divorce*

**10.—(1)** If an application for a divorce order has been made by one of the parties to a marriage, the court may, on the application of the other party, order that the marriage is not to be dissolved. Hardship: orders preventing divorce.

(2) Such an order (an “order preventing divorce”) may be made only if the court is satisfied—

- (a) that dissolution of the marriage would result in substantial financial or other hardship to the other party or to a child of the family; and
- (b) that it would be wrong, in all the circumstances (including the conduct of the parties and the interests of any child of the family), for the marriage to be dissolved.

(3) If an application for the cancellation of an order preventing divorce is made by one or both of the parties, the court shall cancel the order unless it is still satisfied—

- (a) that dissolution of the marriage would result in substantial financial or other hardship to the party in whose favour the order was made or to a child of the family; and
- (b) that it would be wrong, in all the circumstances (including the conduct of the parties and the interests of any child of the family), for the marriage to be dissolved.

(4) If an order preventing a divorce is cancelled, the court may make a divorce order in respect of the marriage only if an application is made under section 3 or 4(3) after the cancellation.

(5) An order preventing divorce may include conditions which must be satisfied before an application for cancellation may be made under subsection (3).

(6) In this section “hardship” includes the loss of a chance to obtain a future benefit (as well as the loss of an existing benefit).

## PART II

*Welfare of children*

Welfare of children.

1989 c. 41.

**11.—(1)** In any proceedings for a divorce order or a separation order, the court shall consider—

- (a) whether there are any children of the family to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 1989 with respect to any of them.

**(2)** Where, in any case to which this section applies, it appears to the court that—

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children Act 1989 with respect to any such child,
- (b) it is not in a position to exercise the power, or (as the case may be) those powers, without giving further consideration to the case, and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the divorce order or separation order is not to be made until the court orders otherwise.

**(3)** In deciding whether the circumstances are as mentioned in subsection (2)(a), the court shall treat the welfare of the child as paramount.

**(4)** In making that decision, the court shall also have particular regard, on the evidence before it, to—

- (a) the wishes and feelings of the child considered in the light of his age and understanding and the circumstances in which those wishes were expressed;
- (b) the conduct of the parties in relation to the upbringing of the child;
- (c) the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by—
  - (i) his having regular contact with those who have parental responsibility for him and with other members of his family; and
  - (ii) the maintenance of as good a continuing relationship with his parents as is possible; and
- (d) any risk to the child attributable to—
  - (i) where the person with whom the child will reside is living or proposes to live;
  - (ii) any person with whom that person is living or with whom he proposes to live; or
  - (iii) any other arrangements for his care and upbringing.

**(5)** This section applies to—

- (a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and



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- (b) any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply.

*Supplementary*

## 12.—(1) The Lord Chancellor may make rules—

Lord Chancellor's rules.

- (a) as to the form in which a statement is to be made and what information must accompany it;
- (b) requiring the person making the statement to state whether or not, since satisfying the requirements of section 8, he has made any attempt at reconciliation;
- (c) as to the way in which a statement is to be given to the court;
- (d) requiring a copy of a statement made by one party to be served by the court on the other party;
- (e) as to circumstances in which such service may be dispensed with or may be effected otherwise than by delivery to the party;
- (f) requiring a party who has made a statement to provide the court with information about the arrangements that need to be made in consequence of the breakdown;
- (g) as to the time, manner and (where attendance in person is required) place at which such information is to be given;
- (h) where a statement has been made, requiring either or both of the parties—
  - (i) to prepare and produce such other documents, and
  - (ii) to attend in person at such places and for such purposes,
 as may be specified;
- (i) as to the information and assistance which is to be given to the parties and the way in which it is to be given;
- (j) requiring the parties to be given, in such manner as may be specified, copies of such statements and other documents as may be specified.

(2) The Lord Chancellor may make rules requiring a person who is the legal representative of a party to a marriage with respect to which a statement has been, or is proposed to be, made—

- (a) to inform that party, at such time or times as may be specified—
  - (i) about the availability to the parties of marriage support services;
  - (ii) about the availability to them of mediation; and
  - (iii) where there are children of the family, that in relation to the arrangements to be made for any child the parties should consider the child's welfare, wishes and feelings;
- (b) to give that party, at such time or times as may be specified, names and addresses of persons qualified to help—
  - (i) to effect a reconciliation; or
  - (ii) in connection with mediation; and
- (c) to certify, at such time or times as may be specified—

## PART II

(i) whether he has complied with the provision made in the rules by virtue of paragraphs (a) and (b);

(ii) whether he has discussed with that party any of the matters mentioned in paragraph (a) or the possibility of reconciliation; and

(iii) which, if any, of those matters they have discussed.

(3) In subsections (1) and (2) “specified” means determined under or described in the rules.

(4) This section does not affect any power to make rules of court for the purposes of this Act.

*Resolution of disputes*

Directions with respect to mediation.

**13.**—(1) After the court has received a statement, it may give a direction requiring each party to attend a meeting arranged in accordance with the direction for the purpose—

(a) of enabling an explanation to be given of the facilities available to the parties for mediation in relation to disputes between them; and

(b) of providing an opportunity for each party to agree to take advantage of those facilities.

(2) A direction may be given at any time, including in the course of proceedings connected with the breakdown of the marriage (as to which see section 25).

(3) A direction may be given on the application of either of the parties or on the initiative of the court.

(4) The parties are to be required to attend the same meeting unless—

(a) one of them asks, or both of them ask, for separate meetings; or

(b) the court considers separate meetings to be more appropriate.

(5) A direction shall—

(a) specify a person chosen by the court (with that person’s agreement) to arrange and conduct the meeting or meetings; and

(b) require such person as may be specified in the direction to produce to the court, at such time as the court may direct, a report stating—

(i) whether the parties have complied with the direction; and

(ii) if they have, whether they have agreed to take part in any mediation.

Adjournments.

**14.**—(1) The court’s power to adjourn any proceedings connected with the breakdown of a marriage includes power to adjourn—

(a) for the purpose of allowing the parties to comply with a direction under section 13; or

(b) for the purpose of enabling disputes to be resolved amicably.

(2) In determining whether to adjourn for either purpose, the court shall have regard in particular to the need to protect the interests of any child of the family.

## PART II

(3) If the court adjourns any proceedings connected with the breakdown of a marriage for either purpose, the period of the adjournment must not exceed the maximum period prescribed by rules of court.

(4) Unless the only purpose of the adjournment is to allow the parties to comply with a direction under section 13, the court shall order one or both of them to produce to the court a report as to—

- (a) whether they have taken part in mediation during the adjournment;
- (b) whether, as a result, any agreement has been reached between them;
- (c) the extent to which any dispute between them has been resolved as a result of any such agreement;
- (d) the need for further mediation; and
- (e) how likely it is that further mediation will be successful.

*Financial provision*

15.—(1) Schedule 2 amends the 1973 Act.

Financial  
arrangements.

(2) The main object of Schedule 2 is—

- (a) to provide that, in the case of divorce or separation, an order about financial provision may be made under that Act before a divorce order or separation order is made; but
- (b) to retain (with minor changes) the position under that Act where marriages are annulled.

(3) Schedule 2 also makes minor and consequential amendments of the 1973 Act connected with the changes mentioned in subsection (1).

16.—(1) The Matrimonial Causes Act 1973 is amended as follows.

(2) In section 25B (benefits under a pension scheme on divorce, etc.), in subsection (2), after paragraph (b), insert—

Division of  
pension rights:  
England and  
Wales.

- “(c) in particular, where the court determines to make such an order, whether the order should provide for the accrued rights of the party with pension rights (“the pension rights”) to be divided between that party and the other party in such a way as to reduce the pension rights of the party with those rights and to create pension rights for the other party.”.

1973 c. 18.

(3) After subsection (7) of that section, add—

“(8) If a pensions adjustment order under subsection (2)(c) above is made, the pension rights shall be reduced and pension rights of the other party shall be created in the prescribed manner with benefits payable on prescribed conditions, except that the court shall not have the power—

- (a) to require the trustees or managers of the scheme to provide benefits under their own scheme if they are able and willing to create the rights for the other party by making a transfer payment to another scheme and the trustees and managers of that other scheme are able and willing to accept such a payment and to create those rights; or

## PART II

(b) to require the trustees or managers of the scheme to make a transfer to another scheme—

(i) if the scheme is an unfunded scheme (unless the trustees or managers are able and willing to make such a transfer payment); or

(ii) in prescribed circumstances.

(9) No pensions adjustment order may be made under subsection (2)(c) above—

(a) if the scheme is a scheme of a prescribed type, or

(b) in prescribed circumstances, or

(c) insofar as it would affect benefits of a prescribed type.”

(4) In section 25D (pensions: supplementary), insert—

(a) in subsection (2)—

(i) at the end of paragraph (a), the words “or prescribe the rights of the other party under the pension scheme.”; and

(ii) after paragraph (a), the following paragraph—

“(aa) make such consequential modifications of any enactment or subordinate legislation as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of section 25B; and an order under this paragraph may make provision applying generally in relation to enactments and subordinate legislation of a description specified in the order.”;

(b) in subsection (4), in the appropriate place in alphabetical order, the following entries—

“‘funded scheme’ means a scheme under which the benefits are provided for by setting aside resources related to the value of the members’ rights as they accrue (and ‘unfunded scheme’ shall be construed accordingly);

‘subordinate legislation’ has the same meaning as in the Interpretation Act 1978.”; and

(c) after subsection (4), the following subsection—

“(4A) Other expressions used in section 25B above shall be construed in accordance with section 124 (interpretation of Part I) of the Pensions Act 1995.”

1978 c. 30.

1995 c. 26.

Division of pension assets: Scotland.

1985 c. 37.

**17.** Section 10 of the Family Law (Scotland) Act 1985 (sharing of value of matrimonial property), is amended as follows—

(a) in subsection (5) at the end of paragraph (b), insert “, and

(c) in the assets in respect of which either party has accrued rights to benefits under a pension scheme”; and

(b) after subsection (5) insert—

“(5A) In the case of an unfunded pension scheme, the court may not make an order which would allow assets to be removed from the scheme earlier than would otherwise have been the case.”.

## PART II

18.—(1) In section 1 of the Domestic Proceedings and Magistrates' Courts Act 1978, omit paragraphs (c) and (d) (which provide for behaviour and desertion to be grounds on which an application for a financial provision order may be made).

Grounds for financial provision orders in magistrates' courts.

1978 c. 22.

(2) In section 7(1) of that Act (powers of magistrates' court where spouses are living apart by agreement), omit "neither party having deserted the other".

*Jurisdiction and commencement of proceedings*

19.—(1) In this section "the court's jurisdiction" means—

Jurisdiction in relation to divorce and separation.

- (a) the jurisdiction of the court under this Part to entertain marital proceedings; and
- (b) any other jurisdiction conferred on the court under this Part, or any other enactment, in consequence of the making of a statement.

(2) The court's jurisdiction is exercisable only if—

- (a) at least one of the parties was domiciled in England and Wales on the statement date;
- (b) at least one of the parties was habitually resident in England and Wales throughout the period of one year ending with the statement date; or
- (c) nullity proceedings are pending in relation to the marriage when the marital proceedings commence.

(3) Subsection (4) applies if—

- (a) a separation order is in force; or
- (b) an order preventing divorce has been cancelled.

(4) The court—

- (a) continues to have jurisdiction to entertain an application made by reference to the order referred to in subsection (3); and
- (b) may exercise any other jurisdiction which is conferred on it in consequence of such an application.

(5) Schedule 3 amends Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (orders to stay proceedings where there are proceedings in other jurisdictions).

1973 c. 45.

(6) The court's jurisdiction is exercisable subject to any order for a stay under Schedule 1 to that Act.

(7) In this section—

"nullity proceedings" means proceedings in respect of which the court has jurisdiction under section 5(3) of the Domicile and Matrimonial Proceedings Act 1973; and

"statement date" means the date on which the relevant statement was received by the court.

20.—(1) The receipt by the court of a statement is to be treated as the commencement of proceedings.

Time when proceedings for divorce or separation begin.

(2) The proceedings are to be known as marital proceedings.

(3) Marital proceedings are also—

## PART II

- (a) separation proceedings, if an application for a separation order has been made under section 3 by reference to the statement and not withdrawn;
- (b) divorce proceedings, if an application for a divorce order has been made under section 3 by reference to the statement and not withdrawn.

(4) Marital proceedings are to be treated as being both divorce proceedings and separation proceedings at any time when no application by reference to the statement, either for a divorce order or for a separation order, is outstanding.

(5) Proceedings which are commenced by the making of an application under section 4(3) are also marital proceedings and divorce proceedings.

(6) Marital proceedings come to an end—

- (a) on the making of a separation order;
- (b) on the making of a divorce order;
- (c) on the withdrawal of the statement by a notice in accordance with section 5(3)(a);
- (d) at the end of the specified period mentioned in section 5(3)(b), if no application under section 3 by reference to the statement is outstanding;
- (e) on the withdrawal of all such applications which are outstanding at the end of that period;
- (f) on the withdrawal of an application under section 4(3).

*Intestacy*

Intestacy: effect of separation.

21. Where—

- (a) a separation order is in force, and
- (b) while the parties to the marriage remain separated, one of them dies intestate as respects any real or personal property,

that property devolves as if the other had died before the intestacy occurred.

*Marriage support services*

Funding for marriage support services.

22.—(1) The Lord Chancellor may, with the approval of the Treasury, make grants in connection with—

- (a) the provision of marriage support services;
- (b) research into the causes of marital breakdown;
- (c) research into ways of preventing marital breakdown.

(2) Any grant under this section may be made subject to such conditions as the Lord Chancellor considers appropriate.

(3) In exercising his power to make grants in connection with the provision of marriage support services, the Lord Chancellor is to have regard, in particular, to the desirability of services of that kind being available when they are first needed.

Provision of marriage counselling.

23.—(1) The Lord Chancellor or a person appointed by him may secure the provision, in accordance with regulations made by the Lord Chancellor, of marriage counselling.

## PART II

(2) Marriage counselling may only be provided under this section at a time when a period for reflection and consideration—

- (a) is running in relation to the marriage; or
- (b) is interrupted under section 7(8) (but not for a continuous period of more than 18 months).

(3) Marriage counselling may only be provided under this section for persons who would not be required to make any contribution towards the cost of mediation provided for them under Part IIIA of the Legal Aid Act 1988. 1988 c. 34.

(4) Persons for whom marriage counselling is provided under this section are not to be required to make any contribution towards the cost of the counselling.

(5) Marriage counselling is only to be provided under this section if it appears to the marriage counsellor to be suitable in all the circumstances.

(6) Regulations under subsection (1) may—

- (a) make provision about the way in which marriage counselling is to be provided; and
- (b) prescribe circumstances in which the provision of marriage counselling is to be subject to the approval of the Lord Chancellor.

(7) A contract entered into for the purposes of subsection (1) by a person appointed under that subsection must include such provision as the Lord Chancellor may direct.

(8) If the person appointed under subsection (1) is the Legal Aid Board, the powers conferred on the Board by or under the Legal Aid Act 1988 shall be exercisable for the purposes of this section as they are exercisable for the purposes of that Act.

(9) In section 15 of the Legal Aid Act 1988 (availability of, and payment for, representation under Part IV of the Act), after subsection (3H) insert—

“(3I) A person may be refused representation for the purposes of any proceedings if—

- (a) the proceedings are marital proceedings within the meaning of Part II of the Family Law Act 1996; and
- (b) he is being provided with marriage counselling under section 23 of that Act in relation to the marriage.”

### *Interpretation*

24.—(1) In this Part—

“the 1973 Act” means the Matrimonial Causes Act 1973;

“child of the family” and “the court” have the same meaning as in the 1973 Act;

“divorce order” has the meaning given in section 2(1)(a);

“divorce proceedings” is to be read with section 20;

“marital proceedings” has the meaning given in section 20;

“non-molestation order” has the meaning given by section 42(1);

“occupation order” has the meaning given by section 39;

Interpretation of  
Part II etc.  
1973 c. 18.

## PART II

- “order preventing divorce” has the meaning given in section 10(2);
- “party”, in relation to a marriage, means one of the parties to the marriage;
- “period for reflection and consideration” has the meaning given in section 7;
- “separation order” has the meaning given in section 2(1)(b);
- “separation proceedings” is to be read with section 20;
- “statement” means a statement of marital breakdown;
- “statement of marital breakdown” has the meaning given in section 6(1).

(2) For the purposes of this Part, references to the withdrawal of an application are references, in relation to an application made jointly by both parties, to its withdrawal by a notice given, in accordance with rules of court—

- (a) jointly by both parties; or
- (b) separately by each of them.

(3) Where only one party gives such a notice of withdrawal, in relation to a joint application, the application shall be treated as if it had been made by the other party alone.

Connected proceedings.

**25.—**(1) For the purposes of this Part, proceedings are connected with the breakdown of a marriage if they fall within subsection (2) and, at the time of the proceedings—

- (a) a statement has been received by the court with respect to the marriage and it is or may become possible for an application for a divorce order or separation order to be made by reference to that statement;
- (b) such an application in relation to the marriage has been made and not withdrawn; or
- (c) a divorce order has been made, or a separation order is in force, in relation to the marriage.

1989 c. 41.

(2) The proceedings are any under Parts I to V of the Children Act 1989 with respect to a child of the family or any proceedings resulting from an application—

- (a) for, or for the cancellation of, an order preventing divorce in relation to the marriage;
- (b) by either party to the marriage for an order under Part IV;
- (c) for the exercise, in relation to a party to the marriage or child of the family, of any of the court’s powers under Part II of the 1973 Act;
- (d) made otherwise to the court with respect to, or in connection with, any proceedings connected with the breakdown of the marriage.



