

MATRIMONIAL CAUSES ACT

Principal Act

Act. No. 1962-09	<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

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).

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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,—

“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.

References to husband and wife.

3. Sections 33, 34, 36(2), 41, 43 (except insofar as it relates to section 40), 44 and 47(2) shall have effect in relation to a husband as they have 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.

PART II.—JURISDICTION.

Jurisdiction in divorce and judicial separation.

4. The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage –

- (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 nullity.

5. The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage –

- (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: or
- (c) died before that date and either-
 - (i) was at that date domiciled in Gibraltar; or
 - (ii) had been habitually resident in Gibraltar throughout the period of one year ending with the date of death, or
- (d) the marriage was celebrated in Gibraltar.

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 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

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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 three 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 three years immediately preceding the presentation of the petition (hereafter in this Act referred to as 'three 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 five years immediately preceding the presentation of the petition (hereafter in this Act referred to as five 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

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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 end either-
 - (i) the condition has existed for at least 5 years; or
 - (ii) in exceptional circumstances, the condition has existed for a shorter period than 5 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.

(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 subsections (3) and (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 allege, 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.

Restrictions on petitions for divorce within five 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 five 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—

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- (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 marriage or of either party, and in 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.

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.

Rescission of decree where respondent misled.

21. 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 or her petition on the fact of three 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 or her consent.

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.

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(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.

Nullity

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 for decree of nullity.

25.(1) The following are grounds on which a decree of nullity may be made—

- (a) that either party was permanently impotent, or incapable of consummating the marriage, at the time of the marriage;
- (b) that the parties are within the prohibited degrees of consanguinity or affinity as provided in the Marriage Act;
- (c) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such previous husband or wife was then in force;
- (d) that the consent of either party to the marriage was obtained by force or fraud in any case in which the marriage might be annulled on this ground by the law of England;
- (e) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (f) that either party to the marriage was at the time of the marriage of unsound mind or was then suffering from mental disorder of such a kind or to such an extent as to be unfitted for marriage and the procreation of children or subject to recurrent attacks of mental disorder:

Provided that, in the cases specified in paragraph (f) of this subsection, the court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(2) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

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) After the pronouncing of the decree nisi and before the decree is made absolute, any person may, in accordance with rules, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not having been brought before the court, and in any such case the court may make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the court thinks fit.

(3) Where a decree nisi has been obtained and no application for the decree to be made absolute has been made by the party who obtained the decree, 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 the decree nisi has been granted shall be at liberty to apply to the court and the court shall, on such application, have power to make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the court thinks fit.

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

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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, 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 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) Subject to subsection (2), 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) Where the petition for judicial separation is presented on the fact alleged in section 16(3)(c), in the exceptional circumstances specified in sub-paragraph (ii) of that paragraph, it shall not be necessary for the respondent to prove that the condition is likely to be incurable.

(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.

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

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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 VII. –ALIMONY, MAINTENANCE, PROPERTY AND INHERITANCE.

General.

Matters to which court is to have regard in deciding how to exercise its powers as to financial, arrangements.

32. (1) It shall be the duty of the court in deciding whether to exercise its powers under this Part in respect of a decree of divorce, nullity or judicial separation. and under sections 47(2) and 48 (insofar as it relates to section 47(2)), in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-

- (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;
- (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;
- (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 made by each of the parties to the welfare of the family. including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity, the value to either 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-

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under the provisions specified in subsection (1), or under section 51(2) in relation to a child and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any). property and other financial resources of the child;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage; and
- (d) the manner in which it was being and in which the parties to the marriage expected it to be educated or trained-

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraph (a) and (b) of subsection (1), just to do so. in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards it.

(3) It shall be the duty of the court in deciding whether to exercise its powers against a party to a marriage in favour of a child who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)-

- (a) to whether that party had 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) to whether in assuming and discharging such responsibility, that party did so knowing that the child was not his or her own;
- (c) to the liability of any other person to maintain the child.

Alimony and maintenance in case of divorce and nullity.

33.(1) On any petition for divorce or nullity, the court may make such interim orders for the payment of alimony to the wife as the court thinks just.

(2) Subject to the provisions of section 35, on pronouncing a decree nisi for divorce or nullity or at any time thereafter, whether before or after the decree has been made absolute, the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as, having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the court may deem to be reasonable.

