

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4580 of 31 May, 2019

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B. 25/19

## BILL

FOR

**AN ACT** to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage and to make provision for financial relief applications following an overseas divorce.

**ENACTED** by the Legislature of Gibraltar.

### **Title and commencement.**

1.(1) This Act may be cited as the Matrimonial Causes (Amendment) Act 2019.

(2) This Act comes into operation on the day appointed by the Minister with responsibility for Justice by notice in the Gazette and the Minister may appoint different days for different provisions or purposes.

### **Amendment of the Matrimonial Causes Act.**

2.(1) The Matrimonial Causes Act (in this Act referred to as the “principal Act”) is amended in accordance with this section-

(2) Section 10 of the principal Act is repealed.

(3) Section 11 of the principal Act is repealed.

(4) In section 12 of the principal Act-

(a) in subsection (1) for “any proceedings” substitute “any nullity proceedings”;

(b) subsection (3) is repealed.

- (5) For subsection (2) of section 16 of the principal Act substitute-
- “(2) On a petition for divorce, the court shall not hold the marriage to have broken down irretrievably unless the petitioner has filed with the court, a notice of intention to divorce which includes a statement of irretrievable breakdown in such form (if any) as may be prescribed.”.
- (6) Subsections (3) and (4) of section 16 of the principal Act are repealed.
- (7) For subsection (5) of section 16 of the principal Act substitute-
- “(5) If the court is satisfied that a notice of intention to divorce, which includes a statement of irretrievable breakdown in such form (if any) as may be prescribed, has been filed and the rules of court complied with insofar as they relate to divorce proceedings, it shall, subject to section 26 and section 49, grant a decree of divorce.”.
- (8) Section 17 of the principal Act is repealed.
- (9) Section 17A of the principal Act is repealed.
- (10) In section 18 of the principal Act-
- (a) in the section heading for “three years” substitute “one year”;
  - (b) in subsection (1) for “three years” substitute “one year”;
  - (c) in subsection (3)(a) delete “on the same facts, or substantially the same facts, as those proved in support of the dismissed petition.”.
- (11) Section 19 of the principal Act is repealed.
- (12) Section 20(1) of the principal Act is amended in subsection (1) by deleting “upon the same or substantially the same facts as those proved in support of the petition for divorce”.
- (13) Section 20(2) of the principal Act is repealed.
- (14) In section 26 of the principal Act-
- (a) in subsection (1) for “six weeks” substitute “six months”;
  - (b) in subsection (2)(a) delete “subsections (2) to (4) of section 26A and”.
- (15) Section 26A of the principal Act is repealed.
- (16) Section 30 of the principal Act is amended as follows-

(a) in subsection (1) for “on the ground that any such fact as is mentioned in section 16(2) exists, and the provisions of section 17 shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging the fact” substitute “and such petition shall include a notice of intention to judicially separate in such form (if any) as may be prescribed”;

(b) for subsection (3) substitute-

“(3) On a petition for judicial separation the court shall not be concerned to consider whether the marriage has broken down irretrievably and if it is satisfied that the court has been petitioned by the petitioner with a notice of intention to judicially separate shall include a notice of intention to judicially separate, in such form (if any) as may be prescribed, it shall, subject to section 49, grant a decree of judicial separation.”.

(17) Section 31(4) of the principal Act is repealed.

(18) For section 31E(7)(b) substitute–

“(b) “separated” means that the parties separated and thereafter lived separately and apart immediately preceding the date of the filing of the application for the decree of divorce, but the parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.”.

### **Transitional provisions.**

3. Except where provided for by rules made under section 61 of the principal Act, proceedings under the principal Act that had commenced before the coming into force of section 2 of this Act must continue in accordance with the provisions of the principal Act as if it had not been amended in accordance with section 2 of this Act.