PART III

LEGAL AID FOR MEDIATION IN FAMILY MATTERS

26.—(1) In the Legal Aid Act 1988 insert, after section 13—

Legal aid for mediation in family matters. 1988 c. 34.

“PART IIIA  
MEDIATION

Scope of this Part.

13A.—(1) This Part applies to mediation in disputes relating to family matters.

(2) “Family matters” means matters which are governed by English law and in relation to which any question has arisen, or may arise—

(a) under any provision of—

(i) the 1973 Act;

(ii) the Domestic Proceedings and Magistrates’ Courts Act 1978; 1978 c. 22.

(iii) Parts I to V of the Children Act 1989; 1989 c. 41.

(iv) Parts II and IV of the Family Law Act 1996; or

(v) any other enactment prescribed;

(b) under any prescribed jurisdiction of a prescribed court or tribunal; or

(c) under any prescribed rule of law.

(3) Regulations may restrict this Part to mediation in disputes of any prescribed description.

(4) The power to—

(a) make regulations under subsection (2), or

(b) revoke any regulations made under subsection (3),

is exercisable only with the consent of the Treasury.”

(2) In section 2 of the 1988 Act, after subsection (3), insert—

“(3A) “Mediation” means mediation to which Part IIIA of this Act applies; and includes steps taken by a mediator in any case—

(a) in determining whether to embark on mediation;

(b) in preparing for mediation; and

(c) in making any assessment under that Part.”

(3) In section 43 of the 1988 Act, after the definition of “legal representative” insert—

““mediator” means a person with whom the Board contracts for the provision of mediation by any person.”

27. After section 13A of the 1988 Act, insert—

Provision and availability of mediation.

“Provision and availability of mediation.

13B.—(1) The Board may secure the provision of mediation under this Part.

(2) If mediation is provided under this Part, it is to be available to any person whose financial resources are such

## PART III

as, under regulations, make him eligible for mediation.

(3) A person is not to be granted mediation in relation to any dispute unless mediation appears to the mediator suitable to the dispute and the parties and all the circumstances.

(4) A grant of mediation under this Part may be amended, withdrawn or revoked.

(5) The power conferred by subsection (1) shall be exercised in accordance with any directions given by the Lord Chancellor.

(6) Any contract entered into by the Board for the provision of mediation under this Part must require the mediator to comply with a code of practice.

(7) The code must require the mediator to have arrangements designed to ensure—

- (a) that parties participate in mediation only if willing and not influenced by fear of violence or other harm;
- (b) that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
- (c) that the possibility of reconciliation is kept under review throughout mediation; and
- (d) that each party is informed about the availability of independent legal advice.

(8) Where there are one or more children of the family, the code must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider—

- (a) the welfare, wishes and feelings of each child; and
- (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.

(9) A contract entered into by the Board for the provision of mediation under this Part must also include such other provision as the Lord Chancellor may direct the Board to include.

(10) Directions under this section may apply generally to contracts, or to contracts of any description, entered into by the Board, but shall not be made with respect to any particular contract.”

Payment for mediation.

**28.**—(1) After section 13B of the 1988 Act, insert—

“Payment for mediation under this Part.

13C.—(1) Except as provided by this section, the legally assisted person is not to be required to pay for mediation provided under this Part.

(2) Subsection (3) applies if the financial resources of a legally assisted person are such as, under regulations, make him liable to make a contribution.

## PART III

(3) The legally assisted person is to pay to the Board in respect of the costs of providing the mediation, a contribution of such amount as is determined or fixed by or under the regulations.

(4) If the total contribution made by a person in respect of any mediation exceeds the Board's liability on his account, the excess shall be repaid to him.

(5) Regulations may provide that, where—

- (a) mediation under this Part is made available to a legally assisted person, and
- (b) property is recovered or preserved for the legally assisted person as a result of the mediation,

a sum equal to the Board's liability on the legally assisted person's account is, except so far as the regulations otherwise provide, to be a first charge on the property in favour of the Board.

(6) Regulations under subsection (5) may, in particular, make provision—

- (a) as to circumstances in which property is to be taken to have been, or not to have been, recovered or preserved; and
- (b) as to circumstances in which the recovery or preservation of property is to be taken to be, or not to be, the result of any mediation.

(7) For the purposes of subsection (5), the nature of the property and where it is situated is immaterial.

(8) The power to make regulations under section 34(2)(f) and (8) is exercisable in relation to any charge created under subsection (5) as it is exercisable in relation to the charge created by section 16.

(9) For the purposes of subsections (4) and (5), the Board's liability on any person's account in relation to any mediation is the aggregate amount of—

- (a) the sums paid or payable by the Board on his account for the mediation, determined in accordance with subsection (10);
- (b) any sums paid or payable in respect of its net liability on his account, determined in accordance with subsection (11) and the regulations—
  - (i) in respect of any proceedings, and
  - (ii) for any advice or assistance under Part III in connection with the proceedings or any matter to which the proceedings relate,so far as the proceedings relate to any matter to which the mediation relates; and
- (c) any sums paid or payable in respect of its net liability on his account, determined in accordance with the regulations, for any other

## PART III

advice or assistance under Part III in connection with the mediation or any matter to which the mediation relates.

(10) For the purposes of subsection (9)(a), the sums paid or payable by the Board on any person's account for any mediation are—

- (a) sums determined under the contract between the Board and the mediator as payable by the Board on that person's account for the mediation; or
- (b) if the contract does not differentiate between such sums and sums payable on any other person's account or for any other mediation, such part of the remuneration payable under the contract as may be specified in writing by the Board.

(11) For the purposes of subsection (9)(b), the Board's net liability on any person's account in relation to any proceedings is its net liability on his account under section 16(9)(a) and (b) in relation to the proceedings."

(2) In section 16(9), after paragraph (b) insert "and

"(c) if and to the extent that regulations so provide, any sums paid or payable in respect of the Board's liability on the legally assisted person's account in relation to any mediation in connection with any matter to which those proceedings relate."

(3) At the end of section 16, insert—

"(11) For the purposes of subsection (9)(c) above, the Board's liability on any person's account in relation to any mediation is its liability on his account under section 13C(9)(a) and (c) above in relation to the mediation."

Mediation and  
civil legal aid.

29. In section 15 of the 1988 Act, after subsection (3E) insert—

"(3F) A person shall not be granted representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator—

(a) to determine—

- (i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and
- (ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm; and

(b) if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation.

(3G) Subsection (3F) does not apply—

(a) in relation to proceedings under—

- (i) Part IV of the Family Law Act 1996;
- (ii) section 37 of the Matrimonial Causes Act 1973;
- (iii) Part IV or V of the Children Act 1989;

## PART III

- (b) in relation to proceedings of any other description that may be prescribed; or
- (c) in such circumstances as may be prescribed.

(3H) So far as proceedings relate to family matters, the Board, in determining under subsection (3)(a) whether, in relation to the proceedings, it is reasonable that a person should be granted representation under this Part—

- (a) must have regard to whether and to what extent recourse to mediation would be a suitable alternative to taking the proceedings; and
- (b) must for that purpose have regard to the outcome of the meeting held under subsection (3F) and to any assessment made for the purposes of section 13B(3)."

## PART IV

## FAMILY HOMES AND DOMESTIC VIOLENCE

*Rights to occupy matrimonial home*

30.—(1) This section applies if—

- (a) one spouse is entitled to occupy a dwelling-house by virtue of—
  - (i) a beneficial estate or interest or contract; or
  - (ii) any enactment giving that spouse the right to remain in occupation; and
- (b) the other spouse is not so entitled.

Rights concerning matrimonial home where one spouse has no estate, etc.

(2) Subject to the provisions of this Part, the spouse not so entitled has the following rights (“matrimonial home rights”)—

- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33;
- (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

(3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by the other spouse.

(4) A spouse’s occupation by virtue of this section—

- (a) is to be treated, for the purposes of the Rent (Agriculture) Act 1976 and the Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation by the other spouse as the other spouse’s residence, and 1976 c. 80.  
1977 c. 42.
- (b) if the spouse occupies the dwelling-house as that spouse’s only or principal home, is to be treated, for the purposes of the Housing Act 1985 and Part I of the Housing Act 1988, as occupation by the other spouse as the other spouse’s only or principal home. 1985 c. 68.  
1988 c. 50.

(5) If a spouse (“the first spouse”)—

## PART IV

- (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
- (b) makes any payment in or towards satisfaction of any liability of the other spouse ("the second spouse") in respect of mortgage payments affecting the dwelling-house,

the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.

(6) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to the other spouse.

(7) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.

(8) A spouse's matrimonial home rights continue—

- (a) only so long as the marriage subsists, except to the extent that an order under section 33(5) otherwise provides; and
- (b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.

(9) It is hereby declared that a spouse—

- (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
- (b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,

is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

Effect of  
matrimonial home  
rights as charge on  
dwelling-house.

**31.**—(1) Subsections (2) and (3) apply if, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.

(2) The other spouse's matrimonial home rights are a charge on the estate or interest.

(3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—

- (a) the date on which the spouse so entitled acquires the estate or interest;
- (b) the date of the marriage; and
- (c) 1st January 1968 (the commencement date of the Matrimonial Homes Act 1967).

## PART IV

(4) Subsections (5) and (6) apply if, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust.

(5) The rights are a charge also on the estate or interest of the trustees for the other spouse.

(6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.

(7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).

(8) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—

- (a) the death of the other spouse, or
- (b) the termination (otherwise than by death) of the marriage,

unless the court directs otherwise by an order made under section 33(5).

(9) If—

- (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and
- (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,

the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.

(10) If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the Land Registration Act 1925 or any enactment replaced by that Act—

- (a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and
- (b) a spouse's matrimonial home rights are not an overriding interest within the meaning of that Act affecting the dwelling-house even though the spouse is in actual occupation of the dwelling-house.

(11) A spouse's matrimonial home rights (whether or not constituting a charge) do not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.

## PART IV

## (12) If—

- (a) a spouse's matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and
- (b) that estate is the subject of a mortgage,

1972 c. 61.  
1925 c. 20.

then if, after the date of the creation of the mortgage ("the first mortgage"), the charge is registered under section 2 of the Land Charges Act 1972, the charge is, for the purposes of section 94 of the Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.

(13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

Further provisions relating to matrimonial home rights.  
1983 c. 19.

32. Schedule 4 re-enacts with consequential amendments and minor modifications provisions of the Matrimonial Homes Act 1983.

*Occupation orders*

Occupation orders where applicant has estate or interest etc. or has matrimonial home rights.

## 33.—(1) If—

- (a) a person ("the person entitled")—
  - (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or
  - (ii) has matrimonial home rights in relation to a dwelling-house, and
- (b) the dwelling-house—
  - (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
  - (ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).

(2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

## (3) An order under this section may—

- (a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");
- (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
- (c) regulate the occupation of the dwelling-house by either or both parties;
- (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;



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- (e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;
- (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (g) exclude the respondent from a defined area in which the dwelling-house is included.

(4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.

(5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by—

- (a) the death of the other spouse; or
- (b) the termination (otherwise than by death) of the marriage.

(6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
- (d) the conduct of the parties in relation to each other and otherwise.

(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—

- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
- (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

(8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.

(9) An order under this section—

- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
- (b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.

(10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

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Effect of order under s. 33 where rights are charge on dwelling-house.

**34.—**(1) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse—

- (a) an order under section 33 against the other spouse has, except so far as a contrary intention appears, the same effect against persons deriving title under the other spouse or under the trustees and affected by the charge, and
- (b) sections 33(1), (3), (4) and (10) and 30(3) to (6) apply in relation to any person deriving title under the other spouse or under the trustees and affected by the charge as they apply in relation to the other spouse.

(2) The court may make an order under section 33 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

One former spouse with no existing right to occupy.

**35.—**(1) This section applies if—

- (a) one former spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;
- (b) the other former spouse is not so entitled; and
- (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.

(2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse ("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision—

- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
- (b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision—

- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
- (b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also—

- (a) regulate the occupation of the dwelling-house by either or both of the parties;
- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—

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- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise;
  - (e) the length of time that has elapsed since the parties ceased to live together;
  - (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
  - (g) the existence of any pending proceedings between the parties—
    - (i) for an order under section 23A or 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.); 1973 c. 18.
    - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or 1989 c. 41.
    - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and
  - (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses; and
  - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.
- (11) A former spouse who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

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(12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 33.

(13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—

- (a) as if he were the spouse entitled to occupy the dwelling-house by virtue of that section; and
- (b) as if the respondent were the other spouse.

One cohabitant or former cohabitant with no existing right to occupy.

**36.**—(1) This section applies if—

- (a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;
- (b) the other cohabitant or former cohabitant is not so entitled; and
- (c) that dwelling-house is the home in which they live together as husband and wife or a home in which they at any time so lived together or intended so to live together.

(2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant (“the respondent”).

(3) If the applicant is in occupation, an order under this section must contain provision—

- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
- (b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision—

- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
- (b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also—

- (a) regulate the occupation of the dwelling-house by either or both of the parties;
- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;

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- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
- (d) the conduct of the parties in relation to each other and otherwise;
- (e) the nature of the parties' relationship;
- (f) the length of time during which they have lived together as husband and wife;
- (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
- (h) the length of time that has elapsed since the parties ceased to live together; and
- (i) the existence of any pending proceedings between the parties—
  - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
  - (ii) relating to the legal or beneficial ownership of the dwelling-house.

1989 c. 41.

(7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the matters mentioned in subsection (6)(a) to (d); and
- (b) the questions mentioned in subsection (8).

(8) The questions are—

- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and
- (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(9) An order under this section—

- (a) may not be made after the death of either of the parties; and
- (b) ceases to have effect on the death of either of them.

(10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

(11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

(12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.

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(13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—

- (a) as if he were a spouse entitled to occupy the dwelling-house by virtue of that section; and
- (b) as if the respondent were the other spouse.

Neither spouse  
entitled to occupy.

37.—(1) This section applies if—

- (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but
- (b) neither of them is entitled to remain in occupation—
  - (i) by virtue of a beneficial estate or interest or contract; or
  - (ii) by virtue of any enactment giving him the right to remain in occupation.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may—

- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
- (b) regulate the occupation of the dwelling-house by either or both of the spouses;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.

(5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

Neither  
cohabitant or  
former cohabitant  
entitled to occupy.

38.—(1) This section applies if—

- (a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they live or lived together as husband and wife; but
- (b) neither of them is entitled to remain in occupation—
  - (i) by virtue of a beneficial estate or interest or contract; or
  - (ii) by virtue of any enactment giving him the right to remain in occupation.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may—

- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
- (b) regulate the occupation of the dwelling-house by either or both of the parties;

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- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) (“a subsection (3) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
- (d) the conduct of the parties in relation to each other and otherwise; and
- (e) the questions mentioned in subsection (5).

(5) The questions are—

- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
- (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

**39.—**(1) In this Part an “occupation order” means an order under section 33, 35, 36, 37 or 38.

Supplementary provisions.

(2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.

(3) If—

- (a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and
- (b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,

the court may make an order under that other section.

(4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

**40.—**(1) The court may on, or at any time after, making an occupation order under section 33, 35 or 36—

Additional provisions that may be included in certain occupation orders.

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- (a) impose on either party obligations as to—
  - (i) the repair and maintenance of the dwelling-house; or
  - (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;
- (b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;
- (c) grant either party possession or use of furniture or other contents of the dwelling-house;
- (d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;
- (e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

(2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including—

- (a) the financial needs and financial resources of the parties; and
- (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

Additional considerations if parties are cohabitants or former cohabitants.

**41.**—(1) This section applies if the parties are cohabitants or former cohabitants.

(2) Where the court is required to consider the nature of the parties' relationship, it is to have regard to the fact that they have not given each other the commitment involved in marriage.

*Non-molestation orders*

Non-molestation orders.

**42.**—(1) In this Part a “non-molestation order” means an order containing either or both of the following provisions—

- (a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;
- (b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order—

- (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or



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- (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

(3) In subsection (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act). 1989 c. 41.

(4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—

- (a) of the applicant or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and  
(b) of any relevant child.

(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) A non-molestation order may be made for a specified period or until further order.

(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

*Further provisions relating to occupation and non-molestation orders*

43.—(1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court. Leave of court required for applications by children under sixteen.

(2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

44.—(1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry. Evidence of agreement to marry.

(2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—

- (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or  
(b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

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## Ex parte orders.

**45.—(1)** The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—

- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
  - (i) where the court is a magistrates' court, in effecting service of proceedings; or
  - (ii) in any other case, in effecting substituted service.

(3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

(4) If, at a full hearing, the court makes an occupation order (“the full order”), then—

- (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
- (b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.

(5) In this section—

“full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;

“initial order” means an occupation order made by virtue of subsection (1); and

“relevant section” means section 33(10), 35(10), 36(10), 37(5) or 38(6).

## Undertakings.

**46.—(1)** In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.

(4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.

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(5) This section has effect without prejudice to the powers of the High Court and the county court apart from this section.

47.—(1) In this section “a relevant order” means an occupation order or a non-molestation order.

Arrest for breach of order.

(2) If—

- (a) the court makes a relevant order; and
- (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

(3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it—

- (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
- (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.

(4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.

(5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.

