

**MATRIMONIAL CAUSES ACT**

**Principal Act**

<b>Act. No. 1962-09</b>	<i>Commencement</i>	31.5.1962
	<i>Assent</i>	25.5.1962

<i>With which are consolidated</i>	<i>Relevant current provisions</i>
Acts. 1974-23, ss.2 and 6-14 1977-15, s.17(1) and (2)	ss. 2, 8, 23, 53-60 and Sch. s.46

Amending enactment		Commencement date
Act. 1972-06	–	
1974-23	ss. 4-7	
1975-22	s. 26(1)	
1977-15	–	
1983-30	ss. 2-4, 7, 10, 12(3), 13-19, 20(2), 21, 30-32, 35, 37(1), 38-39, 41, 43(8), 45, 49	
2005-08	s. 60A	22.2.2005
Act. 2009-45	ss. 2-5, 5A-5B, 16(2)(c)-(e), (3)(c)(i)-(ii), (4)-(5), 17A, 18, 19A, 20-21, 25, 25A-25E, 26(2)- (3), 26A, 27(3), 30(1)-(2), (4), 31A-31M, 32-34, 34A, 35-43, 43A-43E, 46A-46J, 47, 48(1), 49, 50(1)-(2), 51-52, 58	14.1.2010 <sup>1</sup>

Rules of court made under s.61 and other powers appear under the title Supreme Court. (These, inter alia, apply the former English Matrimonial Causes Rules 1957, as amended up to April 1968, with modifications and adaptations.

**Implementing:**

Regulation (EC) No 2201/2003

**English sources:**

Matrimonial Causes Act 1973(1973 Chapter 18).

<sup>1</sup> Notice of Commencement - LN. 2010/002

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AN ACT TO MAKE FURTHER AND BETTER PROVISION IN RESPECT OF THE LAW GOVERNING MATRIMONIAL CAUSES AND FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

## PART I.—PRELIMINARY

### Short title.

1. This Act may be cited as the Matrimonial Causes Act.

### Interpretation.

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

“Agency” means the Care Agency established under section 3 of the Care Agency Act 2009;

“child of the family” means—

- (a) a child of both the parties to a marriage; or
- (b) any other child, not being a child who is placed with those parties as foster carer by the Care Agency under the Children Act 2009, who has been treated by both of those parties as a child of their family;

“conciliator” means a person who is for the time being designated in rules as a conciliator;

“country” includes a colony or other dependent territory of the United Kingdom but for the purposes of this Act a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law;

“court” means the Supreme Court;

“deported” includes, in the case of a non-Gibraltarian, being obliged to leave Gibraltar by reason of the refusal or revocation of a permit of residence;

“disposition” does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, and any other right or interest whether in possession or not;

“Queen’s Proctor” means the Attorney-General;

“will” includes a codicil.

3. *Repealed*

**PART II.—JURISDICTION.**

**Jurisdiction of the court in divorce, judicial separation and nullity.**

4.(1) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Member State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in Gibraltar on the date when the proceedings are begun.

(2) The court shall have jurisdiction to entertain proceedings for nullity or marriage if—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Member State has jurisdiction under the Council Regulation and either of the parties to the marriage—
  - (i) is domiciled in Gibraltar on the date when the proceedings are begun, or
  - (ii) died before that date and either was at death domiciled in Gibraltar or had been habitually resident in Gibraltar throughout the period of one year ending with the date of death.

(3) In this section and in other relevant provisions of this Act—

“Council Regulation” means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition



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and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“Member State” means all Member States with the exception of Denmark and a reference to Member State shall be deemed to include Gibraltar.

## **Domicile.**

5.(1) Subject to subsection (2), the domicile of a married woman as at any time after the coming into force of this section shall, instead of being the same as her husband’s by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before this section came into force a woman was married and then had her husband’s domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this section.

## **Age at which independent domicile can be acquired.**

5A. The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age.

## **Dependent domicile of child not living with his father.**

5B.(1) Where the father and mother of a person incapable of having an independent domicile are alive but living apart, his domicile is that of his mother if he has his home with the mother and has no home with the father.

(2) Where a person incapable of having an independent domicile had the domicile of his mother by virtue of subsection (1) but she is dead, his domicile is that which she last had, if he has not since had a home with his father.

(3) Nothing in this section prejudices any existing rule of law as to the cases in which a person’s domicile is regarded as being, by dependence, that of his mother.

(4) In this section, in its application to a person who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother.

**Jurisdiction in presumption of death.**

6. The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner—

- (a) is domiciled in Gibraltar on the date when the proceedings are begun; or
- (b) was habitually resident in Gibraltar throughout the period of one year ending with that date.

**Jurisdiction in other proceedings.**

7. The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of section 4, 5 or 6 (or of this section) also have jurisdiction to entertain other proceedings in respect of the same marriage for divorce, judicial separation, or nullity of marriage notwithstanding that the jurisdiction would not be exercisable under section 4, 5 or 6.

**Concurrent proceedings.**

8. The Schedule to this Act shall have effect as to the cases for which matrimonial proceedings in Gibraltar may be stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, but nothing in the Schedule prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

**PART III.—PRACTICE, POWERS AND EVIDENCE.****Practice and procedure.**

9. The jurisdiction vested in the court by this Act shall so far as regards procedure, practice and powers of the court be exercised in the manner provided by this Act and by any subsidiary legislation made hereunder; and where no special provision is contained in this Act or in any such subsidiary legislation with reference thereto, any such jurisdiction shall be exercised in accordance with the practice, procedure and powers for the time being in force in the High Court of Justice in England with reference to matrimonial proceedings.

**Parties to proceedings involving adultery.**

10.(1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person

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alleged to have committed adultery with the other party to the marriage a party to the proceedings, unless excused by the court on special grounds from doing so.

(2) Rules may, either generally or in such cases as may be prescribed by the rules, exclude the application of subsection (1) where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.

(3) Where in pursuance of subsection (1), a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.

(4) Rules may make provision, in cases not falling within subsection (1) above, with respect to the joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules made by virtue of this subsection may make different provision for different cases.

(5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks fit.

## **Power to treat desertion as continuing during incapacity.**

11. For the purposes of any petition for divorce or judicial separation the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention, if the evidence before the court is such that, had he not been so incapable, the court would have inferred that that intention continued at that time.

## **Evidence.**

12.(1) Notwithstanding any other law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in this section or any other law, a husband or wife shall not be compellable in any proceedings to give evidence of such matters.

(3) The parties to any proceedings instituted in respect of which adultery is a material matter and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has committed adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

(4) In any proceedings for nullity, evidence on the question of sexual capacity shall be heard in camera unless in any case the Chief Justice is satisfied that in the interests of justice any such evidence ought to be heard in open court.

#### **PART IV.—ENCOURAGEMENT OF RECONCILIATION.**

##### **Duty of legal advisers.**

13. Where any person, in contemplation of filing a petition for divorce or judicial separation, consults a barrister or a solicitor, it shall be the duty of that barrister or solicitor, before advising the person to file such a petition—

- (a) to advise the person specifically to consider the possibility of a reconciliation with his or her spouse; and
- (b) where rules designate conciliators, and their names and addresses, to give to the person the names and addresses of not fewer than two conciliators.

##### **Statement by petitioner.**

14. Before any proceedings are commenced for divorce or judicial separation, the person who is to be the petitioner shall state in writing, in such form (if any) as may be prescribed, whether or not he or she wishes to see a conciliator.

##### **Powers and duties of court in respect of reconciliation.**

15.(1) In any proceedings for divorce or judicial separation, the court shall at all stages during the proceedings have regard to the reasonable possibility of a reconciliation between the parties to the marriage.

(2) If at any stage during any proceedings for divorce or judicial separation, it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it may think fit, to allow for attempts to be made to effect such a reconciliation.

(3) The power of adjournment under sub-section (2) is additional to any other powers of the court to adjourn proceedings.