### **Amendment of the Matrimonial Causes Act by the insertion of a new Part XII.**

4. The principal Act is amended by inserting the following Part XII after Part XI-

**“Part XII.-FINANCIAL RELIEF AFTER OVERSEAS DIVORCE**

**Application for financial relief after an overseas divorce.**

62.(1) Where –

- (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
- (b) the divorce, annulment or legal separation is entitled to be recognised as valid in Gibraltar,

either party to the marriage may apply to the court, in such manner as prescribed by rules of court, for an order for financial relief under this Part.

- (2) This Part applies even if the date of the divorce, annulment or legal separation is earlier than the date on which this Part came into force.
- (3) If after a marriage has been dissolved or annulled in an overseas country one of the parties to the marriage forms a subsequent marriage or civil partnership, that party shall not be entitled to make an application in relation to that marriage under sections 67 or 71.
- (4) The reference in subsection (3) to the forming of a subsequent marriage or civil partnership includes a reference to the forming of a marriage or civil partnership which is by law void or voidable.

**Leave of the Court required for applications for financial relief.**

63.(1) No application for an order for financial relief shall be made under this Part unless the leave of the court has been obtained in accordance with the rules of court; and the court shall not grant leave unless it considers that there is a substantial ground for the making of an application for such an order.

- (2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside Gibraltar requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.
- (3) Leave under this section may be granted subject to such conditions as the court thinks fit.

**Interim orders for maintenance.**

- 64.(1) Where leave is granted under section 63 for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child of the family periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.
- (2) If it appears to the court that it has jurisdiction to entertain the application for an order for financial relief by reason only of section 65(1)(c), the court shall not make an interim order under this section.
- (3) An interim order under subsection (1) may be made subject to such conditions as the court thinks fit.

**Jurisdiction of the Court.**

- 65.(1) The court shall have jurisdiction to entertain an application for an order for financial relief only if one or more of the following jurisdictional requirements are satisfied –
- (a) either of the parties to the marriage was domiciled in Gibraltar on the date of the application for leave under section 63 or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (b) either of the parties to the marriage was habitually resident in Gibraltar throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (c) either or both of the parties to the marriage had at the date of the application for leave, a beneficial interest in possession in a dwelling-house situated in Gibraltar which was at some time during the marriage a matrimonial home of the parties to the marriage.
- (2) In this section “possession” includes receipt of, or the right to receive rents and profits but “rent” does not include mortgage interest.

**Duty of the Court to consider whether Gibraltar is an appropriate venue for application.**

66.(1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in Gibraltar and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

(2) The court shall in particular have regard to the following matters-

- (a) the connection which the parties to the marriage have with Gibraltar;
- (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (c) the connection which the parties to the marriage have with any other country outside of Gibraltar;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside Gibraltar;
- (e) in a case where an order has been made by a court in a country outside Gibraltar requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside Gibraltar and, if the applicant has omitted to exercise that right, the reason for that omission;
- (g) the availability in Gibraltar of any property in respect of which an order under this Part in favour of the applicant could be made;
- (h) the extent to which any order made under this Part is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

**Orders for financial provision, property adjustment and pension sharing.**

67.(1) Subsections (2) and (3) apply where one of the parties to the marriage has made an application for an order under this section.

(2) If the marriage has been dissolved or annulled, the court may on the application make any one or more of the orders which it could make under Part VII and Part VIIA of this Act (financial provision, property adjustment and pension sharing), if a decree of divorce or nullity order had been made in respect of the marriage in Gibraltar.

(3) If the parties to the marriage have been judicially separated, the court may on the application make any one or more of the orders which it could make under Part VII of this Act (financial provision and property adjustment), if a judicial separation order had been made in respect of the marriage in Gibraltar.

(4) Where under subsection (2) or (3) the court makes –

- (a) an order which, if made under Part VII of this Act, would be a secured periodical payments order;
- (b) an order for the payment of a lump sum; or
- (c) an order which, if made under Part VII of this Act, would be a property adjustment order.

then, on making that order or at any time afterwards, the court may make any order which it could make under section 36 of this Act (sale of property) if the order under subsection (2) or (3) had been made under that section.

(5) The powers under subsections (2) to (4) are subject to section 69.