(6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

(7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—

- (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
- (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

(8) If the court has made a relevant order but—

- (a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or
- (b) has attached that power only to certain provisions of the order,

then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.

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(9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless—

- (a) the application is substantiated on oath; and
- (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.

(10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.

1980 c. 43. (11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 of the Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and a county court to remand a person by virtue of this section.

(12) If a person remanded under this section is granted bail (whether in the High Court or a county court under Schedule 5 or in a magistrates' court under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

Remand for medical examination and report.

**48.**—(1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.

(2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.

(3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.

- (4) If there is reason to suspect that a person who has been arrested—
  - (a) under section 47(6), or
  - (b) under a warrant issued on an application made under section 47(8),

1983 c. 20. is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section.

Variation and discharge of orders.

**49.**—(1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—

- (a) the respondent, or
- (b) the person on whose application the order was made.

(2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.

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(3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 33 against the other spouse may also be varied or discharged by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.

(4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

*Enforcement powers of magistrates' courts*

50.—(1) If, under section 63(3) of the Magistrates' Courts Act 1980, a magistrates' court has power to commit a person to custody for breach of a relevant requirement, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.

Power of magistrates' court to suspend execution of committal order.  
1980 c. 43.

(2) In subsection (1) "a relevant requirement" means—

- (a) an occupation order or non-molestation order;
- (b) an exclusion requirement included by virtue of section 38A of the Children Act 1989 in an interim care order made under section 38 of that Act; or
- (c) an exclusion requirement included by virtue of section 44A of the Children Act 1989 in an emergency protection order under section 44 of that Act.

1989 c. 41.

51.—(1) A magistrates' court has the same power to make a hospital order or guardianship order under section 37 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of a relevant requirement as a magistrates' court has under those sections in the case of a person convicted of an offence punishable on summary conviction with imprisonment.

Power of magistrates' court to order hospital admission or guardianship.  
1983 c. 20.

(2) In subsection (1) "a relevant requirement" has the meaning given by section 50(2).

*Interim care orders and emergency protection orders*

52. Schedule 6 makes amendments of the provisions of the Children Act 1989 relating to interim care orders and emergency protection orders.

Amendments of Children Act 1989.

*Transfer of tenancies*

53. Schedule 7 makes provision in relation to the transfer of certain tenancies on divorce etc. or on separation of cohabitants.

Transfer of certain tenancies.

*Dwelling-house subject to mortgage*

54.—(1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.

Dwelling-house subject to mortgage.

## PART IV

(2) Subsection (1) applies whether or not the mortgagee is in possession.

(3) Where a person ("A") is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of—

- (a) any matrimonial home rights conferred by section 30, or
- (b) any rights conferred by an order under section 35 or 36,

have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.

(4) Subsection (3) does not apply, in the case of matrimonial home rights, if under section 31 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.

(5) In this section "connected person", in relation to any person, means that person's spouse, former spouse, cohabitant or former cohabitant.

Actions by mortgagees: joining connected persons as parties.

**55.**—(1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.

(2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).

(3) The circumstances are that—

- (a) the connected person is enabled by section 30(3) or (6) (or by section 30(3) or (6) as applied by section 35(13) or 36(13)), to meet the mortgagor's liabilities under the mortgage;
- (b) he has applied to the court before the action is finally disposed of in that court; and
- (c) the court sees no special reason against his being made a party to the action and is satisfied—
  - (i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings; or
  - (ii) that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.

1970 c. 31.

(4) In this section "connected person" has the same meaning as in section 54.

Actions by mortgagees: service of notice on certain persons.

**56.**—(1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is—

- (a) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or
- (b) in the case of registered land, a subsisting registration of—
  - (i) a notice under section 31(10);

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(ii) a notice under section 2(8) of the Matrimonial Homes Act 1983; or 1983 c. 19.

(iii) a notice or caution under section 2(7) of the Matrimonial Homes Act 1967. 1967 c. 75.

(2) If the person on whose behalf—

- (a) the land charge is registered, or
- (b) the notice or caution is entered,

is not a party to the action, the mortgagee must serve notice of the action on him.

(3) If—

- (a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (1)(a) or (b),
- (b) a certificate of the result of the search has been issued, and
- (c) the action is commenced within the priority period,

the relevant time is the date of the certificate.

(4) In any other case the relevant time is the time when the action is commenced.

(5) The priority period is, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser. 1972 c. 61.

*Jurisdiction and procedure etc.*

57.—(1) For the purposes of this Part “the court” means the High Court, a county court or a magistrates’ court. Jurisdiction of courts.

(2) Subsection (1) is subject to the provision made by or under the following provisions of this section, to section 59 and to any express provision as to the jurisdiction of any court made by any other provision of this Part.

(3) The Lord Chancellor may by order specify proceedings under this Part which may only be commenced in—

- (a) a specified level of court;
- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(4) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Part may only be commenced in—

- (a) a specified level of court;
- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(5) The Lord Chancellor may by order provide that in specified circumstances the whole, or any specified part of any specified proceedings under this Part is to be transferred to—

- (a) a specified level of court;

## PART IV

- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(6) An order under subsection (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.

1984 c. 42.

(7) An order under subsection (5) may make such provision as the Lord Chancellor thinks appropriate for excluding specified proceedings from the operation of section 38 or 39 of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings) or any other enactment which would otherwise govern the transfer of those proceedings, or any part of them.

(8) For the purposes of subsections (3), (4) and (5), there are three levels of court—

- (a) the High Court;
- (b) any county court; and
- (c) any magistrates' court.

(9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for specified purposes of this Part, or of any provision made under this Part.

(10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.

(11) In this section "specified" means specified by an order under this section.

Contempt proceedings.

**58.** The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised by the relevant judicial authority.

Magistrates' courts.

**59.—(1)** A magistrates' court shall not be competent to entertain any application, or make any order, involving any disputed question as to a party's entitlement to occupy any property by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, unless it is unnecessary to determine the question in order to deal with the application or make the order.

(2) A magistrates' court may decline jurisdiction in any proceedings under this Part if it considers that the case can more conveniently be dealt with by another court.

1980 c. 43.

(3) The powers of a magistrates' court under section 63(2) of the Magistrates' Courts Act 1980 to suspend or rescind orders shall not apply in relation to any order made under this Part.

Provision for third parties to act on behalf of victims of domestic violence.

**60.—(1)** Rules of court may provide for a prescribed person, or any person in a prescribed category, ("a representative") to act on behalf of another in relation to proceedings to which this Part applies.



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(2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.

(3) Rules made under this section may prescribe—

- (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
- (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.

(4) Any rules made under this section may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.

(5) Any such rules may be replaced by further rules made under this section.

61.—(1) An appeal shall lie to the High Court against—

Appeals.

- (a) the making by a magistrates' court of any order under this Part, or
- (b) any refusal by a magistrates' court to make such an order,

but no appeal shall lie against any exercise by a magistrates' court of the power conferred by section 59(2).

(2) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.

(3) Where an order is made under subsection (2), the High Court may also make such incidental or consequential orders as appear to it to be just.

(4) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—

- (a) of the enforcement of the order, and
- (b) of any power to vary, revive or discharge orders,

be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.

(5) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under section 57(5).

(6) Except to the extent provided for in any order made under subsection (5), no appeal may be made against any decision of a kind mentioned in that subsection.

## PART IV

## General

Meaning of  
“cohabitants”,  
“relevant child”  
and “associated  
persons”.

1976 c. 36.  
1989 c. 41.

- 62.—(1) For the purposes of this Part—
- (a) “cohabitants” are a man and a woman who, although not married to each other, are living together as husband and wife; and
  - (b) “former cohabitants” is to be read accordingly, but does not include cohabitants who have subsequently married each other.
- (2) In this Part, “relevant child”, in relation to any proceedings under this Part, means—
- (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
  - (b) any child in relation to whom an order under the Adoption Act 1976 or the Children Act 1989 is in question in the proceedings; and
  - (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Part, a person is associated with another person if—
- (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
  - (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to any child, they are both persons falling within subsection (4); or
  - (g) they are parties to the same family proceedings (other than proceedings under this Part).
- (4) A person falls within this subsection in relation to a child if—
- (a) he is a parent of the child; or
  - (b) he has or has had parental responsibility for the child.
- (5) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if—
- (a) one is a natural parent of the child or a parent of such a natural parent; and
  - (b) the other is the child or any person—
    - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

## PART IV

Interpretation of  
Part IV.  
1976 c. 36.

## 63.—(1) In this Part—

“adoption order” has the meaning given by section 72(1) of the Adoption Act 1976;

“associated”, in relation to a person, is to be read with section 62(3) to (6);

“child” means a person under the age of eighteen years;

“cohabitant” and “former cohabitant” have the meaning given by section 62(1);

“the court” is to be read with section 57;

“development” means physical, intellectual, emotional, social or behavioural development;

“dwelling-house” includes (subject to subsection (4))—

(a) any building or part of a building which is occupied as a dwelling,

(b) any caravan, house-boat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it;

“family proceedings” means any proceedings—

(a) under the inherent jurisdiction of the High Court in relation to children; or

(b) under the enactments mentioned in subsection (2);

“harm”—

(a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and

(b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

“ill-treatment” includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

“matrimonial home rights” has the meaning given by section 30;

“mortgage”, “mortgagor” and “mortgagee” have the same meaning as in the Law of Property Act 1925;

1925 c. 20.

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by section 42(1);

“occupation order” has the meaning given by section 39;

“parental responsibility” has the same meaning as in the Children Act 1989;

1989 c. 41.

“relative”, in relation to a person, means—

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse or former spouse, or

## PART IV

(b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse, and includes, in relation to a person who is living or has lived with another person as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other;

“relevant child”, in relation to any proceedings under this Part, has the meaning given by section 62(2);

“the relevant judicial authority”, in relation to any order under this Part, means—

(a) where the order was made by the High Court, a judge of that court;

(b) where the order was made by a county court, a judge or district judge of that or any other county court; or

(c) where the order was made by a magistrates' court, any magistrates' court.

(2) The enactments referred to in the definition of “family proceedings” are—

(a) Part II;

(b) this Part;

1973 c. 18.

(c) the Matrimonial Causes Act 1973;

1976 c. 36.

(d) the Adoption Act 1976;

1978 c. 22.

(e) the Domestic Proceedings and Magistrates' Courts Act 1978;

1984 c. 42.

(f) Part III of the Matrimonial and Family Proceedings Act 1984;

1989 c. 41.

(g) Parts I, II and IV of the Children Act 1989;

1990 c. 37.

(h) section 30 of the Human Fertilisation and Embryology Act 1990.

(3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(4) For the purposes of sections 31, 32, 53 and 54 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of “dwelling-house” were omitted.

(5) It is hereby declared that this Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

## PART V

## SUPPLEMENTAL

Provision for separate representation for children.

**64.**—(1) The Lord Chancellor may by regulations provide for the separate representation of children in proceedings in England and Wales which relate to any matter in respect of which a question has arisen, or may arise, under—

(a) Part II;

## PART V

(b) Part IV;

(c) the 1973 Act; or

(d) the Domestic Proceedings and Magistrates' Courts Act 1978. 1978 c. 22.

(2) The regulations may provide for such representation only in specified circumstances.

**65.**—(1) Any power to make rules, orders or regulations which is conferred by this Act is exercisable by statutory instrument. Rules, regulations and orders.

(2) Any statutory instrument made under this Act may—

(a) contain such incidental, supplemental, consequential and transitional provision as the Lord Chancellor considers appropriate; and

(b) make different provision for different purposes.

(3) Any statutory instrument containing an order, rules or regulations made under this Act, other than an order made under section 5(8) or 67(3), shall be subject to annulment by a resolution of either House of Parliament.

(4) No order shall be made under section 5(8) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(5) This section does not apply to rules of court made, or any power to make rules of court, for the purposes of this Act.

**66.**—(1) Schedule 8 makes minor and consequential amendments. Consequential amendments, transitional provisions and repeals.

(2) Schedule 9 provides for the making of other modifications consequential on provisions of this Act, makes transitional provisions and provides for savings.

(3) Schedule 10 repeals certain enactments.

**67.**—(1) This Act may be cited as the Family Law Act 1996. Short title, commencement and extent.

(2) Section 65 and this section come into force on the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Lord Chancellor may by order appoint; and different days may be appointed for different purposes.

(4) This Act, other than section 17, extends only to England and Wales, except that—

(a) in Schedule 8—

(i) the amendments of section 38 of the Family Law Act 1986 extend also to Northern Ireland; 1986 c. 55.

(ii) the amendments of the Judicial Proceedings (Regulation of Reports) Act 1926 extend also to Scotland; and 1926 c. 61.

(iii) the amendments of the Maintenance Orders Act 1950, the Civil Jurisdiction and Judgments Act 1982, the Finance Act 1985 and sections 42 and 51 of the Family Law Act 1986 extend also to both Northern Ireland and Scotland; and 1950 c. 37, 1982 c. 27, 1985 c. 54.

**PART V**  
1968 c. 63.

(b) in Schedule 10, the repeal of section 2(1)(b) of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 extends also to Scotland.

## SCHEDULES

## SCHEDULE 1

Section 9(6).

## ARRANGEMENTS FOR THE FUTURE

*The first exemption*

1. The circumstances referred to in section 9(7)(a) are that—
  - (a) the requirements of section 11 have been satisfied;
  - (b) the applicant has, during the period for reflection and consideration, taken such steps as are reasonably practicable to try to reach agreement about the parties' financial arrangements; and
  - (c) the applicant has made an application to the court for financial relief and has complied with all requirements of the court in relation to proceedings for financial relief but—
    - (i) the other party has delayed in complying with requirements of the court or has otherwise been obstructive; or
    - (ii) for reasons which are beyond the control of the applicant, or of the other party, the court has been prevented from obtaining the information which it requires to determine the financial position of the parties.

*The second exemption*

2. The circumstances referred to in section 9(7)(b) are that—
  - (a) the requirements of section 11 have been satisfied;
  - (b) the applicant has, during the period for reflection and consideration, taken such steps as are reasonably practicable to try to reach agreement about the parties' financial arrangements;
  - (c) because of—
    - (i) the ill health or disability of the applicant, the other party or a child of the family (whether physical or mental), or
    - (ii) an injury suffered by the applicant, the other party or a child of the family,the applicant has not been able to reach agreement with the other party about those arrangements and is unlikely to be able to do so in the foreseeable future; and
  - (d) a delay in making the order applied for under section 3—
    - (i) would be significantly detrimental to the welfare of any child of the family; or
    - (ii) would be seriously prejudicial to the applicant.

*The third exemption*

3. The circumstances referred to in section 9(7)(c) are that—
  - (a) the requirements of section 11 have been satisfied;
  - (b) the applicant has found it impossible to contact the other party; and
  - (c) as a result, it has been impossible for the applicant to reach agreement with the other party about their financial arrangements.

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*The fourth exemption*

4. The circumstances referred to in section 9(7)(d) are that—
- (a) the requirements of section 11 have been satisfied;
  - (b) an occupation order or a non-molestation order is in force in favour of the applicant or a child of the family, made against the other party;
  - (c) the applicant has, during the period for reflection and consideration, taken such steps as are reasonably practicable to try to reach agreement about the parties' financial arrangements;
  - (d) the applicant has not been able to reach agreement with the other party about those arrangements and is unlikely to be able to do so in the foreseeable future; and
  - (e) a delay in making the order applied for under section 3—
    - (i) would be significantly detrimental to the welfare of any child of the family; or
    - (ii) would be seriously prejudicial to the applicant.

*Court orders and agreements*

5.—(1) Section 9 is not to be read as requiring any order or agreement to have been carried into effect at the time when the court is considering whether arrangements for the future have been made by the parties.

(2) The fact that an appeal is pending against an order of the kind mentioned in section 9(2)(a) is to be disregarded.

*Financial arrangements*

6. In section 9 and this Schedule “financial arrangements” has the same meaning as in section 34(2) of the 1973 Act.

*Negotiated agreements*

7. In section 9(2)(b) “negotiated agreement” means a written agreement between the parties as to future arrangements—

- (a) which has been reached as the result of mediation or any other form of negotiation involving a third party; and
- (b) which satisfies such requirements as may be imposed by rules of court.

*Declarations*

8.—(1) Any declaration of a kind mentioned in section 9—

- (a) must be in a prescribed form;
- (b) must, in prescribed cases, be accompanied by such documents as may be prescribed; and
- (c) must, in prescribed cases, satisfy such other requirements as may be prescribed.

(2) The validity of a divorce order or separation order made by reference to such a declaration is not to be affected by any inaccuracy in the declaration.

*Interpretation*

9. In this Schedule—

- “financial relief” has such meaning as may be prescribed; and  
 “prescribed” means prescribed by rules of court.



## SCHEDULE 2

Section 15.

## FINANCIAL PROVISION

*Introductory*

1. Part II of the 1973 Act (financial provision and property adjustment orders) is amended as follows.

*The orders*

2. For section 21 (definitions) substitute—

“Financial provision and property adjustment orders.

21.—(1) For the purposes of this Act, a financial provision order is—

- (a) an order that a party must make in favour of another person such periodical payments, for such term, as may be specified (a “periodical payments order”);
- (b) an order that a party must, to the satisfaction of the court, secure in favour of another person such periodical payments, for such term, as may be specified (a “secured periodical payments order”);
- (c) an order that a party must make a payment in favour of another person of such lump sum or sums as may be specified (an “order for the payment of a lump sum”).

