



BERMUDA

MATRIMONIAL CAUSES ACT 1974

1974 : 74

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*[preamble and words of enactment omitted]*

PART I

Interpretation

1 (1) In this Act—

“adopted” means adopted in pursuance of an adoption order made under the Adoption of Children Act 2006, or any previous enactment relating to the adoption of children;

“child”, in relation to one or both of the parties to a marriage, includes an adopted child of that party or, as the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage, means—

(a) a child of both of those parties; and

(b) any other child, not being a foster-child within the meaning of the Children Act 1998, who has been treated by both of those parties as a child of their family;

“the court” (except where the context otherwise requires) means the Supreme Court;

“custody”, in relation to a child, includes access to the child;

“the Director” means the Director of Child and Family Services;

“education” includes training;

“magistrates’ court” means a court of summary jurisdiction.

(2) In this Act—

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- (a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 25; and
- (b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 26 and section 31(5).

(3) References in this Act to remarriage include references to a marriage which is by law void or voidable.

*[Section 1 amended by 1998:38 effective 1 January 2000; and in subsection (1) "child" amended by 2002:36 Sch para 16(a) effective 19 January 2004; subsection (1) "adopted" amended by 2011 : 17 s. 11(c) effective 4 November 2013]*

### PART II

#### JURISDICTION IN MATRIMONIAL PROCEEDINGS

##### Jurisdiction

2 (1) Subsections (2) to (5) shall have effect, subject to section 4, with respect to the jurisdiction of the court to entertain—

- (a) proceedings for divorce, judicial separation or nullity of marriage; and
- (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 23.

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

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

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

- (a) is domiciled in Bermuda on the date when the proceedings are begun; or
- (b) was ordinarily resident in Bermuda throughout the period of one year ending with that date; or
- (c) died before that date and either—
  - (i) was at death domiciled in Bermuda; or
  - (ii) had been ordinarily resident in Bermuda throughout the period of one year ending with the date of death.

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

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

(5) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).

(6) Schedule 1 shall have effect as to the cases in which matrimonial proceedings in Bermuda are to be, or may be, stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in the Schedule—

- (a) requires or authorises a stay of proceedings which are pending when this Act comes into force; or
- (b) prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

(7) The court shall have jurisdiction with respect to declarations of legitimacy and of validity of marriage as in this Act provided.

(8) A husband or wife who has been divorced by a foreign court, the decree of which is not recognised by the laws of Bermuda, may petition for divorce under this Act in the same manner as any other person entitled to apply under this Act.

### Domicile

3 For the purposes of section 2 a person's domicile shall, if the person's first or only marriage (whether valid or void) took place when he or she was a minor, be determined as if the person had attained full age on the day of the marriage and a woman's domicile shall be determined without regard to any rule of law providing for her domicile at any time to be the same as that of her then husband.

### Saving provision

4 *[transitional][omitted]*

## PART III

### DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

#### Divorce on breakdown of marriage

5 (1) Subject to section 7, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts—

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- (a) that the respondent has committed adultery and in consequence of that adultery the petitioner finds it intolerable to live with the respondent;
  - (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
  - (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
  - (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as "two years' separation") and the respondent consents to a decree being granted;
  - (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as "five years' separation").
- (3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.
- (4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 7(3) and 9, grant a decree of divorce.
- (5) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant unless the court by general order from time to time fixes a shorter period.

Supplemental provisions as to facts raising presumption of breakdown

- 6 (1) One party to a marriage shall not be entitled to rely for the purposes of section 5(2)(a) on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.
- (2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) does not apply, in any proceedings for divorce in which the petitioner relies on that adultery the fact that the parties have lived with each other after that time shall be disregarded in determining for the purposes of section 5(2)(a) whether the petitioner finds it intolerable to live with the respondent.
- (3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 5(2)(b) whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

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(4) For the purposes of section 5(2)(c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

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

(6) For the purposes of section 5(2)(d) and (e) and this section a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of section 5(2)(d) the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

### Restriction on petitions for divorce within three years of marriage

7 (1) Subject to subsection (2), no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of the marriage (hereafter in this section referred to as "the specified period").