## **PART V. –DIVORCE, NULLITY AND DISSOLUTION OF MARRIAGE ON PRESUMPTION OF DEATH.**

### *Divorce*

#### **Divorce on breakdown of marriage.**

16.(1) Subject to section 18, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) On a petition for divorce, the court shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say-

- (a) that the respondent has committed adultery, rape, sodomy or bestiality, or is homosexual, and in any such case the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as 'two years separation') and the respondent consents to a decree being granted; or
- (e) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition (hereafter in this Act referred to as three years separation').

(3) For the purposes of paragraph (b) of subsection (2), the court shall not hold that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent unless the

petitioner satisfies the court that the behaviour is of one or more of the following kinds, namely-

- (a) conduct by the respondent that involves actual and reasonably substantial physical or mental injury to the petitioner or to any child of the marriage or of either party, or the reasonable apprehension by the petitioner or any such child of such injury;
- (b) constructive desertion by the respondent of the petitioner; or
- (c) unsoundness of mind or other mental disorder on the part of the respondent, where the condition is likely to be incurable and either-
  - (i) the condition has existed for at least 3 years; or
  - (ii) in exceptional circumstances, the condition has existed for a shorter period than 3 years, and the effects of the behaviour of the respondent are directed towards the petitioner or towards any child of the marriage or of either party.

(4) On a petition for divorce, it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent but the court may in its discretion refuse to hear live evidence and decide the petition on the basis of documentary evidence before it.

(5) If the court is satisfied on the evidence of any such fact as is specified in subsection (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to subsection (4) and to sections 26 and 49, grant a decree of divorce.

**Supplemental provisions as to facts raising presumption of breakdown.**

17.(1) One party to a marriage shall not be entitled to rely for the purposes of section 16(2)(a) on the conduct of the other party of a kind specified in that provision committed by the other if, after it became known to him or her that the other had committed that conduct, the parties have lived with each other for a period exceeding, or periods together exceeding, 6 months.

(2) Where the parties to a marriage have lived with each other after it had become known to one party that the other had committed the conduct in section 16(2)(a) to which subsection (1) refers, but subsection (1) does not apply, in any proceedings for divorce in which the petitioner relies on that conduct the fact that the parties have lived with each other after that time

shall be disregarded in determining for the purposes of section 16(2)(a) whether the petitioner finds it intolerable to live with the respondent.

(3) Where in any proceedings for divorce, the petitioner alleges, that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him or her, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his or her allegation, that fact shall be disregarded in determining for the purposes of section 16(2)(b) whether the petitioner cannot reasonably be expected to live with the respondent, if the length of that period or of those periods together was 6 months or less.

(4) For the purposes of section 16(2)(c), the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention, if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his or her desertion continued at that time.

(5) In considering for the purpose of section 16(2) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding 6 months) or of any two or more periods (not exceeding 6 months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) For the purposes of section 16(2)(d) and (e) and of this section, a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(7) Provision may be made by rules of court for the purpose of ensuring that where in pursuance of section 16(2)(d) the petitioner alleges that the respondent consents to a decree being granted, the respondent has been given such information as will enable him or her to understand the consequences of his or her consenting to a decree being granted and the steps which he or she must take to indicate that he or she consents to the grant of a decree.

**Refusal of decree in three years separation cases on the ground of grave hardship to respondent.**

17A.(1) The respondent to a petition for divorce in which the petitioner alleges three years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then if—

- (a) the court finds that the petitioner is entitled to rely in support of his petition on the fact of three years' separation and makes no such finding as to any other fact mentioned in section 16(2); and
- (b) apart from this section the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage, it shall dismiss the petition.

(3) For the purposes of this section “hardship” shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

**Restrictions on petitions for divorce within three years of marriage.**

18.(1) Subject to subsection (2), no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of the marriage (in this section called 'the specified period').

(2) The court may, on an application made to it, allow the presentation of the petition within the specified period—

- (a) on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; or
- (b) in any case where the petitioner was under the age of 16 years at the date of the marriage—

but in determining any application on the ground in paragraph (a), the court shall have regard to the interests of any child of the family, and in



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determining any application under this subsection it shall in every case have regard to the question whether there is a reasonable probability of a reconciliation of the parties during the specified period.

(3) If it appears to the court, at the hearing of a petition for divorce presented pursuant to leave granted under subsection (2), that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case the court may—

- (a) dismiss the petition, without prejudice to any petition that may be brought after the expiration of the specified period on the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
- (b) if it grants the decree, direct that no application to make the decree absolute shall be made during the specified period.

(4) Nothing in this section shall prohibit the presentation of a petition based on matters that have occurred before the expiration of the specified period.

### **Relief for respondent in divorce proceedings.**

19. If in any proceedings for divorce, the respondent alleges and proves any such fact as is mentioned in section 16(2) (treating the respondent as the petitioner and the petitioner as the respondent for the purposes of that subsection) the court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

### **Consideration by the court of certain agreements or arrangements.**

19A. Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it is desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

### **Divorce proceedings after grant of judicial separation or other relief.**

20.(1) A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted a judicial separation or an order under the Maintenance Act upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On any such petition for divorce, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion or other fact by reference to which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner but the court shall not be bound to hear live evidence in the case.

21. *Repealed.*

**Re-marriage of divorced persons.**

22. Where a decree of divorce has been made absolute and the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, either party to the marriage may marry again.

**Non-judicial divorces.**

23.(1) No proceedings in Gibraltar shall be regarded as validly dissolving a marriage unless instituted in the Supreme Court.

- (2) Notwithstanding the provisions of section 57, a divorce which—
- (a) has been obtained elsewhere than in Gibraltar; and
  - (b) has been so obtained by means of a proceeding other than a proceeding instituted in a court of law; and
  - (c) is not required by any of the provisions of sections 53 to 56 to be recognized as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in Gibraltar.

(3) This section does not affect the validity of any divorce obtained before the 1st day of November 1974 and recognized as valid under rules of law formerly applicable.

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## **Petition for nullity.**

24. A husband or a wife may present a petition to the court praying that his or her marriage may be declared null and void.

## **Grounds on which a marriage is void.**

25.(1) A marriage shall be void on any of the following grounds—

- (a) that it is not a valid marriage under the provisions of the Marriage Act;
- (b) that at the time of the marriage either party was already lawfully married;
- (c) that the parties are not respectively male and female; or
- (d) in the case of a polygamous marriage entered into outside Gibraltar, that either party was at the time of the marriage domiciled in Gibraltar.

(2) For the purposes of paragraph (d) of subsection (1) a marriage is not polygamous if at its inception neither party has any spouse additional to the other.

## **Grounds on which a marriage is voidable.**

25A. A marriage shall be voidable on any of the following grounds that—

- (a) the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) at the time of the marriage either party, though capable of giving a valid consent, was suffering, whether continuously or intermittently, from mental disorder within the meaning of section 3 of the Mental Health Act of such a kind or to such an extent as to be unfitted for marriage;

- (e) at the time of the marriage the respondent was suffering from venereal disease in a communicable form; or
- (f) at the time of the marriage the respondent was pregnant by some person other than the petitioner.

**Bars to relief where marriage is voidable.**

25B.(1) The court shall not grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court that—

- (a) the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
- (b) it would be unjust to the respondent to grant the decree.

(2) Without prejudice to subsection (1), the court shall not grant a decree of nullity by virtue of section 25A on the grounds mentioned in paragraph (c), (d), (e) or (f) of that section unless—

- (a) it is satisfied that proceedings were instituted within the period of three years from the date of the marriage; or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under subsection (4).

(3) Without prejudice to subsections (1) and (2), the court shall not grant a decree of nullity by virtue of section 25A on the grounds mentioned in paragraph (e) or (f) of that section unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

(4) In the case of proceedings for the grant of a decree of nullity by virtue of section 25A on the grounds mentioned in paragraph (c), (d), (e) or (f) of that section, the court may, on an application made to it, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if the court—

- (a) is satisfied that the petitioner has at some time during that period suffered from mental disorder within the meaning of section 3 of the Mental Health Act; and
- (b) considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.