(2) For the purposes of this Act, a property adjustment order is—

- (a) an order that a party must transfer such of his or her property as may be specified in favour of the other party or a child of the family;
- (b) an order that a settlement of such property of a party as may be specified must be made, to the satisfaction of the court, for the benefit of the other party and of the children of the family, or either or any of them;
- (c) an order varying, for the benefit of the parties and of the children of the family, or either or any of them, any marriage settlement;
- (d) an order extinguishing or reducing the interest of either of the parties under any marriage settlement.

(3) Subject to section 40 below, where an order of the court under this Part of this Act requires a party to make or secure a payment in favour of another person or to transfer property in favour of any person, that payment must be made or secured or that property transferred—

- (a) if that other person is the other party to the marriage, to that other party; and
- (b) if that other person is a child of the family, according to the terms of the order—
  - (i) to the child; or
  - (ii) to such other person as may be specified, for the benefit of that child.

(4) References in this section to the property of a party are references to any property to which that party is entitled either in possession or in reversion.

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(5) Any power of the court under this Part of this Act to make such an order as is mentioned in subsection (2)(b) to (d) above is exercisable even though there are no children of the family.

(6) In this section—

“marriage settlement” means an ante-nuptial or post-nuptial settlement made on the parties (including one made by will or codicil);

“party” means a party to a marriage; and

“specified” means specified in the order in question.”

*Financial provision: divorce and separation*

3. Insert, before section 23—

“Financial provision orders: divorce and separation.

22A.—(1) On an application made under this section, the court may at the appropriate time make one or more financial provision orders in favour of—

- (a) a party to the marriage to which the application relates; or
- (b) any of the children of the family.

(2) The “appropriate time” is any time—

- (a) after a statement of marital breakdown has been received by the court and before any application for a divorce order or for a separation order is made to the court by reference to that statement;
- (b) when an application for a divorce order or separation order has been made under section 3 of the 1996 Act and has not been withdrawn;
- (c) when an application for a divorce order has been made under section 4 of the 1996 Act and has not been withdrawn;
- (d) after a divorce order has been made;
- (e) when a separation order is in force.

(3) The court may make—

- (a) a combined order against the parties on one occasion,
- (b) separate orders on different occasions,
- (c) different orders in favour of different children,
- (d) different orders from time to time in favour of the same child,

but may not make, in favour of the same party, more than one periodical payments order, or more than one order for payment of a lump sum, in relation to any marital proceedings, whether in the course of the proceedings or by reference to a divorce order or separation order made in the proceedings.

(4) If it would not otherwise be in a position to make a financial provision order in favour of a party or child of the family, the court may make an interim periodical payments order, an interim order for the payment of a lump sum or a series of such orders, in favour of that party or child.

(5) Any order for the payment of a lump sum made under this section may—

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- (a) provide for the payment of the lump sum by instalments of such amounts as may be specified in the order; and
- (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (6) Nothing in subsection (5) above affects—
- (a) the power of the court under this section to make an order for the payment of a lump sum; or
- (b) the provisions of this Part of this Act as to the beginning of the term specified in any periodical payments order or secured periodical payments order.
- (7) Subsection (8) below applies where the court—
- (a) makes an order under this section (“the main order”) for the payment of a lump sum; and
- (b) directs—
- (i) that payment of that sum, or any part of it, is to be deferred; or
- (ii) that that sum, or any part of it, is to be paid by instalments.
- (8) In such a case, the court may, on or at any time after making the main order, make an order (“the order for interest”) for the amount deferred, or the instalments, to carry interest (at such rate as may be specified in the order for interest)—
- (a) from such date, not earlier than the date of the main order, as may be so specified;
- (b) until the date when the payment is due.
- (9) This section is to be read subject to any restrictions imposed by this Act and to section 19 of the 1996 Act.
- 22B.—(1) No financial provision order, other than an interim order, may be made under section 22A above so as to take effect before the making of a divorce order or separation order in relation to the marriage, unless the court is satisfied—
- (a) that the circumstances of the case are exceptional; and
- (b) that it would be just and reasonable for the order to be so made.
- (2) Except in the case of an interim periodical payments order, the court may not make a financial provision order under section 22A above at any time while the period for reflection and consideration is interrupted under section 7(8) of the 1996 Act.
- (3) No financial provision order may be made under section 22A above by reference to the making of a statement of marital breakdown if, by virtue of section 5(3) or 7(9) of the 1996 Act (lapse of divorce or separation process), it has ceased to be possible—
- (a) for an application to be made by reference to that statement; or
- (b) for an order to be made on such an application.
- (4) No financial provision order may be made under section 22A after a divorce order has been made, or while a separation order is in force, except—

Restrictions  
affecting section  
22A.

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- (a) in response to an application made before the divorce order or separation order was made; or
- (b) on a subsequent application made with the leave of the court."

(5) In this section, "period for reflection and consideration" means the period fixed by section 7 of the 1996 Act."

*Financial provision: nullity of marriage*

4. For section 23 substitute—

"Financial provision orders: nullity.

23.—(1) On or after granting a decree of nullity of marriage (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more financial provision orders in favour of—

- (a) either party to the marriage; or
- (b) any child of the family.

(2) Before granting a decree in any proceedings for nullity of marriage, the court may make against either or each of the parties to the marriage—

- (a) an interim periodical payments order, an interim order for the payment of a lump sum, or a series of such orders, in favour of the other party;
- (b) an interim periodical payments order, an interim order for the payment of a lump sum, a series of such orders or any one or more other financial provision orders in favour of each child of the family.

(3) Where any such proceedings are dismissed, the court may (either immediately or within a reasonable period after the dismissal) make any one or more financial provision orders in favour of each child of the family.

(4) An order under this section that a party to a marriage must pay a lump sum to the other party 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 in his or her favour.

(5) An order under this section for the payment of a lump sum to or for the benefit of a child of the family 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 in his favour to be met.

(6) An order under this section for the payment of a lump sum may—

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

(7) Nothing in subsections (4) to (6) above affects—

- (a) the power under subsection (1) above to make an order for the payment of a lump sum; or
- (b) the provisions of this Act as to the beginning of the term specified in any periodical payments order or secured periodical payments order.

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(8) The powers of the court under this section to make one or more financial provision orders are exercisable against each party to the marriage by the making of—

(a) a combined order on one occasion, or

(b) separate orders on different occasions,

but the court may not make more than one periodical payments order, or more than one order for payment of a lump sum, in favour of the same party.

(9) The powers of the court under this section so far as they consist in power to make one or more orders in favour of the children of the family—

(a) may be exercised differently in favour of different children; and

(b) except in the case of the power conferred by subsection (3) above, may be exercised from time to time in favour of the same child; and

(c) in the case of the power conferred by that subsection, if it is exercised by the making of a financial provision order of any kind in favour of a child, shall include power to make, from time to time, further financial provision orders of that or any other kind in favour of that child.

(10) Where an order is made under subsection (1) above in favour of a party to the marriage on or after the granting of a decree of nullity of marriage, neither the order nor any settlement made in pursuance of the order takes effect unless the decree has been made absolute.

(11) Subsection (10) above does not affect the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel.

(12) Where the court—

(a) makes an order under this section (“the main order”) for the payment of a lump sum; and

(b) directs—

(i) that payment of that sum or any part of it is to be deferred; or

(ii) that that sum or any part of it is to be paid by instalments,

it may, on or at any time after making the main order, make an order (“the order for interest”) for the amount deferred or the instalments to carry interest at such rate as may be specified by the order for interest from such date, not earlier than the date of the main order, as may be so specified, until the date when payment of it is due.

(13) This section is to be read subject to any restrictions imposed by this Act.”

*Property adjustment orders: divorce and separation*

5. Insert, before section 24—

“Property adjustment orders: divorce and separation.

23A.—(1) On an application made under this section, the court may, at any time mentioned in section 22A(2) above, make one or more property adjustment orders.

(2) If the court makes, in favour of the same party to the

## SCH. 2

marriage, more than one property adjustment order in relation to any marital proceedings, whether in the course of the proceedings or by reference to a divorce order or separation order made in the proceedings, each order must fall within a different paragraph of section 21(2) above.

(3) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more property adjustment orders in relation to the marriage as it thinks fit.

(4) Subsection (3) above does not affect section 31 or 31A below.

(5) This section is to be read subject to any restrictions imposed by this Act and to section 19 of the 1996 Act.

Restrictions affecting section 23A.

23B.—(1) No property adjustment order may be made under section 23A above so as to take effect before the making of a divorce order or separation order in relation to the marriage unless the court is satisfied—

- (a) that the circumstances of the case are exceptional; and
- (b) that it would be just and reasonable for the order to be so made.

(2) The court may not make a property adjustment order under section 23A above at any time while the period for reflection and consideration is interrupted under section 7(8) of the 1996 Act.

(3) No property adjustment order may be made under section 23A above by virtue of the making of a statement of marital breakdown if, by virtue of section 5(3) or 7(5) of the 1996 Act (lapse of divorce or separation process), it has ceased to be possible—

- (a) for an application to be made by reference to that statement; or
- (b) for an order to be made on such an application.

(4) No property adjustment order may be made under section 23A above after a divorce order has been made, or while a separation order is in force, except—

- (a) in response to an application made before the divorce order or separation order was made; or
- (b) on a subsequent application made with the leave of the court.

(5) In this section, “period for reflection and consideration” means the period fixed by section 7 of the 1996 Act.”

*Property adjustment orders: nullity*

6. For section 24, substitute—

“Property adjustment orders: nullity of marriage.

24.—(1) On or after granting a decree of nullity of marriage (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more property adjustment orders in relation to the marriage.

(2) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more property adjustment orders in relation to the marriage as it thinks fit.

(3) Subsection (2) above does not affect section 31 or 31A below.

(4) Where a property adjustment order is made under this section on or after the granting of a decree of nullity of marriage, neither the order nor any settlement made in pursuance of the order is to take effect unless the decree has been made absolute.

(5) That does not affect the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel.

(6) This section is to be read subject to any restrictions imposed by this Act.”

*Period of secured and unsecured payments orders*

7.—(1) In section 28(1) (duration of a continuing financial provision order in favour of a party to a marriage), for paragraphs (a) and (b) substitute—

“(a) a term specified in the order which is to begin before the making of the order shall begin no earlier—

(i) where the order is made by virtue of section 22A(2)(a) or (b) above, unless sub-paragraph (ii) below applies, than the beginning of the day on which the statement of marital breakdown in question was received by the court;

(ii) where the order is made by virtue of section 22A(2)(b) above and the application for the divorce order was made following cancellation of an order preventing divorce under section 10 of the 1996 Act, than the date of the making of that application;

(iii) where the order is made by virtue of section 22A(2)(c) above, than the date of the making of the application for the divorce order; or

(iv) in any other case, than the date of the making of the application on which the order is made;

(b) a term specified in a periodical payments order or secured periodical payments order shall be so defined as not to extend beyond—

(i) in the case of a periodical payments order, the death of the party by whom the payments are to be made; or

(ii) in either case, the death of the party in whose favour the order was made or the remarriage of that party following the making of a divorce order or decree of nullity.”

(2) In section 29 (duration of continuing financial provision order in favour of a child of the family) insert after subsection (1)—

“(1A) The term specified in a periodical payments order or secured periodical payments order made in favour of a child shall be such term as the court thinks fit.

(1B) If that term is to begin before the making of the order, it may do so no earlier than—

(a) in the case of an order made by virtue of section 22A(2)(a) or (b) above, except where paragraph (b) below applies, the beginning of the day on which the statement of marital breakdown in question was received by the court;

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- (b) in the case of an order made by virtue of section 22A(2)(b) above where the application for the divorce order was made following cancellation of an order preventing divorce under section 10 of the 1996 Act, the date of the making of that application;
- (c) in the case of an order made by virtue of section 22A(2)(c) above, the date of the making of the application for the divorce order; or
- (d) in any other case, the date of the making of the application on which the order is made.”

*Variations etc. following reconciliations*

## 8. Insert after section 31—

“Variation etc.  
following  
reconciliations.

31A.—(1) Where, at a time before the making of a divorce order—

- (a) an order (“a paragraph (a) order”) for the payment of a lump sum has been made under section 22A above in favour of a party,
- (b) such an order has been made in favour of a child of the family but the payment has not yet been made, or
- (c) a property adjustment order (“a paragraph (c) order”) has been made under section 23A above,

the court may, on an application made jointly by the parties to the marriage, vary or discharge the order.

(2) Where the court varies or discharges a paragraph (a) order, it may order the repayment of an amount equal to the whole or any part of the lump sum.

(3) Where the court varies or discharges a paragraph (c) order, it may (if the order has taken effect)—

- (a) order any person to whom property was transferred in pursuance of the paragraph (c) order to transfer—
  - (i) the whole or any part of that property, or
  - (ii) the whole or any part of any property appearing to the court to represent that property, in favour of a party to the marriage or a child of the family; or
- (b) vary any settlement to which the order relates in favour of any person or extinguish or reduce any person’s interest under that settlement.

(4) Where the court acts under subsection (3) it may make such supplemental provision (including a further property adjustment order or an order for the payment of a lump sum) as it thinks appropriate in consequence of any transfer, variation, extinguishment or reduction to be made under paragraph (a) or (b) of that subsection.

(5) Sections 24A and 30 above apply for the purposes of this section as they apply where the court makes a property adjustment order under section 23A or 24 above.

(6) The court shall not make an order under subsection (2), (3) or (4) above unless it appears to it that there has been a reconciliation between the parties to the marriage.

(7) The court shall also not make an order under subsection (3) or (4) above unless it appears to it that the order will not prejudice the interests of—

- (a) any child of the family; or



- (b) any person who has acquired any right or interest in consequence of the paragraph (c) order and is not a party to the marriage or a child of the family.”

## SCHEDULE 3

Section 19(5).

## STAY OF PROCEEDINGS

*Introductory*

1. Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (which relates to the staying of matrimonial proceedings) is amended as follows. 1973 c. 45.

*Interpretation*

2. In paragraph 1, for “The following five paragraphs” substitute “Paragraphs 2 to 6 below”.

3. For paragraph 2 substitute—

“2.—(1) “Matrimonial proceedings” means—

- (a) marital proceedings;
- (b) proceedings for nullity of marriage;
- (c) proceedings for a declaration as to the validity of a marriage of the petitioner; or
- (d) proceedings for a declaration as to the subsistence of such a marriage.

(2) “Marital proceedings” has the meaning given by section 20 of the Family Law Act 1996.

(3) “Divorce proceedings” means marital proceedings that are divorce proceedings by virtue of that section.”

4. Insert, after paragraph 4—

“4A.—(1) “Statement of marital breakdown” has the same meaning as in the Family Law Act 1996.

(2) “Relevant statement” in relation to any marital proceedings, means—

- (a) the statement of marital breakdown with which the proceedings commenced; or
- (b) if the proceedings are for the conversion of a separation order into a divorce order under section 4 of the Family Law Act 1996, the statement of marital breakdown by reference to which the separation order was made.”

*Duty to furnish particulars of concurrent proceedings*

5. For paragraph 7 substitute—

“7.—(1) While marital proceedings are pending in the court with respect to a marriage, this paragraph applies—

- (a) to the party or parties to the marriage who made the relevant statement; and
- (b) in prescribed circumstances where the statement was made by only one party, to the other party.

## SCH. 3

(2) While matrimonial proceedings of any other kind are pending in the court with respect to a marriage and the trial or first trial in those proceedings has not begun, this paragraph applies—

- (a) to the petitioner; and
- (b) if the respondent has included a prayer for relief in his answer, to the respondent.

(3) A person to whom this paragraph applies must give prescribed information about any proceedings which—

- (a) he knows to be continuing in another jurisdiction; and
- (b) are in respect of the marriage or capable of affecting its validity or subsistence.

(4) The information must be given in such manner, to such persons and on such occasions as may be prescribed.”

*Obligatory stays in divorce cases*

6.—(1) Paragraph 8 is amended as follows.

(2) For the words before paragraph (a) of sub-paragraph (1) substitute—

“(1) This paragraph applies where divorce proceedings are continuing in the court with respect to a marriage.

(2) Where it appears to the court, on the application of a party to the marriage—”.

(3) In sub-paragraph (1), in the words after paragraph (d), for “proceedings” substitute “divorce proceedings”.

(4) For sub-paragraph (2) substitute—

“(3) The effect of such an order is that, while it is in force—

- (a) no application for a divorce order in relation to the marriage may be made either by reference to the relevant statement or by reference to any subsequent statement of marital breakdown; and
- (b) if such an application has been made, no divorce order may be made on that application.”

*Discretionary stays*

7.—(1) Paragraph 9 is amended as follows.

(2) For sub-paragraph (1), substitute—

“(1) Sub-paragraph (1A) below applies where—

- (a) marital proceedings are continuing in the court; or
- (b) matrimonial proceedings of any other kind are continuing in the court, if the trial or first trial in the proceedings has not begun.

(1A) The court may make an order staying the proceedings if it appears to the court—

- (a) that proceedings in respect of the marriage, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings to which the order relates.”

(3) For sub-paragraph (3) substitute—

“(3) Where an application for a stay is pending under paragraph 8 above, the court shall not make an order under sub-paragraph (1A) staying marital proceedings in relation to the marriage.”

(4) In sub-paragraph 4, after “pending in the court,” insert “other than marital proceedings,”.

(5) After sub-paragraph (4), insert—

“(5) The effect of an order under sub-paragraph (1A) for a stay of marital proceedings is that, while it is in force—

- (a) no application for a divorce order or separation order in relation to the marriage may be made either by reference to the relevant statement or by reference to any subsequent statement of marital breakdown; and
- (b) if such an application has been made, no divorce order or separation order shall be made on that application.”

