

**ENGLISH AND WELSH LEGISLATION**

**MATRIMONIAL CAUSES ACT 1973**

**Section 1: Divorce on breakdown of marriage**

(1) Subject to section 3 below, 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 hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say -

(a) that the respondent has committed adultery and 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) above, then, unless it is satisfied on all the

evidence that the marriage has not broken down irretrievably, it shall, subject to section 5 below, 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 High Court by general order from time to time fixes a shorter period, or unless in any particular case the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this subsection.

**Section 2: Supplemental provisions as to facts raising presumption of breakdown**

(1) One party to a marriage shall not be entitled to rely for the purposes of section 1(2)(a) above 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) above 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 1(2)(a) above 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 1(2)(b) above 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 1(2)(c) above 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 1(2) above 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 1(2)(d) and (e) above 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 1(2)(d) above 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.

**Section 3: Bar on petitions for divorce within one year of marriage**

(1) No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage.

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

**Section 4: Divorce not precluded by previous judicial separation**

(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 1960 or Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 or any corresponding enactments in force in Northern Ireland, the Isle of Man or any of the Channel Islands.

(2) On a petition for divorce in such a case as is mentioned in subsection (1) above, 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 (subject to sub-section (5) below) 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.

(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say -

- (a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home;
- (b) any period during which there is in force an order made by the High Court or a county court under section 1 or 9 of the Matrimonial Homes Act 1983 which prohibits the exercise by

the respondent of the right to occupy a dwelling- house in which the applicant and the respondent have or at any time have had a matrimonial home;

(c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

(5) Where -

(a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and

(b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date, then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.

**Section 5: Refusal of decree in five year separation cases on grounds of grave hardship to respondent**

(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 1(2) above, 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.

**Section 6: Attempts at reconciliation of parties to marriage**

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

**Section 7: Consideration by the court of certain agreements or arrangements**

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.

**Section 8: Intervention of Queen's Proctor**

- (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 Queen's Proctor, who shall under the directions of the Attorney-General 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 Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.
  
- (2) Where the Queen's Proctor 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 Queen's Proctor shall be entitled to charge as part of the expenses of his office -
  - (a) the costs of any proceedings under subsection (1)(a) above;
  - (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) above are not fully satisfied by any order under that subsection, the amount of the difference;
  - (c) if the Treasury so directs, any costs which he pays to any parties under an order made under subsection (2).

**Section 9: Proceedings after decree nisi: general powers of court**

- (1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 8 above, any person (excluding a party to the proceedings other than the Queen's Proctor) may show

cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may -

- (a) notwithstanding anything in section 1(5) above (but subject to sections 10(2) to (4) and 41 below) 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 paragraphs (a) to (d) of subsection (1) above.

**Section 10: Proceedings after decree nisi: special protection for respondent in separation cases**

(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 1(2) above, 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) below of his financial position after the divorce; and



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(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 1(2) above.

(3) The court hearing an application by the respondent under subsection (2) above shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent, as having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and, subject to subsection (4) below, 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 makes the decree absolute notwithstanding the requirements of subsection (3) above 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.

**Section 21: Financial provision and property adjustment orders**

(1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 23 below 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 27(6) below 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 23(1)(a) or 27(6)(a) or in favour of a child of the family under section 23(1)(d), (2) or (4) or 27(6)(d);  
(b) any order for secured periodical payments in favour of a party to a marriage under section 23(1)(b) or 27(6)(b) or in favour of a child of the family under section 23(1)(e), (2) or (4) or 27(6)(e); and  
(c) any order for lump sum provision in favour of a party to a marriage under section 23(1)(c) or 27(6)(c) or in favour of a child of the family under section 23(1)(f), (2) or (4) or 27(6)(f);  
and references in this Act (except in paragraphs 17(1) and 23 of Schedule 1 below) 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 the provisions of this Act) under section 24 below 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 -

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

### **Section 21A: Pension sharing orders**

(1) For the purposes of this Act, a pension sharing order is an order which -

- (a) provides that one party's -
  - (i) shareable rights under a specified pension arrangement, or
  - (ii) shareable state scheme rights,

be subject to pension sharing for the benefit of the other party,  
and  
(b) specifies the percentage value to be transferred.

(2) In subsection (1) above –

- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,
- (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
- (c) "party" means a party to a marriage.

### **Section 22: Maintenance pending suit**

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.

### **Section 23: Financial provision orders in connection with divorce proceedings, etc**

(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) above, to the restrictions imposed by section 29(1) and (3) below 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) above -

(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) above:

(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

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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) above 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) above, it may from time to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f) above.

(5) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under subsection (1)(a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

(6) Where the court -

(a) makes an order under this section for the payment of a lump sum; and

(b) directs—

(i) that payment of that sum or any part of it shall be deferred; or

(ii) that that sum or any part of it shall be paid by instalments,

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

**Section 24: Property adjustment orders in connection with divorce proceedings, etc**

(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 a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any 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, other than one in the form of a pension arrangement (within the meaning of section 25D below)

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement, other than one in the form of a pension arrangement (within the meaning of section 25D below)

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

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

(3) Without prejudice to the power to give a direction under section 30

below for the settlement of an instrument by conveyancing counsel, 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.