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(5) An application for leave under subsection (4) may be made after the expiration of the period of three years from the date of the marriage.

## **Proceedings after decree nisi in the case of a decree of nullity of marriage: general powers of court.**

25C. (1) Where a decree of nullity of marriage has been granted under this Act but not made absolute, then, without prejudice to section 26, 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 26(1), but subject to section 49, make the decree absolute; or
- (b) rescind the decree;
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(2) Where a decree of nullity of marriage has been granted under this Act and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1).

## **Effect of decree of nullity in case of voidable marriage.**

25D. A decree of nullity in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

## **Marriages governed by foreign law or celebrated abroad under Gibraltar law.**

25E.(1) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined, in accordance with the rules of private international law, by reference to the law of a country outside Gibraltar, nothing in section 25, 25A or 25B(1) shall—

- (a) preclude the determination of that matter as aforesaid; or

- (b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.

(2) In the case of a marriage which has taken place outside Gibraltar and purports to be a marriage under common law, section 25 is without prejudice to any ground on which the marriage may be void by virtue of the rules governing the celebration of marriages outside Gibraltar under common law.

### *Decree nisi*

#### **Decree nisi for divorce or nullity.**

26.(1) Every decree for a divorce or for nullity shall, in the first instance, be a decree nisi not to be made absolute until after the expiration of six weeks from the pronouncing thereof:

Provided that the court may by special order in any case fix a shorter period.

(2) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 28, 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 subsection (1) (but subject to subsections (2) to (4) of section 26A and section 49), make the decree absolute;
- (b) rescind the decree;
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(3) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (2).

**Proceedings after decree nisi: special protection for respondent in separation cases.**

26A.(1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in section 16(2), the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.

(2) The following provisions of this section apply where—

- (a) the respondent to a petition for divorce in which the petitioner alleged two years' or three years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under subsection (3) of his financial position after the divorce; and
- (b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or three years' separation, as the case may be, and has made no such finding as to any other fact mentioned in section 16(2).

(3) The court hearing an application by the respondent under subsection (2) shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and, subject to subsection (4), the court shall not make the decree absolute unless it is satisfied—

- (a) that the petitioner should not be required to make any financial provision for the respondent; or
- (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(4) The court may, if it thinks fit, make the decree absolute notwithstanding the requirements of subsection (3) if—

- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay; and
- (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

*Presumption of death*

**Proceedings for decree of presumption of death and dissolution of marriage.**

27.(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Sections 22, 26(1), 28 and 29 shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

*The Queen's Proctor*

**Duties of Queen's Proctor.**

28. In the case of any petition for divorce or for nullity—

- (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 instruct counsel to argue before the court any question in relation to the matter which the court deems to be 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 of any matter material to the due decision of the case, and the Queen's Proctor may



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thereupon take such steps as he considers necessary or expedient; and

- (c) if in consequence of any such information or otherwise the Queen's Proctor suspects that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.

### **Costs where Queen's Proctor intervenes or shows cause.**

29. Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce or for nullity, the court may make such order 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 the parties by reason of his so doing, as may seem just.

## **PART VI.—JUDICIAL SEPARATION.**

### **Judicial separation.**

30.(1) A petition for judicial separation may be presented to the court by either party to a marriage 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.

(2) *deleted*

(3) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the fact alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 16(2) it shall, subject to section 49, grant a decree of judicial separation.

(4) Sections 15 and 19A shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial separation and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

### **Effects of judicial separation.**

31.(1) Where the court grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(2) If, while a decree of judicial separation is in force and the separation is continuing, either of the parties to the marriage dies intestate in respect of all or any of his or her real or personal property, the property in respect of which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

(3) In any case where the decree for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion shall be deemed to be property to which subsection (2) applies.

(4) The court may, on the application by petition of the husband or wife against whom a decree for judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, reverse the decree at any time after its making, on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

#### **PART VIA**

#### **FINANCIAL AGREEMENTS**

#### **Interpretation and application.**

31A.(1) In this Part—

“dealt with” includes the meaning given by section 31H(3); and

“marriage” includes a void marriage.

(2) Nothing in Part V of the Maintenance Act shall apply to any agreement made pursuant to any provisions of this Part.

#### **Financial agreements before marriage.**

31B.(1) If—

- (a) people who are contemplating entering into a marriage with each other make a written agreement with respect to any of the matters mentioned in subsection (2);
- (b) at the time of the making of the agreement, the people are not the spouse parties to any other binding agreement (whether

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made under this section or section 31C or 31D) with respect to any of those matters; and

- (c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

- (2) The matters referred to in subsection (1)(a) are the following—

- (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with;
- (b) the maintenance of either of the spouse parties—
  - (i) during the marriage;
  - (ii) after divorce; or
  - (iii) both during the marriage and after divorce.

- (3) A financial agreement made as mentioned in subsection (1) may also contain—

- (a) matters incidental or ancillary to those mentioned in subsection (2); and
- (b) other matters.

(4) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

## **Financial agreements during marriage.**

31C.(1) If—

- (a) the parties to a marriage make a written agreement with respect to any of the matters mentioned in subsection (2);
- (b) at the time of the making of the agreement, the parties to the marriage are not the spouse parties to any other binding agreement (whether made under this section or section 31B or 31D) with respect to any of those matters; and

- (c) the agreement is expressed to be made under this section,  
the agreement is a financial agreement.
- (2) The matters referred to in subsection (1)(a) are the following—
- (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the marriage, is to be dealt with;
  - (b) the maintenance of either of the spouse parties—
    - (i) during the marriage;
    - (ii) after divorce; or
    - (iii) both during the marriage and after divorce.
- (3) For the avoidance of doubt, a financial agreement under this section may be made before or after the marriage has broken down.
- (4) A financial agreement made as mentioned in subsection (1) may also contain—
- (a) matters incidental or ancillary to those mentioned in subsection (2); and
  - (b) other matters.
- (5) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**Financial agreements after the decree of divorce are granted.**

31D.(1) If—

- (a) after a decree of divorce is granted in relation to a marriage (whether it has taken effect or not), the parties to the former marriage make a written agreement with respect to any of the matters mentioned in subsection (2);

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- (b) at the time of the making of the agreement, the parties to the former marriage are not the spouse parties to any other binding agreement (whether made under this section or section 31B or 31C) with respect to any of those matters; and
- (c) the agreement is expressed to be made under this section,

the agreement is a financial agreement.

(2) The matters referred to in subsection (1)(a) are the following—

- (a) how all or any of the property or financial resources that either or both of the spouse parties had or acquired during the former marriage is to be dealt with; and
- (b) the maintenance of either of the spouse parties.

(3) A financial agreement made as mentioned in subsection (1) may also contain—

- (a) matters incidental or ancillary to those mentioned in subsection (2); and
- (b) other matters.

(4) A financial agreement (the new agreement) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

### **Need for a declaration of separation for certain provisions of financial agreement to take effect.**

31E.(1) A financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties—

- (a) at the time when the agreement is made; or
- (b) at a later time and before the termination of the marriage by divorce,

are to be dealt with, is of no force or effect until a declaration of separation is made.

(2) Before the declaration of separation is made, the financial agreement will be of force and effect in relation to the other matters it deals with (except for any matters covered by section 31F).

(3) Subsection (1) ceases to apply if—

- (a) the spouse parties divorce; or
- (b) either or both of them die,

and in that case the financial agreement will be of force and effect in relation to the matters mentioned in subsection (1) from the time of the divorce or death.

(4) In this Part, a declaration of separation is a written declaration that complies with subsections (5) and (6), and may be included in the financial agreement to which it relates.

(5) The declaration of separation must be signed by both the spouse parties to the financial agreement.

(6) The declaration of separation must state that—

- (a) the spouse parties have separated and are living separately and apart at the time of declaration; and
- (b) in the opinion of the spouse parties making the declaration, there is no reasonable likelihood of cohabitation being resumed.