(3) Subject to the provisions of section 35, on pronouncing a decree nisi for divorce or nullity or at any time thereafter, whether before or after the decree has been made absolute the court may, if it thinks fit, by order direct the husband to pay the wife, during their joint lives, such monthly or weekly sum for the maintenance and support of the wife as the court may think reasonable, and any such order may either be in addition to or be instead of an order made under subsection (2) of this section.

Alimony in case of judicial separation.

34.(1) On any petition for judicial separation, the court may make, such interim orders for the payment of alimony to the wife as the court thinks just.

(2) On or at any time after a decree for judicial separation, the court may make such order for the payment of alimony to the wife as the court thinks just.

Commencement of proceedings for maintenance, etc.

35. When a petition for divorce or nullity has been presented, proceedings under section 33, 41, 42, 45 or 47(2) may, subject to and in accordance with rules, be commenced at any time after the presentation of the petition:

Provided that no order under any of those sections or subsection (other than an interim order for the payment of alimony under section 33) shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument, and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute.

Payment of alimony and maintenance to trustees, etc.

36.(1) In any case where the court makes an order for alimony, the court may direct the alimony to be paid either to the wife or the husband, as the case may be, or to a trustee approved by the court on her or his behalf, and may impose such terms or restrictions as the court thinks expedient, and may from time to time appoint a new trustee if for any reason it appears to the court expedient so to do.

(2) In any case where a petition for nullity is presented by a husband on the ground specified in section 25(1)(f) and the court orders payments of alimony or maintenance under section 33 in favour of the respondent, the court may order the payments to be made to such persons having charge of the respondent as the court may direct.

Variation and discharge of orders for alimony and maintenance.

37.(1) Where the court has made an order under section 33, 34, 40 or 45 the court shall have power to discharge or vary the order or to suspend any provision thereof temporarily and to revive the operation of any provisions so suspended.

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

(3) In exercising the powers conferred by this section, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage.

Entitlement to maintenance to cease on remarriage.

38.(1) Where, after the pronouncement of a decree of divorce or nullity, either party to the proceedings re-marries, the other party shall thereupon cease to be liable to make any annual or other periodical payment under this Act to the party who remarries.

(2) Subsection (1) shall not apply to an annual or other periodical sum in respect of a child.

Wife's necessities in case of judicial separation.

39. In every case of judicial separation if alimony has been ordered to be paid and has not been duly paid by the husband, he shall be liable for necessities supplied for the use of the wife.

Additional power of court to make orders for maintenance.

40.(1) Where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the minor children of the marriage, the court, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make to her such periodical payments as may be just; and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation.

(2) Where the court makes an order under this section for periodical payments it may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife the periodical payments.

(3) In subsection (1), the reference to the minor children of the marriage shall be construed as including a reference to an illegitimate child of both parties to the marriage.

Property.

Power to order settlement of wife's property.

41. If it appears to the court in any case in which the court pronounces a decree for divorce, or a decree for judicial separation against a wife by reason of any such fact as is mentioned in any of paragraphs (a), (b) and (c) of section 16(2), that the wife is entitled to any property either in possession or reversion, the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of the innocent party and of the children of the marriage or either or any of them.

Power to make orders as to application of settled property.

42. The court may after pronouncing a decree for divorce or for nullity enquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage or of the parties to the marriage, as the court thinks fit, and the court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage.

Avoidance of disposition made to defeat wife's claim for financial relief.

43.(1) Where under any of the relevant provisions of this Act proceedings are brought against a man (in this section referred to as "the husband") by his wife or former wife (in this section referred to as "the wife") for

financial relief, the wife may make an application under this section to the court in those proceedings with respect to any disposition made by the husband within the period of three years ending with the date of the application under this section, whether the disposition was made before or after the commencement of those proceedings.

(2) Subject to the following provisions of this section, if on an application by the wife under this section it appears to the court-

- (a) that the disposition to which the application relates was made by the husband with the intention of defeating the wife's claim for financial relief; and
- (b) that, if the disposition were set aside, financial relief, or, as the case may be, different financial relief, would be granted to her,

the court may by order set aside the disposition and may give such consequential directions (including directions requiring the making of any payment or the disposal of any property) as the court thinks fit for the purpose of giving effect to the order under this subsection.

