

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3748 of 3 December, 2009**

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I ASSENT,

ADRIAN JOHNS,

GOVERNOR.

3rd December, 2009.



**GIBRALTAR**

**No. 45 of 2009**

**AN ACT** to amend the Matrimonial Causes Act for the purpose of updating the legislative provisions in line with the relevant United Kingdom legislation; and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Matrimonial Causes (Amendment) Act 2009 and comes into operation on the day appointed by the Minister for Justice by notice in the Gazette.

**Amendment to section 2.**

2. Section 2 of the Matrimonial Causes Act (the principal Act) is amended by inserting the following definitions before the definition of “conciliator”–

“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;”.

**Repeal of section 3.**

3. The principal Act is amended by repealing section 3.

**Substitution of sections 4 and 5.**

3A. The principal Act is amended by substituting the following sections for sections 4 and 5–

**“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 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."

**Amendments to section 16.**

4. Section 16 of the principal Act is amended—

- (a) in subsection (2)(c) by substituting “two” for “three”;
- (b) in subsection (2)(d) by substituting “two” for “three” in two places;
- (c) in subsection (2)(e) by substituting “three” for “five” in two places;
- (ca) in subsection (3)(c)(i) and (ii), by substituting “3” for “5” where it appears twice;
- (d) in subsection (4), by inserting “but the court may in its discretion refuse to hear live evidence and decide the petition on the basis of documentary evidence before it” after “by the respondent”; and
- (e) in subsection (5) by substituting “subsection (4)” for “subsections (3) and (4)”.

**Insertion of section 17A.**

5. The principal Act is amended by inserting the following section after section 17–

**“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.”.

**Amendments to section 18.**

6. Section 18 of the principal Act is amended—

- (a) in the heading and in subsection (1), by substituting “three” for “five”;
- (b) in subsection (2), by substituting “family” for “marriage or of either party”.

**Insertion of section 19A.**

7. The principal Act is amended by inserting the following section after section 19—

**“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.”.

**Amendment to section 20.**

8. Section 20 of the principal Act is amended in subsection (2) by inserting at the end of that subsection “ but the court shall not be bound to hear live evidence in the case”.

**Repeal of section 21.**

9. The principal Act is amended by repealing section 21.

**Substitution of section 25.**

10. The principal Act is amended by substituting the following sections for section 25—

**“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.

(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.”.

**Amendments to section 26.**

11. The principal Act is amended by substituting the following subsections for subsections (2) and (3)—

“(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).”.

**Insertion of section 26A.**

12 . The principal Act is amended by inserting the following section after section 26—

**“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.”.

**Amendment to section 27.**

13. Section 27(3) of the principal Act is amended by substituting “26(1)” for “26”.

**Amendments to section 30.**

14. Section 30 of the principal Act is amended—

- (a) in subsection (1), by substituting “A” for “Subject to subsection (2), a”;

(b) by deleting subsection (2); and

(c) by inserting the following subsection after subsection (3)–

“(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.”.

**Insertion of Part VIA.**

15. The principal Act is amended by inserting the following Part after section 31–

**“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 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);
- (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

- (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—

- (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 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.”.

**Substitution of Part VII (except sections 44, 45 and 46).**

16. The principal Act is amended by substituting the following Part for Part VII (except sections 44, 45 and 46)–

**“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 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 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;

- (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 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 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);
  - (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;
  - (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 account 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 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
  - (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—
  - (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."

**Insertion of Part VIIA.**

17. The principal Act is amended by inserting the following Part after section 46—

**“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—
    - (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—
  - (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;

“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.”.

**Substitution of section 47.**

18. The principal Act is amended by substituting the following section for section 47—

**“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 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.”.

**Amendment to section 48.**

19. Section 48 of the principal Act is amended—

- (a) in the heading by substituting “Child or children” for “Children”; and
- (b) in subsection (1) by inserting “of the child” after “accepted as one”.

**Substitution of section 49.**

20. The principal Act is amended by substituting the following section for section 49—

**“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.”.

**Amendments to section 50.**

21. Section 50 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by substituting “residence, contact,” for “the custody,” and
  - (ii) by substituting “section 40 or 42 of this Act, or under the Children Act 2009” for “section 47(1)”; and
- (b) in subsection (2), by substituting “residence, contact,” for “custody”.

**Repeal of sections 51 and 51.**

22. Sections 51 and 52 of the principal Act are repealed.

**Amendment to section 58.**

23. Section 58 of the principal Act is amended by substituting “section 53 to 55 and 57(2)” for “section; 23, 53 to 55 and 57(2)”.

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Passed by the Gibraltar Parliament on the 26th day of November, 2009.

M L FARRELL,

Clerk to the Parliament.

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