(7) In this section—

- (a) “time of declaration” means the time when the declaration was signed by the parties to the financial agreement; and
- (b) “separated” means that the parties separated and thereafter lived separately and apart for a continuous period of two years 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—
  - (i) separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one of the parties; or

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- (ii) 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.

## **Whether or when certain other provisions of financial agreements take effect.**

31F.(1) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for a third party to contribute to the maintenance of a spouse party during the marriage is of no force or effect.

(2) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for matters covered by section 31B(3)(b) or 31C(3)(b), is of no force or effect unless and until the marriage breaks down.

## **Requirements with respect to provisions in financial agreements relating to the maintenance of a child or children.**

31G. A provision of a financial agreement that relates to the maintenance of a child or children of the family is void unless that agreement—

- (a) has been referred to the court under section 19A or 30(4); and
- (b) the court has expressed its opinion that the agreement or arrangement is reasonable and gives such directions, if any, as it thinks fit.

## **Certain provisions in agreements.**

31H.(1) No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a party to a marriage if subsection (2) applies.

(2) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party was unable to support himself or herself without an income, of pension, allowance or benefit.

(3) A provision in an agreement made as mentioned in section 31B(1), 31C(1) or 31D(1) that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is

taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

**When financial agreements are binding.**

31I.(1) A financial agreement is binding on the parties to the agreement if–

- (a) the agreement is signed by all parties;
- (b) the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with the independent legal advice from a legal practitioner as to the following matters–
  - (i) the effect of the agreement on the rights of that party;
  - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement;
- (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
- (d) the agreement has not been terminated and has not been set aside by a court.

(2) The court may make such orders for the enforcement of a financial agreement that is binding on the parties to the agreement as it thinks necessary.

**Effect of death of party to financial agreement.**

31J. A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal representative of that party.

**Termination of financial agreement.**

31K.(1) The parties to a financial agreement may terminate the agreement only by–



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- (a) including a provision to that effect in another financial agreement as mentioned in section 31B(4), 31C(4) or 31D(4); or
  - (b) making a written agreement (a termination agreement) to that effect.
- (2) A termination agreement is binding on the parties' if–
- (a) the agreement is signed by all parties to the agreement; and
  - (b) the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, as certified in an annexure to the agreement, with independent legal advice from a legal practitioner as to the following matters–
    - (i) the effect of the agreement on the rights of that party; and
    - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and
  - (c) the annexure to the agreement contains a certificate signed by the person providing the independent legal advice stating that the advice was provided; and
  - (d) the agreement has not been set aside by a court.
- (3) The court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

### **Circumstances in which court may set aside a financial agreement or termination agreement.**

31L.(1) A court may make an order setting aside a financial agreement or a termination agreement if the court is satisfied that–

- (a) the agreement was obtained by fraud (including non-disclosure of a material fact);

- (b) a party to the agreement entered into the agreement–
    - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
    - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
  - (c) the agreement is void, voidable or unenforceable;
  - (d) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement, to be carried out;
  - (e) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the family) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (3)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or
  - (f) in respect of the making of a financial agreement, a party to the agreement engaged in conduct that was, in all circumstances, unconscionable.
- (2) For the purposes of subsection (1)(b), creditor, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.
- (3) For the purpose of subsection (1)(e), a person has caring responsibility for a child if–
- (a) the person is a parent of the child with whom the child lives; or
  - (b) a court order provides that–
    - (i) the child is to live with the person; or
    - (ii) the person has parental responsibility for the child.
- (4) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of

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property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

(5) An order under subsection (1) or (4) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against the estate of the deceased party.

(6) If a party to proceedings under this section dies before the proceedings are completed—

- (a) the proceedings may be continued by or against the legal representative of the deceased party and the rules of court may make provision in relation to the substitution of the legal representative as a party to the proceedings; and
- (b) if the court is of the opinion—
  - (i) that it would have exercised its powers under this section if the deceased party had not died; and
  - (ii) that it is still appropriate to exercise those powers,  
the court may make any order that it could have made under subsection (1) or (4); and
- (c) an order under paragraph (b) may be enforced on behalf of, or against the estate of the deceased party.

## **Validity, enforceability and effect of financial agreements and termination agreements.**

31M. The question whether a financial agreement or a termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings relating to such an agreement, the court—

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the Supreme Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the Supreme Court has original jurisdiction; and

- (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable rules of court; and
- (c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as it were an order of the court.

## PART VII

### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

#### **Financial provision and property adjustment orders.**

32.(1) The financial provision orders for the purposes of this Act are the following orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 34 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 40(6) on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family—

- (a) any order for periodical payments in favour of a party to a marriage under section 34(1)(a) or 40(6)(a) or in favour of a child of the family under section 34(1)(d), (2) or (4) or 40(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 34(1)(b) or 40(6)(b) or in favour of a child of the family under section 34(1)(e), (2) or (4) or 40(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 34(1)(c) or 40(6)(c) or in favour of a child of the family under section 34(1)(f), (2) or (4) or 40(6)(f),

and references in this Act to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial

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provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Act are the following orders dealing with property rights available (subject to the provisions of this Act) under section 35 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation—

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property; and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

### **Maintenance pending suit.**

33. On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit that is an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

### **Financial provision orders in connection with divorce proceedings, etc.**

34.(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;

- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified; and
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f), to the restrictions imposed by section 42(1) and (3) on the making of financial provision orders in favour of children who have attained the age of eighteen.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) and (f)–

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(3) Without prejudice to the generality of subsection (1)(c) or (f)–

- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
- (b) 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; and

- (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The power of the court under subsection (1) or (3)(a) to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (3)(b), it may from time to time, subject to the restrictions mentioned in subsection (1), make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f).

(5) Without prejudice to the power to give a direction under section 43 for the settlement of an instrument by one of the lawyers of the court, where an order is made under subsection (1)(a), (b) or (c) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

(6) Where the court—

- (a) makes an order under this section for the payment of a lump sum; and
- (b) directs—
  - (i) that payment of that sum or any part of it shall be deferred; or
  - (ii) that that sum or any part of it shall be paid by instalments,

the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due.

### **Deduction of maintenance at source.**

34A.(1) An order for the payment of money made by the court under this Part shall be enforceable as a “maintenance order” within the meaning of section 2(1) of the Magistrates’ Courts Act.

(2) If, on the application of the person entitled to receive payments in pursuance of any order for payment of money by the court under this Part, it appears to the court—

- (a) that, at the time when the application was made, there was due under the order and unpaid an amount equal to not less than two of the payments required by the order; and
- (b) that the respondent is a person to whom earnings fall to be paid,

then, the court may, if it thinks fit, make an attachment of earnings order.

(3) Where the court makes an order under subsection (2), the provisions of sections 48 to 56 of and the Schedule to the Maintenance Act shall apply as if the order has been made as an attachment of earnings order under that Act.

(4) In the exercise of its powers under this section the Supreme Court may exercise any of the powers exercisable by the magistrates' court under section 57 of the Magistrates' Court Act.

#### **Property adjustment orders in connection with divorce proceedings, etc**

35.(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the children of the family any ante-nuptial or post-nuptial settlement (including such a



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settlement made by will or codicil) made on the parties to the marriage;

- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 42(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

(2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under section 43 for the settlement of an instrument by one of the lawyers of the court, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

## **Orders for sale of property.**

36.(1) Where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order under any of sections 34 or 35, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include provision requiring—

- (a) the making of a payment out of the proceeds of sale of the property to which the order relates; and
- (b) any such property to be offered for sale to a person, or class of persons, specified in the order.

(3) Where an order is made under subsection (1) on or after the grant of a decree of nullity of marriage, the order shall not take effect unless the decree has been made absolute.

(4) Where an order is made under subsection (1), the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

(5) Where an order under subsection (1) contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or remarriage of that person.

(6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 37(1).