#### *Discharge of orders*

8. In paragraph 10, for sub-paragraph (2), substitute—

“(1A) Where the court discharges an order staying any proceedings, it may direct that the whole or a specified part of any period while the order has been in force—

- (a) is not to count towards any period specified in section 5(3) or 7(9) of the Family Law Act 1996; or
- (b) is to count towards any such period only for specified purposes.

(2) Where the court discharges an order under paragraph 8 above, it shall not again make such an order in relation to the marriage except in a case where the obligation to do so arises under that paragraph following receipt by the court of a statement of marital breakdown after the discharge of the order.”

#### *Ancillary matters*

9.—(1) Paragraph 11 is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) Sub-paragraphs (2) and (3) below apply where a stay of marital proceedings or proceedings for nullity of marriage—

- (a) has been imposed by reference to proceedings in a related jurisdiction for divorce, separation or nullity of marriage, and
- (b) is in force.

(1A) In this paragraph—

“lump sum order”, in relation to a stay, means an order—

(a) under section 22A or 23, 31 or 31A of the Matrimonial Causes Act 1973 which is an order for the payment of a lump sum for the purposes of Part II of that Act, or 1973 c. 18.

(b) made in any equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule, 1989 c. 41.

so far as it satisfies the condition mentioned in sub-paragraph (1C) below;

“the other proceedings”, in relation to a stay, means the proceedings in another jurisdiction by reference to which the stay was imposed;

“relevant order”, in relation to a stay, means—

## SCH. 3

1989 c. 41.

(a) any financial provision order (including an interim order), other than a lump sum order;

(b) any order made in equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule;

(c) any section 8 order under the Act of 1989; and

(d) except for the purposes of sub-paragraph (3) below, any order restraining a person from removing a child out of England and Wales or out of the care of another person, so far as it satisfies the condition mentioned in sub-paragraph (1C) below.

(1C) The condition is that the order is, or (apart from this paragraph) could be, made in connection with the proceedings to which the stay applies."

(3) In sub-paragraph (2)—

(a) for "any proceedings are stayed" substitute "this paragraph applies in relation to a stay";

(b) in paragraph (a), and in the first place in paragraph (c), omit "in connection with the stayed proceedings"; and

(c) in paragraphs (b) and (c), for "made in connection with the stayed proceedings" substitute "already made".

(4) In sub-paragraph (3)—

(a) for "any proceedings are stayed" substitute "this paragraph applies in relation to a stay";

(b) in paragraph (a), for "made in connection with the stayed proceedings" substitute "already made";

(c) in paragraphs (b) and (c), omit "in connection with the stayed proceedings".

(5) In sub-paragraph (3A), for the words before "any order made" substitute—

1973 c. 18.

"Where a secured periodical payments order within the meaning of the Matrimonial Causes Act 1973—

(a) has been made under section 22A(1)(b) or 23(1)(b) or (2)(b) of that Act, but

(b) ceases to have effect by virtue of sub-paragraph (2) or (3) above,".

(6) For sub-paragraph (4), substitute—

"(4) Nothing in sub-paragraphs (2) and (3) above affects any relevant order or lump sum order or any power to make such an order in so far as—

(a) where the stay applies to matrimonial proceedings other than marital proceedings, the order has been made or the power may be exercised following the receipt by the court of a statement of marital breakdown;

(b) where the stay is of marital proceedings, the order has been made or the power may be exercised in matrimonial proceedings of any other kind; or

(c) where the stay is of divorce proceedings only, the order has been made or the power may be exercised—

(i) in matrimonial proceedings which are not marital proceedings, or

(ii) in marital proceedings in which an application has been made for a separation order."

(7) In sub-paragraph (5)(c), for the words from “in connection” onwards substitute “where a stay no longer applies”.

## SCHEDULE 4

Section 32.

## PROVISIONS SUPPLEMENTARY TO SECTIONS 30 AND 31

*Interpretation*

1.—(1) In this Schedule—

- (a) any reference to a solicitor includes a reference to a licensed conveyancer or a recognised body, and
- (b) any reference to a person’s solicitor includes a reference to a licensed conveyancer or recognised body acting for that person.

(2) In sub-paragraph (1)—

“licensed conveyancer” has the meaning given by section 11(2) of the Administration of Justice Act 1985;

1985 c. 61.

“recognised body” means a body corporate for the time being recognised under section 9 (incorporated practices) or section 32 (provision of conveyancing by recognised bodies) of that Act.

*Restriction on registration where spouse entitled to more than one charge*

2. Where one spouse is entitled by virtue of section 31 to a registrable charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse is so entitled shall be registered under section 31(10) or under section 2 of the Land Charges Act 1972 at any one time, and if any of those charges is registered under either of those provisions the Chief Land Registrar, on being satisfied that any other of them is so registered, shall cancel the registration of the charge first registered.

1972 c. 61.

*Contract for sale of house affected by registered charge to include term requiring cancellation of registration before completion*

3.—(1) Where one spouse is entitled by virtue of section 31 to a charge on an estate in a dwelling-house and the charge is registered under section 31(10) or section 2 of the Land Charges Act 1972, it shall be a term of any contract for the sale of that estate whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract that the vendor will before such completion procure the cancellation of the registration of the charge at his expense.

(2) Sub-paragraph (1) shall not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge.

(3) If, on the completion of such a contract as is referred to in sub-paragraph (1), there is delivered to the purchaser or his solicitor an application by the spouse entitled to the charge for the cancellation of the registration of that charge, the term of the contract for which sub-paragraph (1) provides shall be deemed to have been performed.

(4) This paragraph applies only if and so far as a contrary intention is not expressed in the contract.

(5) This paragraph shall apply to a contract for exchange as it applies to a contract for sale.

(6) This paragraph shall, with the necessary modifications, apply to a contract for the grant of a lease or underlease of a dwelling-house as it applies to a contract for the sale of an estate in a dwelling-house.

## SCH. 4

*Cancellation of registration after termination of marriage, etc.*

1972 c. 61.

4.—(1) Where a spouse's matrimonial home rights are a charge on an estate in the dwelling-house and the charge is registered under section 31(10) or under section 2 of the Land Charges Act 1972, the Chief Land Registrar shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied—

- (a) by the production of a certificate or other sufficient evidence, that either spouse is dead, or
- (b) by the production of an official copy of a decree or order of a court, that the marriage in question has been terminated otherwise than by death, or
- (c) by the production of an order of the court, that the spouse's matrimonial home rights constituting the charge have been terminated by the order.

(2) Where—

- (a) the marriage in question has been terminated by the death of the spouse entitled to an estate in the dwelling-house or otherwise than by death, and
- (b) an order affecting the charge of the spouse not so entitled had been made under section 33(5),

then if, after the making of the order, registration of the charge was renewed or the charge registered in pursuance of sub-paragraph (3), the Chief Land Registrar shall not cancel the registration of the charge in accordance with sub-paragraph (1) unless he is also satisfied that the order has ceased to have effect.

(3) Where such an order has been made, then, for the purposes of sub-paragraph (2), the spouse entitled to the charge affected by the order may—

- (a) if before the date of the order the charge was registered under section 31(10) or under section 2 of the Land Charges Act 1972, renew the registration of the charge, and
- (b) if before the said date the charge was not so registered, register the charge under section 31(10) or under section 2 of the Land Charges Act 1972.

(4) Renewal of the registration of a charge in pursuance of sub-paragraph (3) shall be effected in such manner as may be prescribed, and an application for such renewal or for registration of a charge in pursuance of that sub-paragraph shall contain such particulars of any order affecting the charge made under section 33(5) as may be prescribed.

(5) The renewal in pursuance of sub-paragraph (3) of the registration of a charge shall not affect the priority of the charge.

(6) In this paragraph "prescribed" means prescribed by rules made under section 16 of the Land Charges Act 1972 or section 144 of the Land Registration Act 1925, as the circumstances of the case require.

1925 c. 21.

*Release of matrimonial home rights*

5.—(1) A spouse entitled to matrimonial home rights may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.

(2) Where a contract is made for the sale of an estate or interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge registered under section 31(10) or under section 2 of the Land Charges Act 1972, then, without prejudice to sub-paragraph (1), the matrimonial home rights constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs—

## SCH. 4

- (a) the delivery to the purchaser or lessee, as the case may be, or his solicitor on completion of the contract of an application by the spouse entitled to the charge for the cancellation of the registration of the charge; or
- (b) the lodging of such an application at Her Majesty's Land Registry.

*Postponement of priority of charge*

6. A spouse entitled by virtue of section 31 to a charge on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest shall rank in priority to the charge to which that spouse is so entitled.

## SCHEDULE 5

Section 47(11).

## POWERS OF HIGH COURT AND COUNTY COURT TO REMAND

*Interpretation*

1. In this Schedule "the court" means the High Court or a county court and includes—

- (a) in relation to the High Court, a judge of that court, and
- (b) in relation to a county court, a judge or district judge of that court.

*Remand in custody or on bail*

2.—(1) Where a court has power to remand a person under section 47, the court may—

- (a) remand him in custody, that is to say, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or
- (b) remand him on bail—

(i) by taking from him a recognizance (with or without sureties) conditioned as provided in sub-paragraph (3), or

(ii) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 4 and in the meantime committing the person to custody in accordance with paragraph (a).

(2) Where a person is brought before the court after remand, the court may further remand him.

(3) Where a person is remanded on bail under sub-paragraph (1), the court may direct that his recognizance be conditioned for his appearance—

- (a) before that court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(4) Where a recognizance is conditioned for a person's appearance in accordance with sub-paragraph (1)(b), the fixing of any time for him next to appear shall be deemed to be a remand; but nothing in this sub-paragraph or sub-paragraph (3) shall deprive the court of power at any subsequent hearing to remand him afresh.

(5) Subject to paragraph 3, the court shall not remand a person under this paragraph for a period exceeding 8 clear days, except that—

- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and
- (b) if the court adjourns a case under section 48(1), the court may remand him for the period of the adjournment.

## SCH. 5

(6) Where the court has power under this paragraph to remand a person in custody it may, if the remand is for a period not exceeding 3 clear days, commit him to the custody of a constable.

*Further remand*

3.—(1) If the court is satisfied that any person who has been remanded under paragraph 2 is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may, in his absence, remand him for a further time; and paragraph 2(5) shall not apply.

(2) Notwithstanding anything in paragraph 2(1), the power of the court under sub-paragraph (1) to remand a person on bail for a further time may be exercised by enlarging his recognizance and those of any sureties for him to a later time.

(3) Where a person remanded on bail under paragraph 2 is bound to appear before the court at any time and the court has no power to remand him under sub-paragraph (1), the court may in his absence enlarge his recognizance and those of any sureties for him to a later time; and the enlargement of his recognizance shall be deemed to be a further remand.

*Postponement of taking of recognizance*

4. Where under paragraph 2(1)(b)(ii) the court fixes the amount in which the principal and his sureties, if any, are to be bound, the recognizance may thereafter be taken by such person as may be prescribed by rules of court, and the same consequences shall follow as if it had been entered into before the court.

## Section 52.

## SCHEDULE 6

## AMENDMENTS OF CHILDREN ACT 1989

1989 c. 41.

1. After section 38 of the Children Act 1989 insert—

“Power to include exclusion requirement in interim care order.

38A.—(1) Where—

- (a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 31(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and
- (b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the interim care order.

(2) The conditions are—

- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and
- (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
  - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and



(ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following—

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.

(5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.

(8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.

(10) If, while an interim care order containing an exclusion requirement is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

Undertakings  
relating to interim  
care orders.

38B.—(1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1)—

- (a) shall be enforceable as if it were an order of the court, and
- (b) shall cease to have effect if, while it is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

## SCH. 6

(4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.”

1989 c. 41.

2. In section 39 of the Children Act 1989 (discharge and variation etc. of care orders and supervision orders) after subsection (3) insert—

“(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(3B) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

3. After section 44 of the Children Act 1989 insert—

“Power to include exclusion requirement in emergency protection order.

44A.—(1) Where—

- (a) on being satisfied as mentioned in section 44(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child, and
- (b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the emergency protection order.

(2) The conditions are—

- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
  - (i) in the case of an order made on the ground mentioned in section 44(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 44(1)(a)(i) or does not remain as mentioned in section 44(1)(a)(ii), or
  - (ii) in the case of an order made on the ground mentioned in paragraph (b) or (c) of section 44(1), the enquiries referred to in that paragraph will cease to be frustrated, and
- (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
  - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
  - (ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following—

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,

## SCH. 6

- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.

(5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.

(8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.

(10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.

Undertakings  
relating to  
emergency  
protection orders.

44B.—(1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1)—

- (a) shall be enforceable as if it were an order of the court, and
- (b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 44A.”

## SCH. 6

1989 c. 41.

4. In section 45 of the Children Act 1989 (duration of emergency protection orders and other supplemental provisions), insert after subsection (8)—

“(8A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(8B) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

5. In section 105(1) of the Children Act 1989 (interpretation), after the definition of “domestic premises”, insert—

“dwelling-house” includes—

(a) any building or part of a building which is occupied as a dwelling;

(b) any caravan, house-boat or structure which is occupied as a dwelling;

and any yard, garden, garage or outhouse belonging to it and occupied with it;”.

Section 53.

## SCHEDULE 7

## TRANSFER OF CERTAIN TENANCIES ON DIVORCE ETC. OR ON SEPARATION OF COHABITANTS

## PART I

## GENERAL

*Interpretation*

1. In this Schedule—

“cohabitant”, except in paragraph 3, includes (where the context requires) former cohabitant;

“the court” does not include a magistrates’ court,

“landlord” includes—

(a) any person from time to time deriving title under the original landlord; and

(b) in relation to any dwelling-house, any person other than the tenant who is, or (but for Part VII of the Rent Act 1977 or Part II of the Rent (Agriculture) Act 1976) would be, entitled to possession of the dwelling-house;

“Part II order” means an order under Part II of this Schedule;

“a relevant tenancy” means—

(a) a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977;

(b) a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976;

(c) a secure tenancy within the meaning of section 79 of the Housing Act 1985; or

1977 c. 42.

1976 c. 80.

1985 c. 68.

## SCH. 7

(d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988;

1988 c. 50.

“spouse”, except in paragraph 2, includes (where the context requires) former spouse; and

“tenancy” includes sub-tenancy.

*Cases in which the court may make an order*

2.—(1) This paragraph applies if one spouse is entitled, either in his own right or jointly with the other spouse, to occupy a dwelling-house by virtue of a relevant tenancy.

(2) At any time when it has power to make a property adjustment order under section 23A (divorce or separation) or 24 (nullity) of the Matrimonial Causes Act 1973 with respect to the marriage, the court may make a Part II order.

1973 c. 18.

3.—(1) This paragraph applies if one cohabitant is entitled, either in his own right or jointly with the other cohabitant, to occupy a dwelling-house by virtue of a relevant tenancy.

(2) If the cohabitants cease to live together as husband and wife, the court may make a Part II order.

4. The court shall not make a Part II order unless the dwelling-house is or was—

(a) in the case of spouses, a matrimonial home; or

(b) in the case of cohabitants, a home in which they lived together as husband and wife.

*Matters to which the court must have regard*

5. In determining whether to exercise its powers under Part II of this Schedule and, if so, in what manner, the court shall have regard to all the circumstances of the case including—

(a) the circumstances in which the tenancy was granted to either or both of the spouses or cohabitants or, as the case requires, the circumstances in which either or both of them became tenant under the tenancy;

(b) the matters mentioned in section 33(6)(a), (b) and (c) and, where the parties are cohabitants and only one of them is entitled to occupy the dwelling-house by virtue of the relevant tenancy, the further matters mentioned in section 36(6)(e), (f), (g) and (h); and

(c) the suitability of the parties as tenants.

## PART II

## ORDERS THAT MAY BE MADE

*References to entitlement to occupy*

6. References in this Part of this Schedule to a spouse or a cohabitant being entitled to occupy a dwelling-house by virtue of a relevant tenancy apply whether that entitlement is in his own right or jointly with the other spouse or cohabitant.

*Protected, secure or assured tenancy or assured agricultural occupancy*

7.—(1) If a spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a protected tenancy within the meaning of the Rent Act 1977, a secure tenancy within the meaning of the Housing Act 1985 or an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act

1977 c. 42.

1985 c. 68.

## SCH. 7

1988, the court may by order direct that, as from such date as may be specified in the order, there shall, by virtue of the order and without further assurance, be transferred to, and vested in, the other spouse or cohabitant—

- (a) the estate or interest which the spouse or cohabitant so entitled had in the dwelling-house immediately before that date by virtue of the lease or agreement creating the tenancy and any assignment of that lease or agreement, with all rights, privileges and appurtenances attaching to that estate or interest but subject to all covenants, obligations, liabilities and incumbrances to which it is subject; and
- (b) where the spouse or cohabitant so entitled is an assignee of such lease or agreement, the liability of that spouse or cohabitant under any covenant of indemnity by the assignee express or implied in the assignment of the lease or agreement to that spouse or cohabitant.

(2) If an order is made under this paragraph, any liability or obligation to which the spouse or cohabitant so entitled is subject under any covenant having reference to the dwelling-house in the lease or agreement, being a liability or obligation falling due to be discharged or performed on or after the date so specified, shall not be enforceable against that spouse or cohabitant.

1985 c. 68.

