

# Married Women and Civil Partners Act

## Principal Act

<b>Act. No. 1962-06</b>	<i>Commencement</i>	31.5.1962
	<i>Assent</i>	25.5.1962

Amending enactment	Relevant current provisions	Commencement date
Acts. 1964-14	s. 16	
1971-19	–	
1972-06	s. 8(6)	
1983-12	s. 11	
1983-48	–	
2007-17	s. 3	14.6.2007
2014-10	ss. 1-3, 5-9, 10(1), 11-13, 14(1), 15, 17, 19	28.3.2014

## English sources:

Married Women's Property Act 1882 (45 & 46 Vict. c.75)

Married Women's Property Act 1907 (7 Edw. 7 c.18)

Law Reform (Married Women and Tortfeasors) Act 1935 (25 & 26 Geo. 5 c.30)

Married Women (Restraint upon Anticipation) Act 1949 (12, 13 & 14 Geo. 6 c.78)

Law Reform (Husband and Wife) Act 1962 (10 & 11 Eliz. 2 c.48)

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AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE CAPACITY, PROPERTY AND LIABILITIES OF MARRIED WOMEN AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH.

**Short title.**

1. This Act may be cited as the Married Women and Civil Partners Act.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires,—

“contract” includes the acceptance of any trust, or the office of executrix or administratrix;

“debentures or debenture stock of Gibraltar” means any debentures or debenture stock chargeable on the Consolidated Fund under any Act;

“property” includes a thing in action.

- (2) The provisions of this Act as to liabilities of married women or civil partner shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman or civil partner being a trustee or executrix or administratrix either before or after her marriage or in the case of civil partners, either before or after his or her civil partnership, and her husband or his or her civil partner shall not be subject to such liabilities unless he or in the case of civil partners, he or she has acted or intermeddled in the trust or administration.

**Stock, etc., to which a married woman or civil partner is entitled.**

3. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by any person, all debentures or debenture stock of Gibraltar, or any other stocks or funds transferable in the books of any bank, which are standing in the sole name of a married woman or civil partner and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which are standing in her name or in the case of civil partners, his or her name, shall be deemed, unless and until the contrary be shown, to be the property of such married woman or civil partner; and the fact that any such deposit, annuity, debentures or debenture stock, or other stocks or funds transferable in the books of any bank, share, stock, debentures, debenture stock or other interest as aforesaid, is standing in the sole name of a married woman or civil partner, shall be sufficient prima facie evidence that she or he or she in the case of civil partners is beneficially entitled thereto so as to authorize and empower her or him or her in the case of civil partners to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband or civil partner, and to indemnify the Director of Postal Services,

the Financial Secretary and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

**Stock, etc., to be transferred, etc., to a married woman or civil partner.**

4. All debentures or debenture stock of Gibraltar, or any other stocks or funds transferable in the books of any bank, and all such deposits and annuities respectively as are mentioned in section 3 and all shares, stock, debentures, debenture stock, and other interest of or in any such corporation, company, public body, or society, which shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman or civil partner shall be deemed, unless and until the contrary be shown, to be her property or in the case of civil partners, his or her property, in respect of which so far as any liability may be incident thereto he or she shall alone be liable:

Provided that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any law, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company.

**Investments in joint names of married woman or civil partners and others.**

5. The provisions of sections 3 and 4 as to deposits in any post office or other savings bank, or in any other bank, annuities granted by any person, debentures or debenture stock of Gibraltar, or of any other stocks or fund; transferable in the books of any bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which shall be standing in the sole name of a married woman or civil partner, or which shall be allotted to, or placed, registered, or transferred to or into or made to stand in, the name of a married woman or civil partner, shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman or civil partner, to any of the particulars aforesaid which shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in the name of any married woman jointly with any person other than her husband or in the case of civil partners, any civil partner jointly with any person other than their civil partner.

**Stock, etc., standing in the joint names of a married woman or civil partner and others.**

6. It shall not be necessary for the husband of any married woman or civil partners, in respect of her interest or in the case of civil partners, his or her interest, to join in the transfer of any such annuity or deposit as aforesaid, or debentures or debenture stock of Gibraltar, or of any other stocks or funds transferable as aforesaid, or any share, stock, debentures, debenture stock, or other benefit, right, claim or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman or civil partner, or in the joint names of such married woman or civil partner and any other person not being her husband or his or her civil partner.

**Fraudulent investments with money of husband or civil partner.**

7. If any investment in any such deposit or annuity as aforesaid, or in any debentures or debenture stock of Gibraltar, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debentures or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debentures, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman or civil partner by means of moneys of her husband, without his consent or in the case of civil partners, by a civil partner by means of money of his or her civil partner, without his or her consent, the court may, upon an application under section 10, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband or the relevant civil partner; and nothing in this Act shall give validity as against creditors of the husband or the relevant civil partner, to any gift, by a husband to his wife or by a civil partner to their civil partner, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband or the relevant civil partner or the relevant civil partner, or to any deposit or other investment of moneys of the husband or the relevant civil partner made by or in the name of his wife or corresponding civil partner in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not been passed.