**Matters to which court is to have regard in deciding how to exercise its powers under sections 34 to 36.**

37.(1) It shall be the duty of the court in deciding whether to exercise its powers under any of sections 34 to 36 and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 34(1)(a), (b) or (c) to make a financial provision order in favour of a party to a marriage or the exercise of its powers under section 35 or 36 in relation to a party to the marriage, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

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- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) the value to each of the parties to the marriage of any benefit, which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under section 34(1)(d), (e) or (f), (2) or (4) to make a financial provision order in favour of a child of the family or the exercise of its powers under section 35 or 36 in relation to a child of the family, the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
- (b) the income, earning capacity, if any, property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
- (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2).

(4) As regards the exercise of the powers of the court under section 34(1)(d), (e) or (f), (2) or (4) or 35 or 36 against a party to a marriage in

favour of a child of the family who is not the child of that party, the court shall also have regard to—

- (a) whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
- (b) whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own; and
- (c) the liability of any other person to maintain the child.

(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 to—

- (a) any immediate need for an interim order;
- (b) the matters in relation to which it is practicable for the court to inquire before making an interim order; and
- (c) 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.

**Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.**

38.(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 34(1)(a), (b) or (c), 35 or 36 in favour of a party to the marriage it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of a divorce order or decree of nullity as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in

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whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any future application in relation to that marriage for an order under section 34(1)(a) or (b).

### **Commencement of proceedings for financial relief, etc.**

39.(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2), proceedings for maintenance pending suit under section 33 for a financial provision order under section 34, or for a property adjustment order under section 35 may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

(2) Rules of court may provide, in such cases as may be prescribed by the rules that applications for any such relief—

- (a) as is mentioned in subsection (1) shall be made in the petition or answer; and
- (b) which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

### **Financial provision orders, etc, in case of neglect by party to marriage to maintain other party or child of the family.**

40.(1) Without prejudice to the generality of the provisions in Part III of the Maintenance Act, either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)—

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.

(2) The court shall not entertain an application under this section unless—

- (a) the applicant or the respondent is domiciled in Gibraltar on the date of the application;
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(3) Where an application under this section is made on the ground mentioned in subsection (1)(a), then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant; and
- (b) what order, if any, to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 37(2), and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while a minor.

(4) Where an application under this section is made on the ground mentioned in subsection (1)(b) then, in deciding—

- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates; and
- (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 37(3)(a) to (e), and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 37(4).

(5) In relation to an application under this section on the ground mentioned in subsection (1)(a), section 37(2)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned

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in subsection (1)(b), section 37 (2)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.

(6) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, an order requiring the respondent—

- (a) to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable; or
- (b) to pay to the applicant such lump sum or sums as the court thinks reasonable.

(7) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1), the court may make any one or more of the following orders—

- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;

- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f), to the restrictions imposed by section 42(1) and (3) on the making of financial provision orders in favour of children who have attained the age of eighteen.

(8) Without prejudice to the generality of subsection (7)(c) or (f), an order under this section for the payment of a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met; and
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

**Duration of continuing financial provision orders in favour of a party to the marriage, and effect of remarriage.**

41.(1) Subject, in the case of an order made on or after the grant of a decree of a divorce or nullity of marriage, to the provisions of sections 38(2) and 44(7), the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits—

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and
- (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of such a decree, the remarriage of the party in whose favour the order is made.



(2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.

(3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

**Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour.**

42.(1) Subject to subsection (3), no financial provision order and no order for a transfer of property under section 35(1)(a) shall be made in favour of a child who has attained the age of eighteen.

(2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but—

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date; and
- (b) shall not in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.

(3) Subsection (1), and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that—

- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

(4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

**Direction for settlement of instrument for securing payments or effecting property adjustment.**

43. Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order—

- (a) it may direct that the matter be referred to a lawyer of the court for him to settle a proper instrument to be executed by all necessary parties;
- (b) where the order is to be made in proceedings for nullity of marriage it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed;
- (c) the court may also make an order that the cost of executing the instrument to be payable out of the Consolidated Fund; and
- (d) where any of the parties fail to execute the instrument within the time fixed by the court, the court may execute a lien against the payments to be made or the property to be adjusted.

**Variation, discharge, etc, of certain orders for financial relief.**

43A.(1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

- (2) This section applies to the following orders—
  - (a) any order for maintenance pending suit and any interim order for maintenance;
  - (b) any periodical payments order;
  - (c) any secured periodical payments order;
  - (d) any order made by virtue of section 34(3)(c) or 40(8)(b) (provision for payment of a lump sum by instalments);

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- (e) any order for a settlement of property under section 35(1)(b) or for a variation of settlement under section 35(1)(c) or (d), being an order made on or after the grant of a decree of judicial separation;
- (f) any order made under section 36(1) for the sale of property; and
- (g) a pension sharing order under section 46H which is made at a time before the decree has been made absolute.

(3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 35(1)(b) or for a variation of settlement under section 35(1)(c) or (d) except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation by reference to which the order was made; or
- (b) for the dissolution of the marriage in question.

(5) Subject to subsections (8) to (15) and without prejudice to any power exercisable by virtue of subsection (2)(d), (e) or (g) or otherwise than by virtue of this section, no property adjustment order or pension sharing order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 34, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 34 or under section 40).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order and to any order made under section 36(1) which requires the proceeds of sale of property to be used for securing those payments, may be made by the person entitled to payments under the periodical payments order or by the legal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient (in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (9)) to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.

(8) Subsection (9) 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.

(9) 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) one or more pension sharing orders;

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- (d) 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.
  
- (10) An order for the payment of a lump sum made under subsection (9) 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.
  
- (11) Section 34(6) apply where the court makes an order for the payment of a lump sum under subsection (9) as they apply where it makes such an order under section 34.
  
- (12) If under subsection (9) 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 32(2).
  
- (13) Sections 36 and 43 apply where the court makes a property adjustment order under subsection (9) as they apply where it makes such an order under section 35.
  
- (14) Section 46B(3) applies where the court makes a pension sharing order under subsection (9) as it applies where the court makes such an order under section 46B.
  
- (15) Subsections (3) to (5) of section 46B apply in relation to a pension sharing order under subsection (9) as they apply in relation to a pension sharing order under that section.
  
- (16) The legal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) on the ground that they ought to have taken into count the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice

any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(17) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(18) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 41(1) and (2), the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.

(19) Where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child ("the order") is in force; and
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them,

the court may, in exercise of its powers under this section to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.

**Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.**

43B.(1) Where—

- (a) a periodical payments or secured periodical payments order in favour of a party to a marriage, hereafter in this section referred to as "a payments order", has ceased to have effect by reason of the remarriage of that party; and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the

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circumstances mentioned in paragraphs (a) and (b) against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

(2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made in proceedings in the Supreme Court or a magistrates' court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a magistrates' court; and accordingly references in this section to the court are references to the Supreme Court or the magistrates' court, as the circumstances require.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(5) The designated officer for a magistrates' court to whom any payments under a payments order are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable in the case of—

- (a) the designated officer, for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it; and
- (b) the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

(6) In this section “collecting officer”, in relation to an attachment of earnings order, means the Registrar of the Supreme Court or the designated officer for a magistrates’ court to whom a person makes payments in compliance with the order.

**Orders for repayment in certain cases of sums paid under certain orders.**

43C.(1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of–

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made; or
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This section applies to the following orders–

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and
- (c) any secured periodical payments order.

(3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this section may be made in proceedings in the Supreme Court or magistrates’ court for–

- (a) the variation or discharge of the order to which this section applies; or



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- (b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but when not made in such proceedings shall be made to the magistrates' court, and accordingly references in this section to the court are references to the Supreme Court or a magistrates' court, as the circumstances require.

(5) The jurisdiction conferred on a magistrates' court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a magistrates' court.

(6) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

### **Consent orders for financial provision on property adjustment.**

43D.(1) Notwithstanding anything in the preceding sections of this Part, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Subsection (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this section—

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

“order for financial relief” means an order under any of sections 34, 35, 36 or 40; and

“prescribed” means prescribed by rules of court.