(3) The power conferred by subsection (2) shall not be exercisable in respect of a disposition made for valuable consideration to a person who, at the time of the disposition, acted in relation thereto in good faith and without notice of any intention on the part of the husband to defeat the wife's claim for financial relief.

(4) Where an application is made under this section with respect to a disposition, not being a disposition falling within subsection (3), and the court is satisfied that the disposition would (apart from this section) have the consequence of defeating the wife's claim for financial relief, the disposition shall be presumed, unless the contrary is proved, to have been made by the husband with the intention of defeating the wife's claim for financial relief.

(5) The preceding provisions of this section shall have effect for enabling an application to the court to be made thereunder by a woman after she has obtained an order against her husband or former husband under any of the relevant provisions of this Act as they apply for enabling an application to be made in proceedings for such an order:

Provided that for the purposes of the application of those provisions in accordance with this subsection-

- (a) subsection (2) shall apply as if paragraph (b) thereof were omitted; and

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- (b) the presumption mentioned in subsection (4) shall apply (in the case of a disposition not falling within subsection (3)) if the court is satisfied that in consequence of the disposition the wife's claim for financial relief was defeated.

(6) In this section any reference to defeating the wife's claim for financial relief is a reference to preventing financial relief from being granted to her, or reducing the amount of any such relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made on her application under any of the relevant provisions of this Act.

(7) In this section-

“financial relief” means relief under any of the relevant provisions of this Act;

“the relevant provisions of this Act” means subsections (2) and (3) of section 33, subsection (2) of section 34. and section 40;

“valuable consideration” does not include marriage.

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.

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(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 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 Dependants) 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 VIII.—CHILDREN.

Custody and maintenance of children.

47.(1) In any proceedings for divorce or nullity or judicial separation, the court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the court.

(2) Subject to the provisions of section 35, 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 children such gross sum of money or annual sum of money as the court may deem reasonable:

Provided that 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.

(3) The reference in subsection (2) of this section to the children of the petitioner and the respondent includes a reference to any illegitimate child of the petitioner and respondent.

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 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 decree affecting children.

This version is out of date

49.(1) The court shall not make absolute a decree of divorce or of nullity, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied-

- (a) that for the purposes of this section there are no children to whom this section applies; or
- (b) that the only children who are or may be children to whom this section applies are the children named in the order and that-
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
- (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay, notwithstanding that there are or may be children to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b).

(2) The court shall not make an order declaring that it is satisfied as mentioned in paragraph (c) of subsection (1) unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

(3) If the court makes absolute a decree of divorce or of nullity, or grants a decree of judicial separation, without having made an order under subsection (1), the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) were not fulfilled.

(4) If the court refuses to make an order under subsection (1) in any proceedings for divorce, nullity or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children to whom section 47 applies, that is to say-

- (a) any minor child of the family who at the date of the order under subsection (1) is-

- (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not it is also in gainful employment; and
- (b) any other child to whom the court by an order under that subsection directs that this section shall apply-

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to it.

(6) In this section 'welfare', in relation to a child, includes the custody and education of the child and financial provision for it.

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 the custody, maintenance and education of any child as could be made in the case of that child under section 47(1) 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 custody, maintenance and education.

Power to provide for children in proceedings for maintenance.

51.(1) Where the court makes an order after the commencement of this Act under section 40(1), the court shall also have jurisdiction from time to time to make such provision as appears just with respect to the custody of any such child as is referred to in that subsection (and, as in a case under section 50, with respect to access to the child) but the jurisdiction conferred by this subsection, and any order made in exercise of that jurisdiction, shall have effect only as respects any period when an order is in force under section 40(1).

(2) In any case where the court would have power, on an application made under section 40(1), to order the husband to make to the wife periodical payments for the maintenance of any child as is referred to in that subsection. the court may, if it thinks fit, order those payments to be made to the child, or to any other person for the benefit of the child, instead of to the

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wife; and the reference to the wife in section 40(1) shall be construed accordingly.

Power to provide for supervision of children

52.(1) Where the court has jurisdiction to provide for the custody of a child under section 47 to 51 and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person. order that the child be under the supervision of a probation officer.

(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 the matters aforesaid.

(3) The parties to any proceedings instituted and the husband 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.

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

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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.

(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 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.

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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 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;

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- (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—

- (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.