(2) A judge of the court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the judge shall have regard to the interests of any child of the family and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

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

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

(4) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

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### Divorce not precluded by previous judicial separation

8 (1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Matrimonial Proceedings (Magistrates' Courts) Act 1974 [title 27 item 5].

(2) On a petition for divorce in such a case as is mentioned in subsection (1), the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) Where a petition for divorce in such a case follows a decree of judicial separation or an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

### Refusal of decree in five year separation cases on grounds of grave hardship to respondent

9 (1) The respondent to a petition for divorce in which the petitioner alleges five 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—

(a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 5(2); and

(b) if 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 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.

### Attempts at reconciliation of parties to marriage

10 (1) Provision shall be made by rules of court for requiring counsel acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility



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of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

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

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

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

11 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 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.

### Intervention of Attorney General

12 (1) In the case of a petition for divorce—

- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney-General, who may instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
- (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Attorney-General on any matter material to the due decision of the case, and the Attorney-General may thereupon take such steps as he considers necessary or expedient.

(2) Where the Attorney-General intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.

(3) The Attorney-General shall be entitled to charge as part of the expenses of his office—

- (a) the costs of any proceedings under subsection (1)(a);
- (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) are not fully satisfied by any order under that subsection, the amount of the difference;

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- (c) if the Minister of Finance so directs, any costs which he pays to any parties under an order made under subsection (2).

### Proceedings after decree nisi: general powers of the court

13 (1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 12, any person (excluding a party to the proceedings other than the Attorney-General) 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 5(5) (but subject to sections 14(2) to (4) and 45) make the decree absolute; or
- (b) rescind the decree; or
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(2) 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 subsection (1)(a) to (d).

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

14 (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 5(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 five 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 five years' separation (as the case may be) and has made no such finding as to any other fact mentioned in section 5(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,

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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.

Grounds on which a marriage is void

15 A marriage celebrated after 31 December 1974 shall be void on the following grounds only, that is to say—

- (a) that it is not a valid marriage under the Marriage Act 1944 [*title 27 item 1*];
- (b) that at the time of the marriage either party was already lawfully married;
- (c) that the parties are not respectively male and female.

Grounds on which a marriage is voidable

16 A marriage celebrated after 31 December 1974 shall be voidable on the following grounds only, that is to say—

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that 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 the Mental Health Act 1968 [*title 11 item 36*] of such a kind or to such an extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;

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- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

### Bars to relief where marriage is voidable

17 (1) The court shall not, in proceedings instituted 31 December 1974, grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court—

- (a) that 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) that 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 16 on the grounds mentioned in section 16(c), (d), (e) or (f) unless it is satisfied that proceedings were instituted within three years from the date of the marriage.

(3) Without prejudice to subsections (1) and (2), the court shall not grant a decree of nullity by virtue of section 16 on the grounds mentioned in section 16(e) or (f) unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

### Marriages governed by foreign law or celebrated abroad under English law

18 (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 Bermuda, nothing in section 15, 16 or 17(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 purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 of the Parliament of the United Kingdom or has taken place outside Bermuda and purports to be a marriage under common law, section 15 is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside Bermuda under common law.

### Application of ss.5(5), 12 and 13 to nullity proceedings

19 Sections 5(5), 12 and 13 shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

### Effect of decree of nullity in cases of voidable marriage

20 A decree of nullity granted after 31 December 1974 in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been

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made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

### Judicial separation

21 (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 5(2) exists, and section 6 shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.

(2) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 5(2) it shall, subject to section 45, grant a decree of judicial separation.

(3) Sections 10 and 11 shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial separation and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

### Effects of judicial separation

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

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

(3) Notwithstanding anything in section 3(1)(a) of the Matrimonial Proceedings (Magistrates' Courts) Act 1974 [*title 27 item 5*], a provision in force under an order made, or having effect as if made, under that section exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a decree of judicial separation for the purposes of subsection (2).