### **Avoidance of transactions intended to prevent or reduce financial relief.**

43E.(1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 33, 34, 35, 40, 43A (except subsection(6)), and 46B and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so

granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person if it is satisfied—

- (a) that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition; or
- (c) in a case where an order has been obtained under any of the provisions mentioned in subsection (1) by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2)(b) or (c) 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.

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of subsection (2)(b) and (c) unless it was made for valuable consideration, other than 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.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied in a case falling within—

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- (a) subsection (2)(a) or (b), that the disposition or other dealing would, apart from this section, have the consequence; or
- (b) within subsection (2)(c), that the disposition has had the consequence,

of defeating the applicant's claim 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 is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

### **Extension of Married Women Act.**

44.(1) Any right of a wife, under section 10 of the Married Woman Act to apply to the Chief Justice or the judge of the Court of First instance, in any question between husband and wife as to the title to or possession of property, shall include the right to make such an application where it is claimed by the wife that her husband has had in his possession or under his control—

- (a) money to which, or to a share of which, she was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, she was beneficially entitled, or for any other reason); or
- (b) property (other than money) to which, or to an interest in which, she was beneficially entitled,

and that either that money or other property has ceased to be in his possession or under his control or that she does not know whether it is still in his possession or under his control.

(2) Where, on an application made to the Chief Justice or the judge of the Court of First Instance under section 10 of the Married Women Act as extended by subsection) of this section, the Chief Justice or the judge is satisfied—

- (a) that the husband has had in his possession or under his control money or other property as mentioned in paragraph (a) or paragraph (b) of subsection (1) of this section; and

- (b) that he has not made to the wife, in respect of that money or other property, such payment or disposition as would have been appropriate in the circumstances, the power to make orders under that section shall be extended in accordance with subsection (3) of this section.

(3) Where subsection (2) of this section applies, the power to make orders under the said section 10 shall include power for the Chief Justice or the judge to order the husband to pay to the wife—

- (a) in a case falling within paragraph (a) of subsection (1) of this section, such sum in respect of the money to which the application relates, or the wife's share thereof, as the case may be; or
- (b) in a case falling within paragraph (b) of subsection (1) of this section, such sum in respect of the value of the property to which the application relates, or the wife's interest therein, as the case may be,

as the Chief Justice or the judge may consider appropriate.

(4) Where on an application under the said section 10 as extended by this section it appears to the Chief Justice or the judge that there is any property which—

- (a) represents the whole or part of the money or property in question; and
- (b) is property in respect of which an order could have been made under that section if an application had been made by the wife thereunder in a question as to the title to or possession of that property,

the Chief Justice or the judge (either in substitution for or in addition to the making of an order in accordance with subsection (3) of this section ) may make any order under that section in respect of that property which he could have made on such an application as is mentioned in paragraph (b) of this subsection.

(5) Any power of the Chief Justice or the judge under the said section 10 to direct inquiries or give any other directions in relation to an application under that section shall be exercisable in relation to an application made under that section as extended by this section; and subsections (2) to (6) of that section (which relate to appeals and other matters) shall apply in

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relation to any order made under the said section 10 as extended by this section as they apply in relation to an order made under that section apart from this section.

(6) For the avoidance of doubt it is hereby declared that any power conferred by the said section 10 to make orders with respect to any property includes power to order a sale of the property.

## **Vesting of possession in tenancy.**

45.(1) On pronouncing a decree nisi for divorce or nullity, or at any time thereafter, whether before or after the decree has been made absolute, or on or at any time after a decree for judicial separation, where either or both of the parties are in possession of a dwelling house as a tenant or tenants under any tenancy, the court may if it thinks fit by order—

- (a) vest in either party the right to possession of the dwellinghouse under the tenancy to the exclusion of the other party; and
- (b) require the other party to pay or to contribute, to such extent as the court may in the order specify, towards the payment of the rental under the tenancy.

(2) So long as an order remains in force under subsection (1) vesting in either party the right to possession of a dwellinghouse under a tenancy, the other party shall have no right by virtue of the tenancy to enter or be in possession of the dwellinghouse.

(3) Nothing in this section shall relieve any person of any liability as a tenant to his or her landlord.

## *Inheritance.*

### **Power to bar applications under the Inheritance (Provision for Family, and Dependents) Act**

46.(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, the court may, if the court considers it just to do so and the parties to the marriage agree, order that either party to the marriage shall not be entitled on the death of the other party to apply for an order under section 4 of the Inheritance (Provision for Family and Dependents) Act.

(2) In the case of a decree of divorce or nullity of marriage an order may be made under subsection (1) before or after the decree is made absolute,

but if it is made before the decree is made absolute it shall not take effect unless the decree is made absolute.

**PART VIIA**  
**PENSIONS SHARING**

**Pension sharing orders.**

46A.(1) For the purposes of this Part, a pension sharing order is an order which—

- (a) provides that one party's shareable rights under a specified pension arrangement, be subject to pension sharing for the benefit of the other party; and
- (b) specifies the percentage value to be transferred.

(2) Pension sharing is available under this Part in relation to a person's shareable rights under any pension arrangement other than an excepted public service pension scheme.

(3) For the purposes of this Part, a person's shareable rights under a pension arrangement are any rights of his under the arrangement, other than rights of a description specified by Regulations made by the Minister with responsibility for finance.

(4) For the purposes of subsection (1), a public service pension scheme is excepted if it is specified by order made by the Minister with responsibility for finance.

(5) In subsection (1) "party" means a party to a marriage.

**Pension sharing orders in connection with divorce proceedings etc.**

46B.(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more pension sharing orders in relation to the marriage.

(2) A pension sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension sharing order under this section may not be made in relation to a pension arrangement which—

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- (a) is the subject of a pension sharing order in relation to the marriage; or
  - (b) has been the subject of pension sharing between the parties to the marriage.
- (4) A pension sharing order under this section may not be made in relation to shareable state scheme rights if such rights–
- (a) are the subject of a pension sharing order in relation to the marriage; or
  - (b) have been the subject of pension sharing between the parties to the marriage by virtue of any other statutory provisions or otherwise.
- (5) A pension sharing order under this section may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 46F or 46G which relates to benefits or future benefits to which he is entitled under the pension arrangement.

## **Pension sharing orders: nullity of marriage.**

46C.(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 pension sharing 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 pension sharing orders in relation to the marriage as it thinks fit.

(3) Where a pension sharing order is made under this section on or after the granting of a decree of nullity of marriage, the order is not to take effect unless the decree has been made absolute.

(4) This section is to be read subject to any restrictions imposed by section 46D.

## **Restrictions affecting section 46C.**

46D.(1) A pension sharing order under section 46C may not be made in relation to a pension arrangement which–

- (a) is the subject of a pension sharing order in relation to the marriage; or
  - (b) has been the subject of pension sharing between the parties to the marriage by virtue of any other statutory provisions or otherwise.
- (2) A pension sharing order under section 46C may not be made in relation to shareable state scheme rights if such rights–
- (a) are the subject of a pension sharing order in relation to the marriage; or
  - (b) have been the subject of pension sharing between the parties to the marriage by virtue of any other statutory provision or otherwise.
- (3) A pension sharing order under section 46C may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 46F or 46G which relates to benefits or future benefits to which he is entitled under the pension arrangement.

**Pension sharing orders: duty to stay.**

46E. No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by Regulations made by the Minister with responsibility for finance.

**Pensions.**

46F.(1) The matters to which the court is to have regard under section 37(2) include–

- (a) in the case of paragraph (a), any benefits under a pension arrangement which a party to the marriage has or is likely to have; and
- (b) in the case of paragraph (h), any benefits under a pension arrangement which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,

and, accordingly, in relation to benefits under a pension arrangement, section 37(2)(a) shall have effect as if “in the foreseeable future” were omitted.



(2) The following provisions apply where, having regard to any benefits under a pension arrangement, the court determines to make an order under section 34.