**Matters to which the court is to have regard in exercising its powers under section 67.**

68.(1) The court, in deciding –

- (a) whether to exercise its powers under section 67, and
- (b) if so, in what way,

must act in accordance with this section.

(2) The court must have regard to all the circumstances of the case, giving first consideration to the welfare, while under the age of 18, of any child of the family who has not attained the age of 18.

- (3) The court, in exercising its power under section 67 in relation to one of the parties to the marriage –
- (a) must in particular have regard to the matters mentioned in section 37(2)(a) to (h) of this Act, and
  - (b) shall be under duties corresponding to those imposed by sections 38(1) and (2) of this Act where it decides to exercise under section 67 powers corresponding to the powers referred to in those sections.
- (4) The matters to which the court is to have regard under subsection (3)(a), so far as relating to section 37(2)(a) of the Act (regard to be had to financial resources) include any benefits under a pension arrangement which either of the parties to the marriage has or is likely to have, whether or not in the foreseeable future.
- (5) The matters to which the court is to have regard under subsection (3)(a), so far as relating to section 37(2)(h) of the Act (regard to be had to benefits that cease to be acquirable), include any benefits under a pension arrangement which, because of the dissolution or annulment of the marriage, one of the parties to the marriage will lose the chance of acquiring.
- (6) The court in exercising its powers under section 67 in relation to a child of the family must in particular have regard to the matters mentioned in section 37(3)(a) to (e) of this Act.
- (7) The court in exercising its powers under section 67 against a party to the marriage in favour of a child of the family who is not the child of that party, shall also have regard to the matters mentioned in section 37(4)(a) to (c) of this Act.
- (8) Where an order has been made by a court outside Gibraltar for –
- (a) the making of payments; or
  - (b) the transfer of property,
- by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family, shall have regard to the extent to which that order has been complied with or is likely to be complied with.
- (9) In this section –
- (a) “pension arrangement” has the same meaning as in section 46H(18) of this Act; and
  - (b) references to benefits under a pension arrangement include any benefit by way of pension, whether under a pension arrangement or not.

**Restriction of powers of court under section 67 where jurisdiction depends on matrimonial home in Gibraltar.**

69.(1) Subsections (2) to (4) apply where the court has jurisdiction to entertain an application for an order under section 67 only because a dwelling house which was a matrimonial home of the parties to the marriage is situated in Gibraltar.

(2) The court may make under section 67 any one or more of the following orders (but no other) –

- (a) an order that the other party to the marriage shall pay to the other such lump sum as specified in the order;
- (b) an order that a party to the marriage shall pay to a child of the family, or to a specified person for the benefit of a child of the family, such lump sum as may be so specified in the order;
- (c) an order that a party to the marriage shall transfer that party's interest in the dwelling-house, or a specified part of that interest
  - (i) to the other party to the marriage,
  - (ii) to a child of the family,
  - (iii) to such person so specified for the benefit of a child of the family;
- (d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest so specified, be made to the satisfaction of the court for the benefit of–
  - (i) the other party to the marriage and the children of the family;
  - (ii) and either or any of them;
- (e) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any relevant settlement so far as that settlement relates to an interest in the dwelling-house;
- (f) an order extinguishing or reducing the interest of either of the parties to the marriage under any relevant settlement so far as that interest is an interest in a dwelling-house;
- (g) an order for the sale of the interest of a party to the marriage in the dwelling-house.

- (3) Where under subsection (2), the court makes just one order for the payment of a lump sum by a party to the marriage, the amount of the lump sum must not exceed the amount specified in subsection (5).
- (4) Where under subsection (2), the court makes two or more orders, each of which is an order for the payment of a lump sum by the same party to the marriage, the total of the lump sums must not exceed the amount specified in subsection (5).
- (5) That amount is –
  - (a) if the interest of the paying party in the dwelling-house is sold in pursuance of an order made under subsection (2)(g), the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof;
  - (b) if the interest of that party is not sold, the amount which in the opinion of the court represents the value of that interest.
- (6) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons –
  - (a) the reference in subsection (2)(g) to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
  - (b) the reference in subsection (5)(a) to the amount of the proceeds of a sale ordered under subsection (2)(g) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.
- (7) In subsection (2) “relevant settlement” means settlement made, during the subsistence of the marriage or in anticipation of its formation, including one made by will or codicil.