**Section 24A: Orders for sale of property**

(1) Where the court makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

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

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

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

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

(5) Where an order under subsection (1) above contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the

marriage, the order shall cease to have effect on the death or re-marriage of that person.

(6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 25(1) below.

**Section 24B: Pension sharing orders in connection with divorce proceedings etc**

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

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

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

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(4) A pension sharing order under this section may not be made in relation to shareable state scheme rights if—

- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
- (b) such rights have been the subject of pension sharing between the parties to the marriage.



(5) A pension sharing order under this section may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.

**Section 24C: Pension sharing orders: duty to stay**

(1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.

(2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Section 24D: Pension sharing orders: apportionment of charges**

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs), or under corresponding Northern Ireland legislation.

**Section 25: Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A**

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters –

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under section 23(1)(d) or , (e) or (f), (2) (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters –

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

(e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.

(4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard -

(a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) 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.

**Section 25A: Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage**

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under [section 23(1)(a), (b) or (c), 24, 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of

marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 23(1) (a) or (b) above.

### **Section 25B: Pensions**

(1) The matters to which the court is to have regard under section 25(2) above include -

(a) in the case of paragraph (a), any benefits under a pension arrangement which a party to the marriage has or is likely to have, and

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

and, accordingly, in relation to benefits under a pension arrangement, section 25(2)(a) above shall have effect as if “in the foreseeable future” were omitted.

(3) The following provisions apply where, having regard to any benefits under a pension arrangement, the court determines to make an order under section 23 above.

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

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

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

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

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

(7B) The power conferred by subsection (4) or (7) above may not be exercised in relation to a pension arrangement which -

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(7C) In subsection (1) above, references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.

### **Section 25C: Pensions: lump sums**

(1) The power of the court under section 23 above to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension arrangement include any lump sum payable in respect of his death, power to make any of the following provision by the order.

- (2) The court may-
- (a) if the person responsible for the pension arrangement in question has power to determine the person to whom the sum, or any part of it, is to be paid, require him to pay the whole or part of that sum, when it becomes due, to the other party,
  - (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum,
  - (c) in any other case, require the person responsible for the pension arrangement in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.
- (3) Any payment by the person responsible for the arrangement under an order made under section 23 above by virtue of this section shall discharge so much of his liability in respect of the party with pension rights as corresponds to the amount of the payment.
- (4) The powers conferred by this section may not be exercised in relation to a pension arrangement which -
- (a) is the subject of a pension sharing order in relation to the marriage, or
  - (b) has been the subject of pension sharing between the parties to the marriage.

#### **Section 25D: Pensions: supplementary**

- (1) Where -
- (a) an order made under section 23 above by virtue of section 25B or 25C above imposes any requirement on the person responsible for a pension arrangement (“the first arrangement”) and the party with pension rights acquires rights under another pension arrangement (“the new arrangement”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and

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(b) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,  
the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.

(2) The Lord Chancellor may by regulations—

(a) in relation to any provision of sections 25B or 25C above which authorises the court making an order under section 23 above to require the person responsible for a pension arrangement to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made,

(ab) make, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25B or 25C above in an order under section 23 above, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due,

(b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 25B and 25C above,

(ba) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25B or 25C above,

(e) make provision about calculation and verification in relation to the valuation of—

(i) benefits under a pension arrangement, or

(ii) shareable state scheme rights,

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

(2A) Regulations under subsection (2)(e) above may include —

(a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and

(b) provision by reference to regulations under section 30 or 49(4) of the Welfare Reform and Pensions Act 1999.

(2B) Regulations under subsection (2) above may make different provision for different cases.

(2C) Power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) In this section and sections 25B and 25C above -  
"occupational pension scheme" has the same meaning as in the Pension Schemes Act 1993;

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

"pension arrangement" means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;

"personal pension scheme" has the same meaning as in the Pension Schemes Act 1993;

"prescribed" means prescribed by regulations;

"retirement annuity contract" means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

"shareable state scheme rights" has the same meaning as in section 21A(1) above; and

"trustees or managers", in relation to an occupational pension scheme or a personal pension scheme, means—

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



(4) In this section and sections 25B and 25C above, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of "pension arrangement" above, the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.

**Section 26: Commencement of proceedings for ancillary relief, etc**

(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings for maintenance pending suit under section 22 above, for a financial provision order under section 23 above, 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 -

- (a) that applications for any such relief as is mentioned in subsection (1) above 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.

**Section 27: Financial provision orders, etc., in case of neglect by party to marriage to maintain other party or child of the family**

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

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

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

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

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

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(2) above, and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while a minor.

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

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

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(3)(a) to (e) above, and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 25(4) above.