(3) To the extent to which the order is made having regard to any benefits under a pension arrangement, the order may require the person responsible for the pension arrangement in question, if at any time any payment in respect of any benefits under the arrangement becomes due to the party with pension rights, to make a payment for the benefit of the other party.

(4) The order must express the amount of any payment required to be made by virtue of subsection (3) as a percentage of the payment which becomes due to the party with pension rights.

(5) Any such payment by the person responsible for the arrangement—

- (a) shall discharge so much of his liability to the party with pension rights as corresponds to the amount of the payment; and
- (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.

(6) Where the party with pension rights has a right of commutation under the arrangement, the order may require him to exercise it to any extent; and this section applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of benefits under the arrangement.

(7) The power conferred by subsection (6) may not be exercised for the purpose of commuting a benefit payable to the party with pension rights to a benefit payable to the other party.

(8) The power conferred by subsection (3) or (6) may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage; or
- (b) has been the subject of pension sharing between the parties to the marriage by virtue of any other statutory provisions or otherwise.

(9) In subsection (1), references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.

**Pensions: lump sums.**

46G.(1) The power of the court under section 34 to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension arrangement include any lump sum payable in respect of his death, power to make any of the provisions under this section by the order.

(2) The court may—

- (a) if the person responsible for the pension arrangement in question has power to determine the person to whom the sum, or any part of it, is to be paid, require him to pay the whole or part of that sum, when it becomes due, to the other party;
- (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum; and
- (c) in any other case, require the person responsible for the pension arrangement in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.

(3) Any payment by the person responsible for the arrangement under an order made under section 34 by virtue of this section shall discharge so much of his liability in respect of the party with pension rights as corresponds to the amount of the payment.

(4) The powers conferred by this section may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage; or
- (b) has been the subject of pension sharing between the parties to the marriage by virtue of any other statutory provisions or otherwise.

**Pensions: supplementary.**

46H.(1) Where—

- (a) an order made under section 34 by virtue of section 46F or 46G imposes any requirement on the person responsible for a pension arrangement (“the first arrangement”) and the party with pension rights acquires rights under another pension arrangement (“the new arrangement”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement; and
- (b) the person responsible for the new arrangement has been given notice in accordance with Regulations made by the Minister with responsibility for finance,

the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.

(2) The Minister with responsibility for finance may by Regulations—

- (a) in relation to any provision of section 46F or 46G which authorises the court making an order under section 34 to require the person responsible for a pension arrangement to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made or prescribe the rights of the other party under the pension scheme;
- (b) make, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 46F or 46G in an order under section 34, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 46F and 46G;
- (d) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of section 46F or 46G;
- (e) make provision about calculation and verification in relation to the valuation of—
  - (i) benefits under a pension arrangement, or

(ii) shareable state scheme rights,

for the purposes of the court's functions in connection with the exercise of any of its powers under this Part of this Act;

- (f) make provision imposing on the person responsible for a pension arrangement, requirements with respect to the supply of information relevant to any power with respect to financial relief under this Part or Part VII of this Act;
- (g) make provision about calculation and verification in relation to the valuation of benefits under a pension arrangement for the purposes of Regulations made under paragraph (f);
- (h) make provision about calculation and verification in relation to the valuation of benefits under a pension arrangement for the purposes of such Regulations, so far as relating to the making of orders under this Part or Part VII of this Act;
- (i) make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of providing information in accordance with Regulations made under paragraph (f); and
- (j) make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of complying with an order under section 34 so far as it includes provision made by virtue of section 46F or 46G.

(3) Regulations made under subsection (2)(e), (g) or (h) may include provision for calculation or verification in accordance with guidance from time to time prepared by a person designated for the purpose by the Minister with responsibility for finance.

(4) Regulations made under subsection (2) may make different provision for different cases.

(5) The Minister with responsibility for finance may by Regulations make provision for the purpose of enabling the person responsible for a pension arrangement involved in pension sharing to recover from the parties to pension sharing prescribed charges in respect of prescribed descriptions of pension sharing activity.

(6) Regulations made under subsection (5) may include—

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- (a) provision for the start of the implementation period for a pension credit to be postponed in prescribed circumstances;
  - (b) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension sharing; and
  - (c) provision for the recovery in prescribed circumstances of such additional amounts as may be determined in accordance with the regulations.
- (7) In subsection (6)–
- (a) the reference to the relevant order or provision is to the order or provision which gives rise to the pension sharing; and
  - (b) the reference to the transferor is to the person to whose rights that order or provision relates.
- (8) For the purposes of subsection (5), a pension arrangement is involved in pension sharing where any Regulation made under this section in respect of the creation, calculation and verification of pension debit and pension credit applies by virtue of an order or provision which relates to the arrangement.
- (9) In subsection (5), the reference to pension sharing activity is to activity attributable (directly or indirectly) to the involvement in pension sharing.
- (10) The Minister with responsibility for finance may by Regulations make provision about the calculation and verification of cash equivalents.
- (11) The power conferred by subsection (10) includes power to provide for calculation or verification–
- (a) in such manner as may, in the particular case, be approved by a person prescribed by the Regulations; or
  - (b) in accordance with guidance from time to time prepared by a person so prescribed.
- (12) For the purposes of this Act or any Regulations made under this section, the implementation period for a pension credit is the period of 4 months beginning with the later of–

- (a) the day on which the relevant order or provision takes effect; and
- (b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—
  - (i) the relevant documents, and
  - (ii) such information relating to the transferor and transferee as the Minister with responsibility for finance may prescribe by Regulations.

(13) The reference in subsection (12)(b)(i) to the relevant documents is to copies of—

- (a) the relevant order or provision; and
- (b) the order or decree responsible for the divorce, dissolution, or annulment of the marriage to which it relates.

(14) Subsection (12) is subject to any provision made by Regulations under subsection (6)(c).

(15) The Minister with responsibility for finance may by Regulations—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins; and
- (b) provide for subsection (12) to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

(16) In subsections (12) and (13)—

“relevant order or provision”, in relation to a pension credit, means the pension sharing order or provision on which the pension credit depends;

“transferor” means the person to whose rights the relevant order or provision relates;

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“transferee” means the person for whose benefit the relevant order or provision is made.

(17) In this section “prescribed” means prescribed in Regulations made under subsection (5), (11) or 12(b)(ii).

(18) In this section and sections 46F and 46G–

“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension arrangement and “the other party” means the other party to the marriage;

“pension arrangement” means–

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) a retirement annuity contract; and
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme;

and for the purposes of this Part, “pension arrangement” may include any gratuity that is part of the retirement benefits.

“prescribed” means prescribed by Regulations;

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means–

- (a) in the case of a scheme established under a trust, the trustees of the scheme; and
- (b) in any other case, the managers of the scheme.

(19) In this section and sections 46F and 46G, references to the person responsible for a pension arrangement are–

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme;
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) of the definition of “pension arrangement” mentioned in subsection (18), the provider of the annuity; and

- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.

**Discharge of pension sharing orders on making of separation order.**

46I. Where, after the making of a pension sharing order under section 46F in relation to a marriage, a separation order is made in relation to the marriage, the pension sharing order is discharged.

**Appeals relating to pension sharing orders which have taken effect.**

46J.(1) Subsection (2) applies where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

(3) In determining for the purposes of subsection (2) whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(4) Where subsection (2) applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(5) Section 46E only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.

**PART VIII.—CHILDREN.**

**Maintenance, etc. of children.**

47.(1) In any proceedings for divorce or nullity or judicial separation, the court may from time to time, either before or after the final decree, make such order under this Act as appears just with respect to residence, contact, maintenance and education of any child of the family, or, if it thinks fit, direct proper proceedings to be taken under the Children Act 2009.

(2) On pronouncing a decree nisi of divorce or nullity, or at any time thereafter, whether before or after the decree has been made absolute, the court shall have power to order the husband to secure for the benefit of the



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children such gross sum of money or annual sum of money as the court may deem reasonable but the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age unless there are special circumstances which justify the making of an order before that age.