**Moneys payable under policy of assurance not to form part of estate of the insured.**

8.(1) A married woman or civil partner may effect a policy upon his or her own life or the life of her husband or his or her civil partner for his or her own benefit; and the same and all benefit thereof shall enure accordingly.

(2) A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife or civil partner, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband or civil partner, or of her children, or of her husband or his or her civil partner and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts:

Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.

(3) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid.

(4) If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustees Act.

(5) The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representatives of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

(6) In this section, as regards policies of assurance effected after the 1st day of September, 1972, the word “children” includes illegitimate children.

**Wife’s or civil partner’s antenuptial debts and liabilities.**

9. A woman after her marriage or civil partnership shall continue to be liable for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage or civil partnership, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of any law relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong.

**Questions between husband and wife or civil partner as to property to be decided in a summary way.**

10.(1) In any question between husband and wife or civil partners as to the title to or possession of property, either party, or any bank, corporation, company, public body, or society in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to the Chief Justice or (at the option of the applicant irrespectively of the value of the property in dispute) to the judge of the Court of First Instance, and the Chief Justice or the judge (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit.

(2) All proceedings in the Court of First Instance under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act were not in force may, at the option of the defendant or respondent to such proceedings, be removed as of right into the Supreme Court by order of certiorari or otherwise as may be prescribed by any rule of the Supreme Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by the Supreme Court.

(3) The Chief Justice or the judge of the Court of first Instance, if either party so require, may hear any application under this section in chambers.

(4) Any bank, corporation, company, public body, or society, shall, in the matter of any application under this section, for the purpose of costs or otherwise, be treated as a stake holder only.

### **Actions in tort between husband and wife or civil partners.**

11.(1) Subject to the provisions of this section, each of the parties to a marriage or civil partnership shall have the like right of action in tort against the other as if they were not married or in a civil partnership.

(2) Where an action in tort is brought by one of the parties to a marriage or civil partnership against the other during the subsistence of the marriage or civil partnership, the court may stay the action if it appears –

- (a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or
- (b) that the question or questions in issue could more conveniently be disposed of on an application made under section 10,

and without prejudice to paragraph (b) of this subsection the court may, in such an action, either exercise any power which could be exercised on an application under section 10, or give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

### **Married woman or civil partners as executrix or trustee.**

12. A married woman or civil partner who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the debentures or debenture stock in Gibraltar, or of any other stocks or funds transferable as aforesaid, or any share, stock, debentures, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole or in the case of civil partners, without his or her civil partner, as if he or she was not in a civil partnership.

### **Saving of power to make settlements.**

13. Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage or civil partnership, respecting the property of any married woman or civil partner, but no settlement or agreement for a

settlement shall have any greater force or validity against creditors of such woman or man, in the case of a civil partnership than a like settlement or agreement for a settlement made or entered into by a man or woman, in the case of a civil partnership would have against his creditors.

**Married woman or civil partners entitled to prior estate to be protector of settlement alone.**

14.(1) Where a married woman or civil partner would, if single, be the protector of a settlement in respect of a prior estate, then she alone shall, in respect of that estate, be the protector of the settlement.

(2) This section applies to all disentailing assurances and surrenders made after the 31st day of December, 1882.

**Capacity of married women or civil partners.**

15. Subject to the provisions of this Act a married woman or civil partner shall –

- (a) be capable of acquiring, holding, and disposing of, any property;
- (b) be capable of rendering herself or in the case of civil partners, himself or herself, and being rendered, liable in respect of any tort, contract, debt, or obligation;
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were a feme sole.

**Property of married women.**

16. Subject to the provisions of this Act all property which–

- (a) immediately before the 1st day of June, 1948, was the separate property of a married woman or held for her separate use in equity; or
- (b) belongs at the time of her marriage to a woman married after the 1st day of June, 1948; or
- (c) after the 1st day of June, 1948, is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a feme sole and may be disposed of accordingly.

**Abolition of husband's or civil partner's liability for wife's or civil partner's torts and antenuptial contracts, debts and obligations.**

17. Subject to the provisions of this Act, the husband of a married woman or a civil partner shall not, by reason only of his being her husband or his or her civil partner, be liable –

- (a) in respect of any tort committed by her or in the case of civil partners, by him or her whether before or after the marriage or civil partnership, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage or him or her before the civil partnership; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

**Abolition of restraint upon anticipation.**

18.(1) No restriction upon anticipation or alienation attached, or purported to be attached, to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of any effect after the 31st day of May, 1962.

(2) Subsection (1) shall have effect whatever is the date of the passing, execution or coming into operation of the law or instrument containing the provision by virtue of which the restriction was attached or purported to be attached.

**Savings.**

19. For the avoidance of doubt it is hereby declared that nothing in this Act –

- (a) prevents a husband and wife or civil partners from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued either in tort or in contract or otherwise, in like manner as if they were not married;
- (b) prevents the exercise of any joint power given to a husband and wife or civil partners.