(3) If the spouse so entitled is a successor within the meaning of Part IV of the Housing Act 1985, his former spouse or former cohabitant (or, if a separation order is in force, his spouse) shall be deemed also to be a successor within the meaning of that Part.

1988 c. 50.

(4) If the spouse or cohabitant so entitled is for the purpose of section 17 of the Housing Act 1988 a successor in relation to the tenancy or occupancy, his former spouse or former cohabitant (or, if a separation order is in force, his spouse) is to be deemed to be a successor in relation to the tenancy or occupancy for the purposes of that section.

(5) If the transfer under sub-paragraph (1) is of an assured agricultural occupancy, then, for the purposes of Chapter III of Part I of the Housing Act 1988—

- (a) the agricultural worker condition is fulfilled with respect to the dwelling-house while the spouse or cohabitant to whom the assured agricultural occupancy is transferred continues to be the occupier under that occupancy, and
- (b) that condition is to be treated as so fulfilled by virtue of the same paragraph of Schedule 3 to the Housing Act 1988 as was applicable before the transfer.

(6) In this paragraph, references to a separation order being in force include references to there being a judicial separation in force.

*Statutory tenancy within the meaning of the Rent Act 1977*

1977 c. 42.

8.—(1) This paragraph applies if the spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the Rent Act 1977.

(2) The court may by order direct that, as from the date specified in the order—

- (a) that spouse or cohabitant is to cease to be entitled to occupy the dwelling-house; and
- (b) the other spouse or cohabitant is to be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.

(3) The question whether the provisions of paragraphs 1 to 3, or (as the case may be) paragraphs 5 to 7 of Schedule 1 to the Rent Act 1977, as to the succession by the surviving spouse of a deceased tenant, or by a member of the deceased tenant's family, to the right to retain possession are capable of having effect in the event of the death of the person deemed by an order under this paragraph

to be the tenant or sole tenant under the statutory tenancy is to be determined according as those provisions have or have not already had effect in relation to the statutory tenancy.

*Statutory tenancy within the meaning of the Rent (Agriculture) Act 1976*

9.—(1) This paragraph applies if the spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976. 1976 c. 80.

(2) The court may by order direct that, as from such date as may be specified in the order—

- (a) that spouse or cohabitant is to cease to be entitled to occupy the dwelling-house; and
- (b) the other spouse or cohabitant is to be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.

(3) A spouse or cohabitant who is deemed under this paragraph to be the tenant under a statutory tenancy is (within the meaning of that Act) a statutory tenant in his own right, or a statutory tenant by succession, according as the other spouse or cohabitant was a statutory tenant in his own right or a statutory tenant by succession.

### PART III

#### SUPPLEMENTARY PROVISIONS

##### *Compensation*

10.—(1) If the court makes a Part II order, it may by the order direct the making of a payment by the spouse or cohabitant to whom the tenancy is transferred (“the transferee”) to the other spouse or cohabitant (“the transferor”).

(2) Without prejudice to that, the court may, on making an order by virtue of sub-paragraph (1) for the payment of a sum—

- (a) direct that payment of that sum or any part of it is to be deferred until a specified date or until the occurrence of a specified event, or
- (b) direct that that sum or any part of it is to be paid by instalments.

(3) Where an order has been made by virtue of sub-paragraph (1), the court may, on the application of the transferee or the transferor—

- (a) exercise its powers under sub-paragraph (2), or
- (b) vary any direction previously given under that sub-paragraph,

at any time before the sum whose payment is required by the order is paid in full.

(4) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court shall have regard to all the circumstances including—

- (a) the financial loss that would otherwise be suffered by the transferor as a result of the order;
- (b) the financial needs and financial resources of the parties; and
- (c) the financial obligations which the parties have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(5) The court shall not give any direction under sub-paragraph (2) unless it appears to it that immediate payment of the sum required by the order would cause the transferee financial hardship which is greater than any financial hardship that would be caused to the transferor if the direction were given.

## SCH. 7

*Liabilities and obligations in respect of the dwelling-house*

11.—(1) If the court makes a Part II order, it may by the order direct that both spouses or cohabitants are to be jointly and severally liable to discharge or perform any or all of the liabilities and obligations in respect of the dwelling-house (whether arising under the tenancy or otherwise) which—

- (a) have at the date of the order fallen due to be discharged or performed by one only of them; or
- (b) but for the direction, would before the date specified as the date on which the order is to take effect fall due to be discharged or performed by one only of them.

(2) If the court gives such a direction, it may further direct that either spouse or cohabitant is to be liable to indemnify the other in whole or in part against any payment made or expenses incurred by the other in discharging or performing any such liability or obligation.

*Date when order made between spouses is to take effect*

12.—(1) In the case of a decree of nullity of marriage, the date specified in a Part II order as the date on which the order is to take effect must not be earlier than the date on which the decree is made absolute.

(2) In the case of divorce proceedings or separation proceedings, the date specified in a Part II order as the date on which the order is to take effect is to be determined as if the court were making a property adjustment order under section 23A of the Matrimonial Causes Act 1973 (regard being had to the restrictions imposed by section 23B of that Act).

1973 c. 18.

*Remarriage of either spouse*

13.—(1) If after the making of a divorce order or the grant of a decree annulling a marriage either spouse remarries, that spouse is not entitled to apply, by reference to the making of that order or the grant of that decree, for a Part II order.

(2) For the avoidance of doubt it is hereby declared that the reference in subparagraph (1) to remarriage includes a reference to a marriage which is by law void or voidable.

*Rules of court*

14.—(1) Rules of court shall be made requiring the court, before it makes an order under this Schedule, to give the landlord of the dwelling-house to which the order will relate an opportunity of being heard.

(2) Rules of court may provide that an application for a Part II order by reference to an order or decree may not, without the leave of the court by which that order was made or decree was granted, be made after the expiration of such period from the order or grant as may be prescribed by the rules.

*Saving for other provisions of Act*

15.—(1) If a spouse is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule does not affect the operation of sections 30 and 31 in relation to the other spouse's matrimonial home rights.

(2) If a spouse or cohabitant is entitled to occupy a dwelling-house by virtue of a tenancy, the court's powers to make orders under this Schedule are additional to those conferred by sections 33, 35 and 36.



## SCHEDULE 8

Section 66(1).

## MINOR AND CONSEQUENTIAL AMENDMENTS

## PART I

## AMENDMENTS CONNECTED WITH PART II

*The Wills Act 1837 (c. 26)*

1. In section 18A(1) of the Wills Act 1837 (effect of dissolution or annulment of marriage on wills), for “a decree” substitute “an order or decree”.

*The Judicial Proceedings (Regulation of Reports) Act 1926 (c. 61)*

2. In section 1(1)(b) of the Judicial Proceedings (Regulation of Reports) Act 1926 (restriction on reporting) after “in relation to” insert “any proceedings under Part II of the Family Law Act 1996 or otherwise in relation to”.

*The Maintenance Orders Act 1950 (c. 37)*

3. In section 16 of the Maintenance Orders Act 1950 (orders to which Part II of that Act applies)—

- (a) in subsection (2)(a)(i), for “23(1), (2) and (4)” substitute “22A, 23”; and
- (b) in subsection (2)(c)(v), after “Matrimonial Causes Act 1973” insert “(as that Act had effect immediately before the passing of the Family Law Act 1996)”.

*The Matrimonial Causes Act 1973 (c. 18)*

4. The 1973 Act is amended as follows.

5. In section 8 (intervention of Queen’s Proctor)—

- (a) for “a petition for divorce” substitute “proceedings for a divorce order”;
- (b) in subsection (1)(b), omit “or before the decree nisi is made absolute”; and
- (c) in subsection (2), for “a decree nisi in any proceedings for divorce” substitute “the making of a divorce order”.

6. For section 15 (application of provisions relating to divorce to nullity proceedings) substitute—

“Decrees of nullity to be decrees nisi.

15. Every decree of nullity of marriage shall in the first instance be a decree nisi and shall not be made absolute before the end of six weeks from its grant unless—

- (a) the High Court by general order from time to time fixes a shorter period; or
- (b) in any particular case, the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this section.

Intervention of Queen’s Proctor.

15A.—(1) In the case of a petition for nullity of marriage—

- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen’s Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
- (b) any person may at any time during the progress of the

proceedings or before the decree nisi is made absolute give information to the Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.

(2) If the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for nullity of marriage, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.

(3) Subsection (3) of section 8 above applies in relation to this section as it applies in relation to that section.

Proceedings after  
decree nisi:  
general powers of  
court.

15B.—(1) Where a decree of nullity of marriage has been granted under this Act but not made absolute, then, without prejudice to section 15A above, any person (excluding a party to the proceedings other than the Queen's Proctor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—

- (a) notwithstanding anything in section 15 above (but subject to section 41 below) make the decree absolute; or
- (b) rescind the decree; or
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(2) Where a decree of nullity of marriage has been granted under this Act and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above."

7. In section 19(4) (application of provisions relating to divorce to proceedings under section 19)—

- (a) for "1(5), 8 and 9" substitute "15, 15A and 15B"; and
- (b) for "divorce" in both places substitute "nullity of marriage".

8. In section 24A(1) (orders for sale of property), for "section 23 or 24 of this Act" substitute "any of sections 22A to 24 above".

9.—(1) Section 25 (matters to which the court is to have regard) is amended as follows.

(2) In subsection (1), for "section 23, 24 or 24A" substitute "any of sections 22A to 24A".

(3) In subsection (2)—

- (a) for "section 23(1)(a), (b) or (c)" substitute "section 22A or 23 above to make a financial provision order in favour of a party to a marriage or the exercise of its powers under section 23A,";

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- (b) in paragraph (g), after “parties” insert “, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage,”; and
- (c) in paragraph (h), omit “in the case of proceedings for divorce or nullity of marriage,”.
- (4) In subsection (3), for “section 23(1)(d), (e) or (f), (2) or (4)” substitute “section 22A or 23 above to make a financial provision order in favour of a child of the family or the exercise of its powers under section 23A,”.
- (5) In subsection (4), for “section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A” substitute “any of sections 22A to 24A”.

(6) After subsection (4) insert—

“(5) In relation to any power of the court to make an interim periodical payments order or an interim order for the payment of a lump sum, the preceding provisions of this section, in imposing any obligation on the court with respect to the matters to which it is to have regard, shall not require the court to do anything which would cause such a delay as would, in the opinion of the court, be inappropriate having regard—

- (a) to any immediate need for an interim order;
- (b) to the matters in relation to which it is practicable for the court to inquire before making an interim order; and
- (c) to the ability of the court to have regard to any matter and to make appropriate adjustments when subsequently making a financial provision order which is not interim.”

10.—(1) Section 25A (requirement to consider need to provide for “a clean break”) is amended as follows.

(2) In subsection (1), for the words from the beginning to “the marriage” substitute—

“If the court decides to exercise any of its powers under any of sections 22A to 24A above in favour of a party to a marriage (other than its power to make an interim periodical payments order or an interim order for the payment of a lump sum)”.

(3) In subsection (1), for “the decree” substitute “a divorce order or decree of nullity”.

(4) For subsection (3) substitute—

“(3) If the court—

- (a) would have power under section 22A or 23 above to make a financial provision order in favour of a party to a marriage (“the first party”), but
- (b) considers that no continuing obligation should be imposed on the other party to the marriage (“the second party”) to make or secure periodical payments in favour of the first party,

it may direct that the first party may not at any time after the direction takes effect, apply to the court for the making against the second party of any periodical payments order or secured periodical payments order and, if the first party has already applied to the court for the making of such an order, it may dismiss the application.

(3A) If the court—

- (a) exercises, or has exercised, its power under section 22A at any time before making a divorce order, and

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- (b) gives a direction under subsection (3) above in respect of a periodical payments order or a secured periodical payments order,

it shall provide for the direction not to take effect until a divorce order is made.”

11. In each of sections 25B(2) and (3), 25C(1) and (3) and 25D(1)(a), (2)(a), (c) and (e) (benefits under a pension scheme on divorce, etc.) for “section 23” substitute “section 22A or 23”.

12. In section 26(1) (commencement of proceedings for ancillary relief), for the words from the beginning to “22 above” substitute—

“(1) If a petition for nullity of marriage has been presented, then, subject to subsection (2) below, proceedings”.

13.—(1) Section 27 (financial provision orders etc. in case of failure to provide proper maintenance) is amended as follows.

(2) In subsection (5)—

(a) after “an order requiring the respondent” insert “—

(a)”; and

(b) at the end insert “, or

(b) to pay to the applicant such lump sum or sums as the court thinks reasonable.”

(3) For subsection (6) substitute—

“(6) Subject to the restrictions imposed by the following provisions of this Act, if on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, the court may make one or more financial provision orders against the respondent in favour of the applicant or a child of the family.”

(4) In subsection (7), for “(6)(c) or (f)” substitute “(6)”.

14.—(1) Section 28 (duration of continuing financial provision order in favour of a party to a marriage) is amended as follows.

(2) In subsection (1A), for the words from the beginning to “nullity of marriage” substitute—

“(1A) At any time when—

(a) the court exercises, or has exercised, its power under section 22A or 23 above to make a financial provision order in favour of a party to a marriage,

(b) but for having exercised that power, the court would have power under one of those sections to make such an order, and

(c) an application for a divorce order or a petition for a decree of nullity of marriage is outstanding or has been granted in relation to the marriage,”.

(3) Insert, after subsection (1A)—

“(1B) If the court—

(a) exercises, or has exercised, its power under section 22A at any time before making a divorce order, and

- (b) gives a direction under subsection (1A) above in respect of a periodical payments order or a secured periodical payments order,

it shall provide for the direction not to take effect until a divorce order is made."

(4) In subsection (2), for the words from "on or after" to "nullity of marriage" substitute "at such a time as is mentioned in subsection (1A)(c) above".

(5) In subsection (3)—

- (a) for "a decree" substitute "an order or decree"; and  
 (b) for "that decree" substitute "that order or decree".

15. In section 29(1) (duration of a continuing financial provision order in favour of a child of the family), for "under section 24(1)(a)" substitute "such as is mentioned in section 21(2)(a)".

16.—(1) Section 31 (variation etc. of orders) is amended as follows.

(2) In subsection (2)—

- (a) after "following orders" insert "under this Part of this Act";  
 (b) for paragraph (d) substitute—  
 "(d) an order for the payment of a lump sum in a case in which the payment is to be by instalments;";  
 (c) in paragraph (dd), for "23(1)(c)" substitute "21(1)(c)";  
 (d) after paragraph (dd) insert—  
 "(de) any other order for the payment of a lump sum, if it is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;";  
 (e) for paragraph (e) substitute—  
 "(e) any order under section 23A of a kind referred to in section 21(2)(b),(c) or (d) which is made on or after the making of a separation order;  
 (ea) any order under section 23A which is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;".

(3) In subsection (4)—

- (a) for the words from "for a settlement" to "24(1)(c) or (d)", substitute "referred to in subsection (2)(e)"; and  
 (b) for paragraphs (a) and (b) substitute "on an application for a divorce order in relation to the marriage".

(4) After subsection (4) insert—

"(4A) In relation to an order which falls within subsection (2)(de) or (ea) above ("the subsection (2) order")—

(a) the powers conferred by this section may be exercised—

(i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and

(ii) only if, at the time when the application is made, no divorce order has been made in relation to the marriage and no separation order has been so made since the subsection (2) order was made; and

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(b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.

## (4B) No variation—

(a) of a financial provision order made under section 22A above, other than an interim order, or

(b) of a property adjustment order made under section 23A above, shall be made so as to take effect before the making of a divorce order or separation order in relation to the marriage, unless the court is satisfied that the circumstances of the case are exceptional, and that it would be just and reasonable for the variation to be so made.”

## (5) In subsection (5)—

(a) insert, at the beginning, “Subject to subsections (7A) to (7F) below and without prejudice to any power exercisable by virtue of subsection (2)(d),(dd) or (e) above or otherwise than by virtue of this section,”; and

(b) for “section 23”, in each place, substitute “section 22A or 23”.

## (6) In subsection (7)(a)—

(a) for “on or after” to “consider” substitute “in favour of a party to a marriage, the court shall, if the marriage has been dissolved or annulled, consider”; and

(b) after “sufficient” insert “(in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below)”.

## (7) After subsection (7), insert—

“(7A) Subsection (7B) below applies where, after the dissolution of a marriage, the court—

(a) discharges a periodical payments order or secured periodical payments order made in favour of a party to the marriage; or

(b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.

(7B) The court has power, in addition to any power it has apart from this subsection, to make supplemental provision consisting of any of—

(a) an order for the payment of a lump sum in favour of a party to the marriage;

(b) one or more property adjustment orders in favour of a party to the marriage;

(c) a direction that the party in whose favour the original order discharged or varied was made is not entitled to make any further application for—

(i) a periodical payments or secured periodical payments order, or

(ii) an extension of the period to which the original order is limited by any variation made by the court.

(7C) An order for the payment of a lump sum made under subsection (7B) above may—

(a) provide for the payment of that sum by instalments of such amount as may be specified in the order; and

(b) require the payment of the instalments to be secured to the satisfaction of the court.

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(7D) Subsections (7) and (8) of section 22A above apply where the court makes an order for the payment of a lump sum under subsection (7B) above as they apply where it makes such an order under section 22A above.

(7E) If under subsection (7B) above the court makes more than one property adjustment order in favour of the same party to the marriage, each of those orders must fall within a different paragraph of section 21(2) above.

(7F) Sections 24A and 30 above apply where the court makes a property adjustment order under subsection (7B) above as they apply where it makes such an order under section 23A above."