(3) Subsection (2) shall have effect in relation to a husband as it has effect in relation to a wife, as if any reference to the husband were a reference to the wife and any reference to the wife were a reference to the husband.

### **Child or children accepted as of the family.**

48.(1) Subject to the provisions of this section, section 47 shall apply in relation to a child of one party to the marriage (including an illegitimate or adopted child) who has been accepted as one of the child of the family by the other party as it applies in relation to a child of both parties.

(2) In this section “adopted child” means a child adopted in pursuance of an adoption order made under the Adoption Act (Act. 1951 No. 19) or any other law.

### **Restrictions on decrees for dissolution, annulment or separation affecting children.**

49.(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider whether there are any—

- (a) children of the family to whom this section applies; and
- (b) such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 2009 with respect to any of them.

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

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children Act 2009 with respect to any such child;
- (b) it is not in a position to exercise the power or those powers without giving further consideration to the case; and

- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

- (3) This section applies to—
  - (a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
  - (b) any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply.

**Power to provide for children on dismissal of proceedings.**

50.(1) Where proceedings instituted after the commencement of this Act in the court for divorce, nullity or judicial separation are dismissed at any stage after the beginning of the trial, the court may, either forthwith or within a reasonable period after the proceedings have been dismissed, make such provision with respect to residence, contact, maintenance and education of any child as could be made in the case of that child under section 40 or 42 of this Act, or under the Children Act 2009 if the proceedings were still before the court.

(2) Where an order has been made under subsection (1) of this section as respects a child, the court may from time to time make further provision with respect to his residence, contact, maintenance and education.

51. *Repealed.*

52. *Repealed.*

**PART IX.—RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS OBTAINED ELSEWHERE THAN IN GIBRALTAR.**

**Recognition in Gibraltar of divorces and legal separations, obtained elsewhere.**

53. Section 54 to 56 shall have effect, subject to section 59, as respects the recognition in Gibraltar of the validity of divorces and legal separations which—

- (a) have been obtained by means of judicial or other proceedings in any country outside Gibraltar; and
- (b) are effective under the law of that country.

## **Grounds for recognition.**

54.(1) The validity of a divorce or legal separation obtained in a country outside Gibraltar shall be recognized if, at the date of the institution of the proceedings in the country in which it was obtained—

- (a) either spouse was habitually resident in that country; or
- (b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, subsection (1)(a) shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the foregoing provisions of this section (except those relating to nationality) shall have effect as if each territory were a separate country.

## **Cross-proceedings and divorce following legal separations.**

55.(1) Where there have been cross-proceedings, the validity of a divorce or legal separation obtained in a country outside Gibraltar either in the original proceedings or in the cross-proceedings shall be recognized if the requirements of section (1)(a) or (b) are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition by virtue of the provisions of section 54 or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognized whether or not it would itself be entitled to recognition by virtue of those provisions.

## **Proof of facts relevant to recognition.**

56.(1) For the purpose of deciding whether a divorce or legal separation obtained in a country outside Gibraltar is entitled to recognition by virtue of the foregoing provisions of this Act, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the

divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall—

- (a) if both spouses took part in the proceedings, be conclusive evidence of the fact found; and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section “finding of fact” includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purposes of subsection (1) (a), a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

**Existing common law and statutory rules.**

57.(1) In this section “the common law rules” means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognized as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside Gibraltar would be recognized by virtue only of the common law rules if either—

- (a) the spouses had at the material time both been domiciled in that country; or
- (b) the divorce or separation were recognized as valid under the law of the spouses' domicile, its validity shall also be recognized if subsection (3) is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside Gibraltar if either—

- (a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognized as valid under the law of the domicile of the other spouse; or
- (b) neither of the spouses having been domiciled in that country at the material time, the divorce or separation was recognized as valid under the law of the domicile of each of the spouses respectively.

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(4) For any purpose of subsection (2) or (3) “the material time”, in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 53 to 56 are without prejudice to the recognition of the validity of divorces and legal separations obtained outside Gibraltar by virtue of the common law rules (as extended by this section) or of any enactment other than this Act: but, subject to this section, no divorce or legal separation so obtained shall be recognized as valid in Gibraltar except as provided by those sections.

### **Non-recognition of divorce by third country no bar to re-marriage.**

58. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of section; 23, 53 to 55 and 57(2) or by virtue of any rule or enactment preserved by section 57(5) neither spouse shall be precluded from re-marrying in Gibraltar on the ground that the validity of the divorce would not be recognized in any other country.

### **Exceptions from recognition.**

59.(1) The validity of—

- (a) a decree of divorce or judicial separation granted under the law of Gibraltar; or
- (b) a divorce or legal separation obtained outside Gibraltar,

shall not be recognized in Gibraltar if it was granted or obtained at a time when, according to the law of Gibraltar (including its rules of private international law and the provisions of this Act) there was no subsisting marriage between the parties.

(2) Without prejudice to the provisions of subsection (1), recognition by virtue of section 53 to 56 or 57(2) of this Act of any rule preserved by section 57(5) hereof of the validity of a divorce or legal separation obtained outside Gibraltar may be refused if, and only if—

- (a) it was obtained by one spouse—
  - (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

- (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings, as, having regard to the matters aforesaid, he should reasonably have been given; or

- (b) its recognition would manifestly be contrary to public policy.

(3) Nothing in this Act shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

#### **Transitional.**

60. The provisions of this Act relating to divorces and legal separations obtained outside Gibraltar apply to a divorce or legal separation obtained before the 1st day of November 1974 as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date—

- (a) require, or, as the case may be, preclude, the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but
- (b) do not affect any property rights to which any person became entitled before that date or apply where the question of the validity of the divorce or legal separation has been decided by the court in Gibraltar before that date.

#### **PART X.—JURISDICTION, AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS MADE IN A MEMBER STATE OF THE EUROPEAN UNION.**

##### **Jurisdiction, and recognition and enforcement of judgments made in a member state of the European Union.**

60A. This Act shall have effect subject to—

- (a) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 and to section 38A of the Civil Jurisdiction and Judgments Act 1993;
- (b) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments

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in civil and commercial matters and sections 38 and 39 of the Civil Jurisdiction and Judgments Act 1993.

## **PART XI.—RULES.**

### **Rules.**

61. The Chief Justice may make rules for the better carrying out of the purposes and provisions of this Act and in particular, but without prejudice to the generality of the foregoing, may make rules—

- (a) as to all matters of procedure under this Act;
- (b) prescribing the forms to be used and fees to be paid in proceedings under this Act;
- (c) with regard to any matter as to which rules may be made under this Act.

## SCHEDULE.

Section 8.

**1. Interpretation.**

(1) In this Schedule—

“another jurisdiction” means any country outside Gibraltar;

“matrimonial proceedings” means any proceedings so far as they are one or more of the five following kinds, namely proceedings for—

divorce;

judicial separation;

nullity of marriage;

a declaration as to the validity of a marriage of the petitioner; and

a declaration as to the subsistence of such a marriage.

(2) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.

(3) For purposes of this Schedule, proceedings in the court are continuing if they are pending and not stayed.

(4) Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.

**2. Duty to furnish particulars.**

While matrimonial proceedings are pending in the court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—



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

### **3. Stay of proceedings.**

(1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the court it appears to the court—

- (a) that any proceedings in respect of the marriage in question 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 the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings so far as they consist of a particular kind of matrimonial proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the court, the court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 2, sub-paragraph (1) of this paragraph shall have effect in relation to those proceedings and to the other proceedings by reference to which the declaration is made, as if the words “before the beginning of the trial or first trial” were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

### **4. Discharge of order staying proceedings.**

Where an order staying any proceedings is in force in pursuance of paragraph 3 above, the court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the court that the other proceedings by reference to which the order was made are stayed

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or conducted, or that a party to those other proceedings has delayed unreasonably in prosecuting them.