### Presumption of death and dissolution of marriage

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

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

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(3) Sections 5(5), 12 and 13 shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

(4) It is hereby declared that neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the grant of a decree under this section.

### Relief for respondent in divorce proceedings

24 If in any proceedings for divorce the respondent alleges and proves any such fact as is mentioned in section 5(2) (treating the respondent as the petitioner and the petitioner as the respondent for the purposes of that subsection) the court may give to the respondent the relief to which he would have been entitled if he had presented a petition seeking that relief.

## PART IV

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

#### Financial provision and property adjustment orders

25 (1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to this Act) under section 27 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 31(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, that is to say—

- (a) any order for periodical payments in favour of a party to a marriage under section 27(1)(a) or 31(6)(a) or in favour of a child of the family under section 27(1)(d), (2) or (4) or 31(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 27(1)(b) or 31(6)(b) or in favour of a child of the family under section 27(1)(e), (2) or (4) or 31(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 27(1)(c) or 31(6)(c) or in favour of a child of the family under section 27(1)(f), (2) or (4) or 31(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 orders dealing with property rights available (subject to this Act) under section 28 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, that is to say—

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- (a) any order under section 28(1)(a) for a transfer of property;
- (b) any order under section 28(1)(b) for a settlement of property; and
- (c) any order under section 28(1)(c) or (d) for a variation of settlement.

### Maintenance pending suit

26 On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, 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

27 (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, that is to say—

- (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;
- (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 33(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 (2)(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 (2)(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 34 for the settlement of an instrument by the Registrar, 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.

Property adjustment orders in connection with divorce proceedings, etc

28 (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;



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- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either of them 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 33(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) notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under section 34 for the settlement of an instrument by the Registrar, 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.

Matters to which court is to have regard in deciding how to exercise its powers under ss.27 and 28

29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

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

(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

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

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

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)—

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

Commencement of proceedings for ancillary relief, etc

30 (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 26, for a financial provision order under section 27, or for a property adjustment order 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—

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- (a) that applicants for any such relief as is mentioned in subsection (1) shall be made in the petition or answer; and
- (b) that applications for any such relief 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

31 (1) 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) being the husband, has wilfully neglected—
  - (i) to provide reasonable maintenance for the applicant, or
  - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
- (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—
  - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or
  - (ii) for any child of the family to whom this section applies.

(2) The court shall not entertain an application under this section unless it would have jurisdiction to entertain proceedings by the applicant for judicial separation.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—

- (a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child; and
- (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to the matters mentioned in section 29(3).

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(5) 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, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

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

- (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 sections 33(1) and (3) on the making of financial provision orders in favour of children who have attained the age of eighteen.

(7) Without prejudice to the generality of subsection (6)(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;
- (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,

(8) For the purpose of proceedings on an application under this section adultery which has been condoned shall not be capable of being revived, and any presumption of

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condonation which arises from the continuance of resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.

Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage

32 (1) 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, subject to the following limits, that is to say—

- (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

33 (1) Subject to subsection (3), no financial provision order and no order for a transfer of property under section 28(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 (that is to say, the age that is for the time being that limit by virtue of section 40 of the Education Act 1996) unless the court thinks it right in the circumstances of the case to specify a later date; and

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(b) shall not in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.

(3) Subsection (1), and subsection (2)(b), 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.

*[Reference to "Education Act 1954" changed to "Education Act 1996" under the authority of the Computerization and Revision of Laws Act 1989 s.11(h)]*

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

34 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 the Registrar for him to settle a proper instrument to be executed by all necessary parties; and
- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

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

35 (1) Where the court has made an order to which this section applies, then, subject to 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 27(3)(c) or 31(7) (b) (provision for payment of a lump sum by instalments);

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(e) any order for a settlement of property under section 28(1)(b) or for a variation of settlement under section 28(1)(c) or (d), being an order made on or after the grant of a decree of judicial separation.