17. In section 32(1) (payment of certain arrears to be unenforceable), for the words from "an order" to "financial provision order" substitute "any financial provision order under this Part of this Act or any interim order for maintenance".

18. For section 33(2) (repayment of sums paid under certain orders) substitute—

"(2) This section applies to the following orders under this Part of this Act—

- (a) any periodical payments order;
- (b) any secured periodical payments order; and
- (c) any interim order for maintenance, so far as it requires the making of periodical payments."

19.—(1) Section 33A (consent orders) is amended as follows.

(2) In subsection (2), after "applies", in the first place, insert "(subject, in the case of the powers of the court under section 31A above, to subsections (6) and (7) of that section)".

(3) In subsection (3), in the definition of "order for financial relief", for "an order under any of sections 23, 24, 24A or 27 above" substitute "any of the following orders under this Part of this Act, that is to say, any financial provision order, any property adjustment order, any order for the sale of property or any interim order for maintenance".

20. In section 35 (alteration of maintenance agreements), after subsection (6), insert—

"(7) Subject to subsection (5) above, references in this Act to any such order as is mentioned in section 21 above shall not include references to any order under this section."

21. In section 37(1) (avoidance of transactions intended to prevent or reduce financial relief), for "22, 23, 24, 27, 31 (except subsection (6))" substitute "22A to 24, 27, 31 (except subsection (6)), 31A".

22. In section 47(2) (relief in cases of polygamous marriages)—

- (a) in paragraph (a), after "any" insert the words "divorce order, any separation order under the 1996 Act or any"; and
- (b) in paragraph (d), after "this Act" insert "or the 1996 Act" and for "such decree or order" substitute "a statement of marital breakdown or any such order or decree".

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23. Omit section 49 (under which a person who is alleged to have committed adultery with a party to a marriage is required to be made a party to certain proceedings).

24.—(1) Section 52(1) (interpretation) is amended as follows.

(2) After “In this Act”, insert—

““the 1996 Act” means the Family Law Act 1996;”.

(3) After the definition of “maintenance assessment” insert—

““statement of marital breakdown” has the same meaning as in the Family Law Act 1996.”

25. In section 52(2)(a), for “with section 21 above” substitute “(subject to section 35(7) above) with section 21 above and—

(i) in the case of a financial provision order or periodical payments order, as including (except where the context otherwise requires) references to an interim periodical payments order under section 22A or 23 above; and

(ii) in the case of a financial provision order or order for the payment of a lump sum, as including (except where the context otherwise requires) references to an interim order for the payment of a lump sum under section 22A or 23 above;”.

*The Domicile and Matrimonial Proceedings Act 1973 (c. 45)*

26. For section 5(5) of the Domicile and Matrimonial Proceedings Act 1973 (jurisdiction in cases of change of domicile or habitual residence) substitute—

“(5) The court shall have jurisdiction to entertain proceedings for nullity of marriage (even though it would not otherwise have jurisdiction) at any time when marital proceedings, as defined by section 20 of the Family Law Act 1996, are pending in relation to the marriage.”

*The Inheritance (Provision for Family and Dependents) Act 1975*

(c. 63)

27.—(1) The Inheritance (Provision for Family and Dependents) Act 1975 (meaning of reasonable financial provision) is amended as follows.

(2) In section 1(2)(a), for the words from “the marriage” to “in force” substitute “, at the date of death, a separation order under the Family Law Act 1996 was in force in relation to the marriage”.

(3) In section 3(2) (matters to which the court is to have regard)—

(a) for “decree of judicial separation” substitute “separation order under the Family Law Act 1996”; and

(b) for “a decree of divorce” substitute “a divorce order”.

(4) In section 14 (provision where no financial relief was granted on divorce)—

(a) in subsection (1), for the words from “a decree” to first “granted” substitute “a divorce order or separation order has been made under the Family Law Act 1996 in relation to a marriage or a decree of nullity of marriage has been made absolute”;

(b) in subsection (1)(a), for “section 23” and “section 24” substitute, respectively, “section 22A or 23” and “section 23A or 24”;



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- (c) after paragraph (b), for the words from “the decree of divorce” to the end substitute “, as the case may be, the divorce order or separation order had not been made or the decree of nullity had not been made absolute”; and
- (d) in subsection (2), for “decree of judicial separation” and “the decree” substitute, respectively, “separation order” and “the order”.
- (5) In section 15(1) (restriction imposed in divorce proceedings on applications under that Act), for the words from the beginning to “thereafter” substitute—
- “At any time when the court—
- (a) has jurisdiction under section 23A or 24 of the Matrimonial Causes Act 1973 to make a property adjustment order in relation to a marriage; or
- (b) would have such jurisdiction if either the jurisdiction had not already been exercised or an application for such an order were made with the leave of the court,”.
- (6) In section 15, for subsections (2) to (4) substitute—
- “(2) An order made under subsection (1) above with respect to any party to a marriage has effect in accordance with subsection (3) below at any time—
- (a) after the marriage has been dissolved;
- (b) after a decree of nullity has been made absolute in relation to the marriage; and
- (c) while a separation order under the Family Law Act 1996 is in force in relation to the marriage and the separation is continuing.
- (3) If at any time when an order made under subsection (1) above with respect to any party to a marriage has effect the other party to the marriage dies, the court shall not entertain any application made by the surviving party to the marriage for an order under section 2 of this Act.”
- (7) In section 19(2)(b) (effect and duration of certain orders), for the words from “the marriage” to “in force” substitute “, at the date of death, a separation order under the Family Law Act 1996 was in force in relation to the marriage with the deceased”.
- (8) In section 25 (interpretation), in the definition of “former wife” and “former husband”, for “a decree”, in the first place, substitute “an order or decree”.

*The Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22)*

28.—(1) Section 28(1) of the Domestic Proceedings and Magistrates’ Courts Act 1978 (powers of High Court in respect of orders under Part I) is amended as follows.

(2) After “this Act” insert—

- “(a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage has been received by the court but no application has been made under that Act by reference to that statement, or
- (b)”.

(3) For the words from “then” to “lump sum” substitute “then, except in the case of an order for the payment of a lump sum, any court to which an application may be made under that Act by reference to that statement or, as the case may be,”.

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*The Housing Act 1980 (c. 51)*

29. In section 54(2) of the Housing Act 1980 (prohibition of assignment of shorthold tenancy under that section) for “section 24” substitute “sections 23A or 24”.

*The Supreme Court Act 1981 (c. 54)*

30. In section 18 of the Supreme Court Act 1981 (restrictions on appeals to Court of Appeal), in paragraph (d) of subsection (1) omit “divorce or” and after that paragraph insert—

“(dd) from a divorce order;”.

*The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

31. In section 18(6)(a) of the Civil Jurisdiction and Judgments Act 1982 (decrees of judicial separation), for “a decree” substitute “an order or decree”.

*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

32.—(1) The Matrimonial and Family Proceedings Act 1984 is amended as follows.

(2) In section 17(1) (financial relief in the case of overseas divorces etc.), for the words from “any” where it first occurs to the end substitute “one or more orders each of which would, within the meaning of Part II of the 1973 Act, be a financial provision order in favour of a party to the marriage or child of the family or a property adjustment order in relation to the marriage.”

(3) For section 21(a) (provisions of the 1973 Act applied for the purposes of the powers to give relief in the case of overseas divorces etc.) substitute—

“(a) section 22A(5) (provisions about lump sums in relation to divorce or separation);

(aa) section 23(4), (5) and (6) (provisions about lump sums in relation to annulment);”.

(4) In section 27 (interpretation), for the definition of “property adjustment order”, substitute—

““property adjustment order” and “secured periodical payments order” mean any order which would be a property adjustment order or, as the case may be, secured periodical payments order within the meaning of Part II of the 1973 Act;”

(5) In section 32 (meaning of “family business”), for the definition of “matrimonial cause” substitute—

““matrimonial cause” means an action for nullity of marriage or any marital proceedings under the Family Law Act 1996;”.

*The Finance Act 1985 (c. 54)*

33. In section 83(1) of the Finance Act 1985 (stamp duty for transfers of property in connection with divorce etc.)—

(a) after paragraph (b), insert—

“(bb) is executed in pursuance of an order of a court which is made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973, or”; and

(b) in paragraph (c), for “or their judicial separation” substitute “, their judicial separation or the making of a separation order in respect of them”.

*The Housing Act 1985 (c. 68)*

34. In each of sections 39(1)(c), 88(2), 89(3), 90(3)(a), 91(3)(b), 99B(2)(e), 101(3)(c), 160(1)(c), 171B(4)(b)(i) of, and paragraph 1(2)(c) to, Schedule 6A of the Housing Act 1985 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

*The Housing Associations Act 1985 (c. 69)*

35. In paragraph 5(1)(c) of Schedule 2 to the Housing Associations Act 1985 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

*The Agricultural Holdings Act 1986 (c. 5)*

36. In paragraph 1(3) of Schedule 6 to the Agricultural Holdings Act 1986 (spouse of close relative not to be treated as such when marriage subject to decree nisi etc.), for the words from “when” to the end substitute “when a separation order or a divorce order under the Family Law Act 1996 is in force in relation to the relative’s marriage or that marriage is the subject of a decree nisi of nullity.”

*The Family Law Act 1986 (c. 55)*

37.—(1) The Family Law Act 1986 is amended as follows.

(2) For section 2(1) and (2) (jurisdiction to make orders under section 1) substitute—

“(1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child unless—

- (a) the case falls within section 2A below; or
- (b) in any other case, the condition in section 3 below is satisfied.”

(3) For section 2A(1) (jurisdiction in or in connection with matrimonial proceedings), substitute—

“(1) Subject to subsections (2) to (4) below, a case falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made—

- (a) at a time when—
  - (i) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage of the parents of the child concerned has been received by the court; and
  - (ii) it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or
- (b) at a time when an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.

(1A) A case also falls within this section for the purposes of the making of a section 1(1)(a) order if that order is made in or in connection with any proceedings for the nullity of the marriage of the parents of the child concerned and—

- (a) those proceedings are continuing; or
- (b) the order is made—
  - (i) immediately on the dismissal, after the beginning of the trial, of the proceedings; and
  - (ii) on an application made before the dismissal.”

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(4) In section 2A(2), for the words from the beginning to “judicial separation” substitute “A case does not fall within this section if a separation order under the Family Law Act 1996 is in force in relation to the marriage of the parents of the child concerned if,”.

(5) In section 2A(3), for “in which the other proceedings there referred to” substitute “in Scotland, Northern Ireland or a specified dependent territory in which the proceedings for divorce or nullity”.

(6) In section 2A(4)—

(a) for “in or in connection with matrimonial proceedings” substitute “by virtue of the case falling within this section”; and

(b) for “in or in connection with those proceedings” substitute “by virtue of section 2(1)(a) of this Act”.

(7) In section 3 (child habitually resident or present in England and Wales), for “section 2(2)” substitute “section 2(1)(b)”.

(8) In section 6 (duration and variation of Part I orders), for subsections (3A) and (3B) substitute—

“(3A) Subsection (3) above does not apply if the Part I order was made in a case falling within section 2A of this Act.”

(9) In section 38 (restriction on removal of wards of court from the jurisdiction), insert after subsection (3)—

“(4) The reference in subsection (2) above to a time when proceedings for divorce or judicial separation are continuing in respect of a marriage in another part of the United Kingdom includes, in relation to any case in which England and Wales would be another part of the United Kingdom, any time when—

(a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to that marriage has been received by the court and it is or may become possible for an application for a divorce order or for a separation order to be made by reference to that statement; or

(b) an application in relation to that marriage for a divorce order, or for a separation order under the Act of 1996, has been made and not withdrawn.”

(10) In section 42(2) (times when divorce etc. proceedings are to be treated as continuing for the purposes of certain restrictions on the removal of children from the jurisdiction), for the words from “unless” to the end substitute “be treated as continuing (irrespective of whether a divorce order, separation order or decree of nullity has been made)—

(a) from the time when a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage is received by the court in England and Wales until such time as the court may designate or, if earlier, until the time when—

(i) the child concerned attains the age of eighteen; or

(ii) it ceases, by virtue of section 5(3) or 7(9) of that Act (lapse of divorce or separation process) to be possible for an application for a divorce order, or for a separation order, to be made by reference to that statement; and

(b) from the time when a petition for nullity is presented in relation to the marriage in England and Wales or a petition for divorce, judicial separation or nullity is presented in relation to the marriage in Northern Ireland or a specified dependent territory, until the time when—

(i) the child concerned attains the age of eighteen; or

(ii) if earlier, proceedings on the petition are dismissed.”

(11) In section 51(4) (definitions), after the definition of “the relevant date” insert—

“‘judicial separation’ includes a separation order under the Family Law Act 1996;”.

*The Landlord and Tenant Act 1987 (c. 31)*

38. In section 4(2)(c) of the Landlord and Tenant Act 1987 (which refers to the 1973 Act), for “section 24” substitute “section 23A, 24”.

*The Legal Aid Act 1988 (c. 34)*

39. In paragraph 5A of Part II of Schedule 2 to the Legal Aid Act 1988 (excepted proceedings)—

- (a) for “decree of divorce or judicial separation” substitute “a divorce order or a separation order”; and
- (b) in sub-paragraph (b) of that paragraph, for “petition” substitute “application”.

*The Housing Act 1988 (c. 50)*

40. In paragraph 4(1)(c) of Schedule 11 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

*The Children Act 1989 (c. 41)*

41.—(1) The Children Act 1989 is amended as follows.

(2) In section 6(3A) (revocation or appointment of guardian) for paragraph (a) substitute—

“(a) a court of civil jurisdiction in England and Wales by order dissolves, or by decree annuls, a marriage, or”.

(3) In section 8(3) after “means” insert “(subject to subsection (5))”.

(4) In section 8, insert after subsection (4)—

“(5) For the purposes of any reference in this Act to family proceedings, powers which under this Act are exercisable in family proceedings shall also be exercisable in relation to a child, without any such proceedings having been commenced or any application having been made to the court under this Act, if—

- (a) a statement of marital breakdown under section 5 of the Family Law Act 1996 with respect to the marriage in relation to which that child is a child of the family has been received by the court; and
- (b) it may, in due course, become possible for an application for a divorce order or for a separation order to be made by reference to that statement.”

*The Local Government and Housing Act 1989 (c. 42)*

42. In section 124(3)(c) of the Local Government and Housing Act 1989 (which refers to the 1973 Act), for “section 24” substitute “section 23A or 24”.

*Pensions Act 1995 (c. 26)*

43. In section 166(4) of the Pensions Act 1995 (jurisdiction of the court under the Matrimonial Causes Act 1973 in respect of pensions to which that section applies) for “section 23” substitute “section 22A or 23”.

## PART II

## AMENDMENTS CONNECTED WITH PART III

*The Legal Aid Act 1988 (c. 34)*

44.—(1) The 1988 Act is amended as follows.

(2) In section 1, after “III” insert “IIIA”.

(3) In sections 1, 2(11), 3(2), 4(1), (2) and (4), 5(1) and (6), 6(2)(a) and (3)(a), 34(2)(c) and (d) and (11), 38(1) and (6) and 39(1) and (4)(a), after “assistance”, in each place, insert “, mediation”.

(4) In section 3(9), after paragraph (a) insert—  
“(aa) the provision of mediation;”.

(5) In section 6, after subsection (3)(c) insert—  
“(ca) any sum which is to be paid out of property on which it is charged under regulations under section 13C(5) below”.

(6) In section 15—

- (a) in subsection (1), after “(3D)” insert “and (3F)”; and
- (b) in subsection (3D), after “(3)” insert “and (3F)”.

(7) In section 16(9), leave out “and” at the end of paragraph (a).

(8) In section 38—

- (a) in subsection (1)(f), after “legal representatives” insert “or mediators”;  
and
- (b) in subsection (6), after “legal representative” insert “or mediator”.

(9) In section 43—

- (a) after ““assistance”” insert “, “mediation””;
- (b) after “(3)” insert “, (3A)”; and
- (c) after the definition of “financial resources” insert—  
““family matters” has the meaning assigned by section 13A(2);”.

## PART III

## AMENDMENTS CONNECTED WITH PART IV

*The Land Registration Act 1925 (c. 21)*

45. In section 64 of the Land Registration Act 1925 (certificates to be produced and noted on dealings) in subsection (5) for “section 2(8) of the Matrimonial Homes Act 1983” substitute “section 31(10) of the Family Law Act 1996 and for “rights of occupation” substitute “matrimonial home rights””.

*The Land Charges Act 1972 (c. 61)*

46. In section 1(6A) of the Land Charges Act 1972 (cases where county court has jurisdiction to vacate registration) in paragraph (d)—

- (a) after “section 1 of the Matrimonial Homes Act 1983” insert “or section 33 of the Family Law Act 1996”; and
- (b) for “that section” substitute “either of those sections”.

47. In section 2(7) of that Act (Class F land charge) for “Matrimonial Homes Act 1983” substitute “Part IV of the Family Law Act 1996”.

*The Land Compensation Act 1973 (c. 26)*

48.—(1) Section 29A of the Land Compensation Act 1973 (spouses having statutory rights of occupation) is amended as follows.

(2) In subsection (1), for “rights of occupation (within the meaning of the Matrimonial Homes Act 1983)” substitute “matrimonial home rights (within the meaning of Part IV of the Family Law Act 1996)”.

(3) In subsection (2)(a), for “rights of occupation” substitute “matrimonial home rights”.

