

SCHEDULES

SCHEDULE 8

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS CONNECTED WITH PART II

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—

“15 Decrees of nullity to be decrees nisi

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.

15A Intervention of Queen’s Proctor

- (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

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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.

15B Proceedings after decree nisi: general powers of court

- (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,”;
- (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

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- (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—

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- (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 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

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- (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
 - (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

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- (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.
- (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)—

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- (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”.
- 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;”.