**Consent orders under section 67.**

- 70.(1) Notwithstanding anything in section 68, on an application for a consent order under section 67, the court may make an order in the terms agreed on the basis only of the prescribed information furnished with the application.
- (2) Subsection (1) does not apply if the court has reason to think that there are other circumstances into which it ought to inquire.
- (3) Subsection (1) applies to an application for a consent order varying or discharging an order under section 67 as it applies to an application for such an order.

(4) In this section –

“consent order” in relation to an application for a consent order, means an order in the terms applied for to which the respondent agreed;

“prescribed” means prescribed by rules of court.

**Orders for transfers of tenancies of dwelling-houses.**

71.(1) This paragraph applies if –

- (a) an application is made by a party to the marriage 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 Gibraltar by virtue of tenancy.

(2) The court may make in relation to the dwelling-house any order which it could make under section 45 of this Act.

**Application to orders under sections 64 and 67 of Part XII.**

72.(1) The following sections of this Act apply in relation to an order made under section 64 or 67 of this Part as they apply in relation to a like order made under that Part of the Act, that is to say –

- (a) sections 34(3) (provisions as to lump sums);
- (b) sections 36(2), (4), (5) and (6) (provisions as to orders for sale);
- (c) sections 46B(3) to (5) and 46E (pension sharing);
- (d) sections 46F (2) to (8) and 46G;
- (e) sections 41(1) and (2) (duration of continuing financial provision orders in favour of a party to a marriage);
- (f) section 42 (duration of continuing financial provision orders in favour of children);
- (g) section 43, except paragraph (b);
- (h) section 43A (variation, discharge etc. of certain orders for financial relief), except subsection (2) (e) and subsection (4);
- (i) section 43B (orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage);

- (j) section 43C (orders for repayment in certain cases of sums paid under certain orders).
- (2) Subsection (1)(d) does not apply where the court has jurisdiction to entertain an application for an order for financial relief only because a dwelling-house which was the matrimonial home of the parties is situated in Gibraltar.
- (3) Section 46H(1) applies in relation to an order made under section 67 of this Part by virtue of subsection (1)(d) as it applies to an order made under section 34 by virtue of section 46F or 46G of this Act.
- (4) The Minister may by regulations make for the purposes of this Part provision corresponding to any provision which may be made by him under section 46H(2) of the Act.

**Avoidance of transactions intended to defeat applications for financial relief.**

73.(1) Subsections (2) and (3) apply where a party to the marriage is granted leave under section 63 to make an application for an order for financial relief under section 67.

- (2) If the court is satisfied, on application by a party to the marriage, that the other party is, with the intention of defeating the claim of the other party, about to –
  - (a) make any disposition; or
  - (b) transfer out of the jurisdiction, or otherwise deal with, any property

it may make such order as it thinks fit for restraining that party from doing so or otherwise protecting the claim.

- (3) If the court is satisfied, on application by a party to the marriage –
  - (a) that the other party to the marriage has, with the intention of defeating a claim made by that party, made a reviewable disposition; and
  - (b) that, if the disposition were set aside –
    - (i) financial relief under section 64 or 67, or
    - (ii) different financial relief would have been granted to that party,

it may make an order setting aside the disposition.

- (4) Where an order for financial relief under section 64 or section 67 has been made by the court at the instance of a party to the marriage, then, on an application made by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief made a reviewable disposition, make an order setting aside the disposition.
- (5) Where the court has jurisdiction to entertain the application for financial relief by reason only of section 65(1)(c), it shall not make any order under subsection (2), (3) or (4) in respect of any property other than the dwelling-house concerned.
- (6) Where the court makes an order under subsection (3) or (4) setting aside a disposition, it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).
- (7) For the purposes of subsections (3) and (4), but subject to subsection (8), any disposition made by the other party is a “reviewable disposition” (whether made before or after the commencement of the application under that subsection).
- (8) A disposition made by the other party is not a reviewable disposition for those purposes if made for valuable consideration (other than formation of marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant’s claim for financial relief.
- (9) A reference in this section to defeating a claim by a party to the marriage is a reference to –
  - (a) preventing financial relief being granted, or reducing the amount of financial relief which might be granted, or
  - (b) frustrating or impeding the enforcement of any order which might be, or has been, made under sections 64 and 67.