(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 28(1)(b) or for a variation of settlement under section 28(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) No property adjustment 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 27, 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 27 or under section 31).

(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 may be made by the person entitled to payments under the order or by the estate 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, including 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, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The estate 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.

(9) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited 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.

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### Payment of certain arrears unenforceable without the leave of the court

36 (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(2) The court may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

### Orders for repayment in certain cases of sums paid under certain orders

37 (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 estate 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 estate representatives and may be made against the person entitled to payments under the order or his or her estate representatives.

(4) An application under this section may be made 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.

(5) 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.



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### Validity of maintenance agreements

38 (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to the court for an order containing financial arrangements, then—

- (a) that provision shall be void; but
- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 39 and 40), be binding on the parties to the agreement.

(2) In this section and in section 39—

“maintenance agreement” means any agreement in writing made, whether before, on or after 1 January 1975, between the parties to a marriage, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

### Alteration of agreements by court during lives of parties

39 (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Bermuda, then, subject to subsection (3), either party may apply to the court or to a magistrates' court for an order under this section.

(2) If the court to which the application is made is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain financial arrangements; or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to subsections (3), (4) and (5), that court may by order make such alterations in the agreement—

- (i) by varying or revoking any financial arrangements contained in it; or

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- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 29(3); and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A magistrates' court shall not entertain an application under subsection (1) unless both the parties to the agreement are resident in Bermuda, and shall not have power to make any order on such an application except—

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits—

- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made;
- (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of that party.

(5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 33(2) and (3) as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(6) Nothing in this section or in section 38 affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any

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other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

### Alteration of agreements by court after death of one party

40 (1) Where a maintenance agreement within the meaning section 38 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Bermuda, the surviving party or the estate representatives of the deceased party may, subject to subsections (2) and (3), apply to the court for an order under section 39.

(2) An application under this section shall not, 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 the deceased is first taken out.

(3) If a maintenance agreement is altered by the court on an application made in pursuance of subsection (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(4) This section shall not render the estate representatives of the deceased 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 (2) on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section to be made by the surviving party after that period; 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.

(5) Section 35(9) shall apply for the purposes of subsection (2) as it applies for the purposes of section 35(6).

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

41 (1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 26, 27, 28, 31, 35 (except subsection (6)) and 39, 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—

- (a) if it is satisfied 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) if it is satisfied 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;

- (c) if it is satisfied, 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—

- (a) in a case falling within subsection (2)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence; or
- (b) in a case falling 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, as the case may be, 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.

(7) This section does not apply to a disposition made before 1 January 1975.

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

42 (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

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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 estate 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 estate 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 his or her estate representatives but may instead make an application against that person or his or her estate 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 for leave to enforce, or the enforcement of, payment of arrears under the order in question.

(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 clerk of 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—

- (a) in the case of the clerk, 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) in the case of the collecting officer, for any act done by him after that date in accordance with any Act or rule of court specifying how payments made to him in compliance with the attachments of earnings order are to be dealt with,

if, but only 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 estate representatives of either of those persons.

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

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Settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settlor

43 The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being a settlement of property to which section 45(1) of the Bankruptcy Act 1989 [*title 8 item 49*] (avoidance of certain settlements) applies.

*[Section 43 amended by 1989:58 effective 31 January 1990]*

Payments, etc., under order made in favour of person suffering from mental disorder

44 Where the court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1968 [*title 11 item 36*], of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under Part IV of that Act, the court may order the payments to be made, or as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

Enforcement of orders of the court in the magistrates' court.

44A (1) Where the court makes an order under this Act for maintenance pending suit or for periodical payments, the court may in the order direct that payment of any sum payable under the order shall be made to the clerk of the magistrates' court, and in any such case payment may be enforced by the clerk of the magistrates' court in the same manner as payment required to be made by and order is enforced under section 36.1L of the Children Act 1998.