*The Magistrates' Courts Act 1980 (c. 43)*

49. In section 65(1) of the Magistrates' Courts Act 1980 (meaning of family proceedings) after paragraph (o) insert—

“(p) Part IV of the Family Law Act 1996;”.

*The Contempt of Court Act 1981 (c. 49)*

50. In Schedule 3 to the Contempt of Court Act 1981 (application of Magistrates' Courts Act 1980 to civil contempt proceedings), in paragraph 3 for the words from “or, having been arrested” onwards substitute—

“or, having been arrested under section 47 of the Family Law Act 1996 in connection with the matter of the complaint, is at large after being remanded under subsection (7)(b) or (10) of that section.”

*The Supreme Court Act 1981 (c. 54)*

51. In Schedule 1 to the Supreme Court Act 1981 (distribution of business in High Court), in paragraph 3 (Family Division)—

(a) in paragraph (d), after “matrimonial proceedings” insert “or proceedings under Part IV of the Family Law Act 1996”, and

(b) in paragraph (f)(i), for “Domestic Violence and Matrimonial Proceedings Act 1976” substitute “Part IV of the Family Law Act 1996”.

*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

52. For section 22 of the Matrimonial and Family Proceedings Act 1984 substitute—

“Powers of court in relation to certain tenancies of dwelling-houses.

22.—(1) This section applies if—

- (a) an application is made by a party to a marriage for an order for financial relief; and
- (b) one of the parties is entitled, either in his own right or jointly with the other party, to occupy a dwelling-house situated in England or Wales by virtue of a tenancy which is a relevant tenancy within the meaning of Schedule 7 to the Family Law Act 1996 (certain statutory tenancies).

(2) The court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if—

- (a) a divorce order,
- (b) a separation order, or
- (c) a decree of nullity of marriage,

had been made or granted in England and Wales in respect of the marriage.

(3) The provisions of paragraphs 10, 11 and 14(1) in Part III of that Schedule apply in relation to any order under this section as they apply to any order under Part II of that Schedule.”

*The Housing Act 1985 (c. 68)*

53.—(1) Section 85 of the Housing Act 1985 (extended discretion of court in certain proceedings for possession) is amended as follows.

(2) In subsection (5)—

- (a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”; and
- (b) for “those rights of occupation” substitute “those matrimonial home rights”.

(3) After subsection (5) insert—

“(5A) If proceedings are brought for possession of a dwelling-house which is let under a secure tenancy and—

- (a) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant or an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,
- (b) the former spouse, cohabitant or former cohabitant is then in occupation of the dwelling-house, and
- (c) the tenancy is terminated as a result of those proceedings,

the former spouse, cohabitant or former cohabitant shall, so long as he or she remains in occupation, have the same rights in relation to, or in connection with, any adjournment, stay, suspension or postponement in pursuance of this section as he or she would have if the rights conferred by the order referred to in paragraph (a) were not affected by the termination of the tenancy.”

54. In section 99B of that Act (persons qualifying for compensation for improvements) in subsection (2) for paragraph (f) substitute—

- “(f) a spouse, former spouse, cohabitant or former cohabitant of the improving tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”

55. In section 101 of that Act (rent not to be increased on account of tenant’s improvements) in subsection (3) for paragraph (d) substitute—

- “(d) a spouse, former spouse, cohabitant or former cohabitant of the tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”

56. In section 171B of that Act (extent of preserved right to buy: qualifying persons and dwelling-houses) in subsection (4)(b)(ii) after “Schedule 1 to the Matrimonial Homes Act 1983” insert “or Schedule 7 to the Family Law Act 1996”.



*The Insolvency Act 1986 (c. 45)*

57.—(1) Section 336 of the Insolvency Act 1986 (rights of occupation etc. of bankrupt's spouse) is amended as follows.

(2) In subsection (1), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.

(3) In subsection (2)—

(a) for “rights of occupation under the Act of 1983” substitute “matrimonial home rights under the Act of 1996”, and

(b) in paragraph (b), for “under section 1 of that Act” substitute “under section 33 of that Act”.

(4) In subsection (4), for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.

58.—(1) Section 337 of that Act is amended as follows.

(2) In subsection (2), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.

(3) For subsection (3) substitute—

“(3) The Act of 1996 has effect, with the necessary modifications, as if—

(a) the rights conferred by paragraph (a) of subsection (2) were matrimonial home rights under that Act,

(b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act, and

(c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.”

(4) In subsections (4) and (5) for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.

*The Housing Act 1988 (c. 50)*

59.—(1) Section 9 of the Housing Act 1988 (extended discretion of court in possession claims) is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”, and

(b) for “those rights of occupation” substitute “those matrimonial home rights”.

(3) After subsection (5) insert—

“(5A) In any case where—

(a) at a time when proceedings are brought for possession of a dwelling-house let on an assured tenancy—

(i) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant, or

(ii) an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,

## SCH. 8

(b) that cohabitant, former cohabitant or former spouse is then in occupation of the dwelling-house, and

(c) the assured tenancy is terminated as a result of those proceedings, the cohabitant, former cohabitant or former spouse shall have the same rights in relation to, or in connection with, any such adjournment as is referred to in subsection (1) above or any such stay, suspension or postponement as is referred to in subsection (2) above as he or she would have if the rights conferred by the order referred to in paragraph (a) above were not affected by the termination of the tenancy.”

*The Children Act 1989 (c. 41)*

60.—(1) In section 8(4) of the Children Act 1989 (meaning of “family proceedings” for purposes of that Act), omit paragraphs (c) and (f) and after paragraph (g) insert—

“(h) the Family Law Act 1996.”

1978 c. 22.

(2) In Schedule 11 to that Act, in paragraph 6(a) (amendment of the Domestic Proceedings and Magistrates’ Courts Act 1978), for “sections 16(5)(c) and” substitute “section”.

*The Courts and Legal Services Act 1990 (c. 41)*

61. In section 58 of the Courts and Legal Services Act 1990 (conditional fee agreements) in subsection (10), omit paragraphs (b) and (e) and immediately before the “or” following paragraph (g) insert—

“(gg) Part IV of the Family Law Act 1996”.

Section 66(2).

## SCHEDULE 9

## MODIFICATIONS, SAVING AND TRANSITIONAL

*Transitional arrangements for those who have been living apart*

1.—(1) The Lord Chancellor may by order provide for the application of Part II to marital proceedings which—

(a) are begun during the transitional period, and

(b) relate to parties to a marriage who immediately before the beginning of that period were living apart,

subject to such modifications (which may include omissions) as may be prescribed.

(2) An order made under this paragraph may, in particular, make provision as to the evidence which a party who claims to have been living apart from the other party immediately before the beginning of the transitional period must produce to the court.

(3) In this paragraph—

“marital proceedings” has the same meaning as in section 24;

“prescribed” means prescribed by the order; and

“transitional period” means the period of two years beginning with the day on which section 3 is brought into force.”

*Modifications of enactments etc.*

2.—(1) The Lord Chancellor may by order make such consequential modifications of any enactment or subordinate legislation as appear to him necessary or expedient in consequence of Part II in respect of any reference (in whatever terms) to—

- (a) a petition;
- (b) the presentation of a petition;
- (c) the petitioner or respondent in proceedings on a petition;
- (d) proceedings on a petition;
- (e) proceedings in connection with any proceedings on a petition;
- (f) any other matrimonial proceedings;
- (g) a decree; or
- (h) findings of adultery in any proceedings.

(2) An order under sub-paragraph (1) may, in particular—

- (a) make provision applying generally in relation to enactments and subordinate legislation of a description specified in the order;
- (b) modify the effect of sub-paragraph (3) in relation to documents and agreements of a description so specified.

(3) Otherwise a reference (in whatever terms) in any instrument or agreement to the presentation of a petition or to a decree has effect, in relation to any time after the coming into force of this paragraph—

- (a) in the case of a reference to the presentation of a petition, as if it included a reference to the making of a statement; and
- (b) in the case of a reference to a decree, as if it included a reference to a divorce order or (as the case may be) a separation order.

3. If an Act or subordinate legislation—

- (a) refers to an enactment repealed or amended by or under this Act, and
- (b) was passed or made before the repeal or amendment came into force,

the Lord Chancellor may by order make such consequential modifications of any provision contained in the Act or subordinate legislation as appears to him necessary or expedient in respect of the reference.

*Expressions used in paragraphs 2 and 3*

4. In paragraphs 2 and 3—

“decree” means a decree of divorce (whether a decree nisi or a decree which has been made absolute) or a decree of judicial separation;

“instrument” includes any deed, will or other instrument or document

“petition” means a petition for a decree of divorce or a petition for a decree of judicial separation; and

“subordinate legislation” has the same meaning as in the Interpretation Act 1978. 1978 c. 30.

*Proceedings under way*

5.—(1) Except for paragraph 6 of this Schedule, nothing in any provision of Part II, Part I of Schedule 8 or Schedule 10—

(a) applies to, or affects—

- (i) any decree granted before the coming into force of the provision;

## SCH. 9

(ii) any proceedings begun, by petition or otherwise, before that time; or

(iii) any decree granted in any such proceedings;

(b) affects the operation of—

(i) the 1973 Act,

(ii) any other enactment, or

(iii) any subordinate legislation,

in relation to any such proceedings or decree or to any proceedings in connection with any such proceedings or decree; or

(c) without prejudice to paragraph (b), affects any transitional provision having effect under Schedule 1 to the 1973 Act.

1978 c. 30.

(2) In this paragraph, “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

6.—(1) Section 31 of the 1973 Act has effect as amended by this Act in relation to any order under Part II of the 1973 Act made after the coming into force of the amendments.

(2) Subsections (7) to (7F) of that section also have effect as amended by this Act in relation to any order made before the coming into force of the amendments.

*Interpretation*

1983 c. 19.

7. In paragraphs 8 to 15 “the 1983 Act” means the Matrimonial Homes Act 1983.

*Pending applications for orders relating to occupation and molestation*

8.—(1) In this paragraph and paragraph 10 “the existing enactments” means—

1976 c. 50.

(a) the Domestic Violence and Matrimonial Proceedings Act 1976;

1978 c. 22.

(b) sections 16 to 18 of the Domestic Proceedings and Magistrates’ Courts Act 1978; and

(c) sections 1 and 9 of the 1983 Act.

(2) Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application for an order or injunction under any of the existing enactments which is pending immediately before the commencement of the repeal of that enactment.

*Pending applications under Schedule 1 to the Matrimonial Homes Act 1983*

9. Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application for an order under Schedule 1 to the 1983 Act which is pending immediately before the commencement of the repeal of that Schedule.

*Existing orders relating to occupation and molestation*

10.—(1) In this paragraph “an existing order” means any order or injunction under any of the existing enactments which—

(a) is in force immediately before the commencement of the repeal of that enactment; or

(b) was made or granted after that commencement in proceedings brought before that commencement.

(2) Subject to sub-paragraphs (3) and (4), nothing in Part IV, Part III of Schedule 8 or Schedule 10—

- (a) prevents an existing order from remaining in force; or
- (b) affects the enforcement of an existing order.

(3) Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application to extend, vary or discharge an existing order, but the court may, if it thinks it just and reasonable to do so, treat the application as an application for an order under Part IV.

(4) The making of an order under Part IV between parties with respect to whom an existing order is in force discharges the existing order.

#### *Matrimonial home rights*

11.—(1) Any reference (however expressed) in any enactment, instrument or document (whether passed or made before or after the passing of this Act) to rights of occupation under, or within the meaning of, the 1983 Act shall be construed, so far as is required for continuing the effect of the instrument or document, as being or as the case requires including a reference to matrimonial home rights under, or within the meaning of, Part IV.

(2) Any reference (however expressed) in this Act or in any other enactment, instrument or document (including any enactment amended by Schedule 8) to matrimonial home rights under, or within the meaning of, Part IV shall be construed as including, in relation to times, circumstances and purposes before the commencement of sections 30 to 32, a reference to rights of occupation under, or within the meaning of, the 1983 Act.

12.—(1) Any reference (however expressed) in any enactment, instrument or document (whether passed or made before or after the passing of this Act) to registration under section 2(8) of the 1983 Act shall, in relation to any time after the commencement of sections 30 to 32, be construed as being or as the case requires including a reference to registration under section 31(10).

(2) Any reference (however expressed) in this Act or in any other enactment, instrument or document (including any enactment amended by Schedule 8) to registration under section 31(10) shall be construed as including a reference to—

- (a) registration under section 2(7) of the Matrimonial Homes Act 1967 or section 2(8) of the 1983 Act, and 1967 c. 75.
- (b) registration by caution duly lodged under section 2(7) of the Matrimonial Homes Act 1967 before 14th February 1983 (the date of the commencement of section 4(2) of the Matrimonial Homes and Property Act 1981). 1981 c. 24.

13. In sections 30 and 31 and Schedule 4—

- (a) any reference to an order made under section 33 shall be construed as including a reference to an order made under section 1 of the 1983 Act, and
- (b) any reference to an order made under section 33(5) shall be construed as including a reference to an order made under section 1 of the 1983 Act by virtue of section 2(4) of that Act.

14. Neither section 31(11) nor the repeal by the Matrimonial Homes and Property Act 1981 of the words “or caution” in section 2(7) of the Matrimonial Homes Act 1967, affects any caution duly lodged as respects any estate or interest before 14th February 1983.

15. Nothing in this Schedule is to be taken to prejudice the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals). 1978 c. 30.

Section 66(3).

## SCHEDULE 10

## REPEALS

Chapter	Short title	Extent of repeal
1968 c. 63.	The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968.	Section 2(1)(b).
1973 c. 18.	The Matrimonial Causes Act 1973.	<p>Sections 1 to 7.</p> <p>In section 8(1)(b), the words "or before the decree nisi is made absolute".</p> <p>Sections 9 and 10.</p> <p>Sections 17 and 18.</p> <p>Section 20.</p> <p>Section 22.</p> <p>In section 24A(3), the words "divorce or".</p> <p>In section 25(2)(h), the words "in the case of proceedings for divorce or nullity of marriage,".</p> <p>In section 28(1), the words from "in", in the first place where it occurs, to "nullity of marriage" in the first place where those words occur.</p> <p>In section 29(2), the words from "may begin" to "but".</p> <p>In section 30, the words "divorce" and "or judicial separation".</p> <p>In section 31, in subsection (2)(a), the words "order for maintenance pending suit and any".</p> <p>In section 41, in subsection (1) the words "divorce or" and "or a decree of judicial separation" and in subsection (2) the words "divorce or" and "or that the decree of judicial separation is not to be granted."</p> <p>Section 49.</p> <p>In section 52(2)(b), the words "to orders for maintenance pending suit and", "respectively" and "section 22 and".</p> <p>In Schedule 1, paragraph 8.</p>
1973 c. 45.	The Domicile and Matrimonial Proceedings Act 1973.	In section 5, in subsection (1), the words "subject to section 6(3) and (4) of this

Chapter	Short title	Extent of repeal
		Act” and, in paragraph (a), “divorce, judicial separation or” and subsection (2). Section 6(3) and (4). In Schedule 1, in paragraph 11, in sub-paragraph (2)(a), in sub-paragraph (2)(c), in the first place where they occur, and in sub-paragraph (3)(b) and (c), the words “in connection with the stayed proceedings”.
1976 c. 50.	The Domestic Violence and Matrimonial Proceedings Act 1976.	The whole Act.
1978 c. 22.	The Domestic Proceedings and Magistrates’ Courts Act 1978.	In section 1, paragraphs (c) and (d) and the word “or” preceding paragraph (c). In section 7(1), the words “neither party having deserted the other”. Sections 16 to 18. Section 28(2). Section 63(3). In Schedule 2, paragraphs 38 and 53.
1980 c. 43.	The Magistrates’ Courts Act 1980.	In Schedule 7, paragraph 159.
1981 c. 54.	The Supreme Court Act 1981.	In section 18(1)(d), the words “divorce or”.
1982 c. 53.	The Administration of Justice Act 1982.	Section 16.
1983 c. 19.	The Matrimonial Homes Act 1983.	The whole Act.
1984 c. 42.	The Matrimonial and Family Proceedings Act 1984.	Section 1. In section 21(f) the words “except subsection (2)(e) and subsection (4)”. In section 27, the definition of “secured periodical payments order”. In Schedule 1, paragraph 10.
1985 c. 61.	The Administration of Justice Act 1985.	In section 34(2), paragraph (f) and the word “and” immediately preceding it. In Schedule 2, in paragraph 37, paragraph (e) and the word “and” immediately preceding it.
1985 c. 71.	The Housing (Consequential Provisions) Act 1985.	In Schedule 2, paragraph 56.
1986 c. 53.	The Building Societies Act 1986.	In Schedule 21, paragraph 9(f).

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Chapter	Short title	Extent of repeal
1986 c. 55.	The Family Law Act 1986.	In Schedule 1, paragraph 27.
1988 c. 34.	The Legal Aid Act 1988.	In section 16(9), the word "and" at the end of paragraph (a).
1988 c. 50.	The Housing Act 1988.	In Schedule 17, paragraphs 33 and 34.
1989 c. 41.	The Children Act 1989.	Section 8(4)(c) and (f). In Schedule 11, paragraph 6(b). In Schedule 13, paragraphs 33(1) and 65(1).
1990 c. 41.	The Courts and Legal Services Act 1990.	Section 58(10)(b) and (e). In Schedule 18, paragraph 21.
1995 c. 42.	The Private International Law (Miscellaneous Provisions) Act 1995.	In the Schedule, paragraph 3.

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