

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.

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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.

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—

“21 Financial provision and property adjustment orders

- (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;

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- (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.
- (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—

“22A Financial provision orders: divorce and separation

- (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—

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- (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—
- (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 Restrictions affecting section 22A

- (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—

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- (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—
- (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—

“23 Financial provision orders: nullity

- (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

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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.
- (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—

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(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—

“23A Property adjustment orders: divorce and separation

- (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 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.

23B Restrictions affecting section 23A

- (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.

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- (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—

“24 Property adjustment orders: nullity of marriage

- (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;

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- (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;
- (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—

“31A Variation etc. following reconciliations

- (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.

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- (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.

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—

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- (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.

(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.”

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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—

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“(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
- (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,

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—

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- (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—

“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

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(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;
 - “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.

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

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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.

Cancellation of registration after termination of marriage, etc.

- 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.

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- (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.

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—
- (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

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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.
- (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.

SCHEDULE 6

Section 52.

AMENDMENTS OF CHILDREN ACT 1989

1 After section 38 of the Children Act 1989 insert—

“38A Power to include exclusion requirement in interim care order

- (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

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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.

38B Undertakings relating to interim care orders

- (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.
- (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.”

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—

“44A Power to include exclusion requirement in emergency protection order

- (1) Where—

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- (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,
 - (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.

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- (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.

44B Undertakings relating to emergency protection orders

- (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.”

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;

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

SCHEDULE 7

Section 53.

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
 - (d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988;
 - “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.

- 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 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.
 - (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.
 - (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

- 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.

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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.
- (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.

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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).

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.

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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—

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“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 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

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- 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
 - (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—

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“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

(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

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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;”;

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- (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
 - (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;”;
 - (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.
- (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

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- (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”.
- 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;”.

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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 Dependants) Act 1975 (c. 63)

27 (1) The Inheritance (Provision for Family and Dependants) 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”;
- (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;

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- (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,”.

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.

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- (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”.

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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.”
- (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.”

Status: This is the original version (as it was originally enacted).

- (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”.

Status: This is the original version (as it was originally enacted).

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

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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—

“22 Powers of court in relation to certain tenancies of dwelling-houses

- (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.”

Status: This is the original version (as it was originally enacted).

- 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”.

Status: This is the original version (as it was originally enacted).

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,
 - (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.”
- (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”.

Status: This is the original version (as it was originally enacted).

SCHEDULE 9

Section 66(2).

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—

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- (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.

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;
 - (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.
- (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

- 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—
- (a) the Domestic Violence and Matrimonial Proceedings Act 1976;

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(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

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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
 - (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).
- 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).

SCHEDULE 10

Section 66(3).

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
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.	Sections 1 to 7. In section 8(1)(b), the words “or before the decree nisi is made absolute”. Sections 9 and 10. Sections 17 and 18. Section 20. Section 22. In section 24A(3), the words “divorce or”.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In section 25(2)(h), the words “in the case of proceedings for divorce or nullity of marriage,”.
		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.
		In section 29(2), the words from “may begin” to “but”.
		In section 30, the words “divorce” and “or judicial separation”.
		In section 31, in subsection (2)(a), the words “order for maintenance pending suit and any”.
		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.”
		Section 49.
		In section 52(2)(b), the words “to orders for maintenance pending suit and”, “respectively” and “section 22 and”.
		In Schedule 1, paragraph 8.
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 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)

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		(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.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
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).
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.