(2) *[Omitted]*

*[Section 44A subsection (1) amended, and (2) deleted, by 2002:36 Sch para 16(b) effective 19 January 2004]*

## PART V

### PROTECTION, CUSTODY, ETC., OF CHILDREN

Restrictions on decrees for dissolution, annulment or separation affecting children

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

- (a) that for the purposes of this section there are no children of the family to whom this section applies; or
- (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—

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- (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
- (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
- (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b).

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

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

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

(5) This section applies to the following children of the family—

- (a) any minor child of the family who at the date of the order under subsection (1) is—
  - (i) under the age of sixteen; or
  - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
- (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply,

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

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

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Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect

46 (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal,

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the court.

(2) Where the court makes an order under section 31, the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3), then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(6) The power of the court under subsection (1)(a) or (2) to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.

(7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

Power to provide for supervision of children

47 (1) Where the court has jurisdiction by virtue of this Part to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent



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person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of the Director.

(2) Where the court makes an order under this section for supervision by the Director the child shall, for the purposes of such supervision but not further or otherwise, be deemed to be a foster-child within the meaning of the Children Act 1998 [*title 27 item 26*].

(3) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any financial provision order in the child's favour or any order made with respect to his custody or education under this Part shall, subject to any rules of court, be exercisable at the instance of that court itself.

(4) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

[*Section 47 amended by 1998:38 effective 1 January 2000*]

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

##### Declarations

48 (1) Any person who is a Commonwealth citizen, or whose right to be deemed a Commonwealth citizen depends wholly or in part on the validity of any marriage, may, if he is domiciled in Bermuda or claims any real or personal estate situate in Bermuda, apply by petition to the court for a decree declaring that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

(2) [*Omitted*]

(3) Any person who is domiciled in Bermuda or claims any real or personal estate situate in Bermuda may apply to the court for a decree declaring his right to be deemed a Commonwealth citizen.

(4) Applications to the court under the preceding provisions of this section may be included in the same petition, and on any application under the preceding provisions of this section the court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person—

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(5) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Attorney-General at least one month before the

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application is made, and the Attorney-General shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.

(6) Where any application is made under this section, such persons as the court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(7) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(8) The court may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

*[Section 48 heading and subsection (1) amended, subsection (2) deleted, by 2002:36 Sch para 16(c)-(e) effective 19 January 2004]*

### Evidence

49 (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period; but a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings; but no witness in any such proceedings, whether a party to the proceedings or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

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

### Parties to proceedings under this Act

50 (1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either from of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.

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

(3) Where in pursuance of subsection (1) a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part

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of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.

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

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

### Transitional provisions and savings

51 Schedule 2 shall have effect for the purpose of—

- (a) the transition to this Act from the law in force before the commencement of this Act;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Act or by enactments repealed and replaced by this Act; and
- (c) the assimilation in certain respects to orders under this Act of orders made, or deemed to have been made, under the Matrimonial Causes Act 1943 [*repealed*].

### Consequential amendments and repeals

52 [*omitted*]

### Commencement

53 [*omitted*]

SCHEDULE 1

(Section 2(6))

STAYING OF MATRIMONIAL PROCEEDINGS

- 1 Paragraphs 2 to 6 have effect for the interpretation of this Schedule.
- 2 “Matrimonial proceedings” means any proceedings so far as they are one or more of the five following kinds, namely, proceedings for—
- (a) divorce;
  - (b) judicial separation;
  - (c) nullity of marriage;
  - (d) a declaration as to the validity of a marriage of the petitioner; and
  - (e) a declaration as to the subsistence of such a marriage.
- 3 “Another jurisdiction” means any country outside Bermuda.
- 4 (1) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.
- (2) For the purposes of this Schedule, proceedings in the court are continuing if they are pending and not stayed.
- 5 Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.
- 6 “Prescribed” means prescribed by rules of court.
- 7 While matrimonial proceedings are pending in the court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—
- (a) he knows to be continuing in another jurisdiction; and
  - (b) are in respect of that marriage or capable of affecting its validity or subsistence.