**Presumptions for the purposes of section 73.**

- 74.(1) Where an application is made under section 73(2) or (3) by a party to the marriage with respect to –
- (i) a disposition which took place less than 3 years before the date of the application, or
  - (ii) a disposition or other dealing with property which is about to take place, and

the court is satisfied that in a case falling within section 73(2)(a) or (b), that the disposition or other dealing would have the consequence, or in a case falling within section 73(3) that the disposition has had the consequence, of defeating a claim by the applicant for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case maybe, is about to do so, with the intention of defeating the applicant's claim for financial relief.

- (2) In this section reference to defeating a party's claim is a reference to preventing financial relief being granted, or reducing the amount of financial relief which might be granted, under sections 64 or 67.

**Prevention of transactions intended to defeat prospective applications for financial relief.**

75.(1) Where, on an application by a party to a marriage, it appears to the court—

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in an overseas country; and
- (b) that the applicant intends to apply for leave to make an application for an order for financial relief under section 67 as soon as he or she has been habitually resident in Gibraltar for the period of one year, and
- (c) that the party to the marriage is, with the intention of defeating a claim for financial relief, about to—
  - (i) make any disposition, or
  - (ii) transfer out of the jurisdiction, or otherwise deal with, any property,

the court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in paragraph (c).

- (2) Subsection (1) applies notwithstanding that the date of the dissolution of the marriage, annulment or legal separation is earlier than on the date on which that subsection comes into force.

(3) Subsection (4) applies where —

- (a) an application is made under subsection (1) with respect to —
  - (i) a disposition which took place less than 3 years before the date of the application, or
  - (ii) a disposition or other dealing with property is about to take place, and

- (b) the court is satisfied that the disposition or other dealing would have the consequence of defeating a claim by the applicant.
- (4) It shall be presumed, unless the contrary is shown, that the person who –
- (a) disposed of, or
  - (b) is about to dispose of or deal with the property,
- did so, or (as the case may be) is about to do so, with the intention of defeating the applicant’s claim.
- (5) A reference in this paragraph to defeating a person’s claim is a reference to preventing financial relief being granted, or reducing the amount of financial relief which might be granted, under section 64 or 67.

#### SUPPLEMENTARY

#### **Sections 73 to 75: meaning of “disposition”.**

- 76.(1) In sections 73 to 75, “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance of gift of property of any description, whether made by an instrument or otherwise.
- (2) The provisions of sections 73 to 75 are without prejudice to any powers of the Supreme Court to grant injunctions under section 12 of the Supreme Court Act.

#### **Interpretation of this Part.**

77. In this Part –

“the court” means the Supreme Court or, where a magistrates court has jurisdiction by virtue of sections 43B and 43C, the magistrates court.

“dwelling-house” includes –

- (a) any building or part of a building, which is occupied as a dwelling, and
- (b) any yard, garage, garden or outhouse belonging to, and occupied with, the dwelling-house.

“overseas country” means a country or territory outside Gibraltar.”.

## **EXPLANATORY MEMORANDUM**

This Act amends the Matrimonial Causes Act providing for:

- so-called “no-fault divorces”, by keeping the “irretrievable breakdown of the marriage” as the sole ground for divorce, but no longer requiring this ground to be supported by allegations against a spouse, such as allegations of adultery, unreasonable behaviour or desertion;
- the reduction of the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage;
- the extension of the cooling off period between the provisional and final divorce pronouncements from 6 weeks to 6 months; and
- financial relief applications following an overseas divorce.