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

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

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

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

(3) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the court, the court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 7, subparagraph (1) shall have effect in relation to those proceedings and, to the other proceedings by reference to which the declaration is made, as if the words “before the beginning of the trial or first trial” were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

9 Where an order staying any proceedings is in force in pursuance of paragraph 8, the court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

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SCHEDULE 2  
TRANSITIONAL PROVISIONS AND SAVINGS

PART I  
MISCELLANEOUS AND GENERAL

*[omitted]*

PART II  
PRESERVATION FOR LIMITED PURPOSES OF CERTAIN PROVISIONS OF PREVIOUS  
ENACTMENTS

6 (1) Subject to subparagraph (3), a marriage celebrated before the commencement of this Act shall (without prejudice to any other grounds on which a marriage celebrated before the commencement of this Act is by law void or voidable) be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage—
  - (i) was suffering from mental disorder within the meaning of the Mental Health Act 1968; or
  - (ii) was subject to recurring fits of such disorder or epilepsy; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) In relation to a marriage celebrated before 7th June, 1968, for heads (i) and (ii) of subparagraph (1)(b) there shall be substituted the following heads—

- “(i) was a person of unsound mind within the meaning of the Lunacy Act 1929; or
- (ii) was subject to recurrent fits of insanity or epilepsy; or”.

(3) The court shall not grant a decree of nullity in a case falling within subparagraph (1)(b), (c) or (d) unless it is satisfied that—

- (a) the petitioner was at the time of the marriage ignorant of the facts alleged; and
- (b) proceedings were instituted within a year from the date of the marriage; and

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- (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree;

and where the proceedings with respect to the marriage are instituted after the commencement of this Act the application of section 17(1) in relation to the marriage shall be without prejudice to the preceding provisions of this subparagraph.

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

7 Where a decree of nullity was granted before the commencement of this Act in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

8 Section 22 shall not apply in a case where the death occurred before the commencement of this Act, but section 26(1) of the Act of 1943 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death intestate, as if her husband had then been dead) shall continue to apply in any such case.

### PART III

#### ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ACT OF ORDERS MADE, ETC., UNDER THE ACT OF 1943, ETC.

9 (1) An order for the payment of money made, or deemed to have been made, under section 21 of the Act of 1943 on any decree for divorce or nullity of marriage shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

(2) An order for the payment of money made, or deemed to have been made, under section 21(5) of the Act of 1943, shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Act of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

10 Section 42 shall apply in relation to an order made or deemed to have been made under section 20.

11 Section 46(7) shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 24 of the Act of 1943, as it applies in relation to an order made under section 46.

12 The power of the court under section 27(1) or (2)(a) or 46(1)(a) to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a

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previous order or orders in relation to the child under section 24 of the Act of 1943; and where the court has made an order in relation to a child under section 24 of that Act sections 27(4) and 46(6) shall apply respectively in relation to that child as if the order were an order made under section 27(2)(b) or section 46(1)(b), as the case may be.

13 Section 36 shall apply in relation to the enforcement, by proceedings begun after the commencement of this Act, of the payment of arrears due under an order made, or deemed to have been made, under the Act of 1943, as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.

14 Section 37 shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under the Act of 1943 as it applies to the orders mentioned in section 37(2).

15 (1) Section 41 shall apply in relation to proceedings for relief under section 15 or 24(2) of the Act of 1943 continuing by virtue of paragraph 4(b) as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 41(1).

(2) Without prejudice to subparagraph (1), section 41 shall also apply where an order has been obtained under the Act of 1943 for the settlement of property or the payment of money as it applies where an order has been obtained under any of the provisions of this Act specified in section 41(1).



SCHEDULE 3  
CONSEQUENTIAL AMENDMENTS

*[omitted]*

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SCHEDULE 4  
ENACTMENTS REPEALED

[*omitted*]

[Assent Date: 5 July 1974]

[This Act was brought into operation on 1 January 1975 by SR&O 61/1974]

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[*Amended by:*

1983 : 41

1989 : 58

1998 : 38

2002 : 36

2011 : 17]