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(3B) In relation to an application under this section on the ground mentioned in subsection (1)(a) above, section 25(2)(c) above shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) above, section 25(2)(c) above (as it applies by virtue of section 25(3)(e) above) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.

(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) above, the court may make any one or more of the following orders, that is to say—

- (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) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

(6A) An application for the variation under section 31 of this Act of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that—

(a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its power under section 31 of this Act in relation to any order so revived.

(7) Without prejudice to the generality of subsection (6)(c) or (f) above, 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.

**Section 28: Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage**

(1) Subject in the case of an order made on or after the grant of a decree of divorce or nullity of marriage to the provisions of sections 25A(2) above and 31(7) below, the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits, 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.

(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the grant of a decree of divorce or nullity of marriage, the court may direct that that party shall not be entitled to apply under section 31 below for the extension of the term specified in the order

(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 whether at any time before or after the commencement of this Act 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.

**Section 29: Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour**

(1) Subject to subsection (3) below, no financial provision order and no order for a transfer of property under section 24(1)(a) above 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 or a date ascertained in accordance with subsection (5) or (6) below 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 (construed in accordance with section 8 of the Education Act 1996) unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date; and

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

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

(a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation,

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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.

(5) Where—

(a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and

(b) an application is made under Part II of this Act for a periodical payments or secured periodical payments order in favour of that child –

(i) in accordance with section 8 of the Child Support Act 1991, and

(ii) before the end of the period of 6 months beginning with the making of the current assessment

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.

(6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—

(a) the date 6 months before the application is made; or

(b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of those assessments took effect.

(7) Where—

(a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support Act 1991; and

(b) an application is made, before the end of the period of 6 months beginning with the relevant date, for a periodical

payments or secured periodical payments order in favour of a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,  
the term to be specified in any such order made on that application may begin with the date on which that maintenance assessment ceased to have effect or, as the case may be, the date with effect from which it was cancelled, or any later date.

(8) In subsection (7)(b) above—

- (a) where the maintenance assessment ceased to have effect, the relevant date is the date on which it so ceased; and
- (b) where the maintenance assessment was cancelled, the relevant date is the later of—
  - (i) the date on which the person who cancelled it did so, and
  - (ii) the date from which the cancellation first had effect.

**Section 30: Direction for settlement of instrument for securing payments or effecting property adjustment**

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 one of the conveyancing counsel of the court 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.

**Section 31: Variation, discharge, etc., of certain orders for financial relief**

(1) Where the court has made an order to which this section applies, then, subject to the provisions of this section and of section 28(1A) above, 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, that is to say—
- (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 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments);
  - (dd) any deferred order made by virtue of section 23(1)(c) (lump sums) which includes provision made by virtue of—
    - (i) section 25B(4), or
    - (ii) section 25C, (provision in respect of pension rights)
  - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the grant of a decree of judicial separation.
  - (f) any order made under section 24A(1) above for the sale of property
  - (g) a pension sharing order under section 24B above which is made at a time before the decree has been made absolute.

(2A) Where the court has made an order referred to in subsection (2)(a), (b) or (c) above, then, subject to the provisions of this section, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.

(2B) Where the court has made an order referred to in subsection (2)(dd)(ii) above, this section shall cease to apply to the order on the death of either of the parties to the marriage.

(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 24(1)(b) or for a

variation of settlement under section 24(1)(c) or (d) above 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.

(4A) In relation to an order which falls within paragraph (g) of subsection (2) above (“the subsection (2) order”)—

- (a) the powers conferred by this section may be exercised—
  - (i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and
  - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
- (b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.

(4B) No variation of a pension sharing order shall be made so as to take effect before the decree is made absolute.

(4C) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.

(5) Subject to subsections (7A) to (7G) below and without prejudice to any power exercisable by virtue of subsection (2)(d), (dd), (e) or (g) above or otherwise than by virtue of this section No property adjustment order or pension sharing order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, 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 23 or under section 27 above).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section

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relating to that order (and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

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

(a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient (in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below) to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;

(b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.

(7A) Subsection (7B) below applies where, after the dissolution of a marriage, the court—

(a) discharges a periodical payments order or secured periodical payments order made in favour of a party to the marriage; or

(b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.

(7B) The court has power, in addition to any power it has apart from this subsection, to make supplemental provision consisting of any of—

(a) an order for the payment of a lump sum in favour of a party to the marriage;

(b) one or more property adjustment orders in favour of a party to the marriage;

(ba) one or more pension sharing orders;

(c) a direction that the party in whose favour the original order discharged or varied was made is not entitled to make any further application for—

(i) a periodical payments or secured periodical payments order, or

(ii) an extension of the period to which the original order is limited by any variation made by the court.

(7C) An order for the payment of a lump sum made under subsection

(7B) above may—

(a) provide for the payment of that sum by instalments of such amount as may be specified in the order; and

(b) require the payment of the instalments to be secured to the satisfaction of the court.

(7D) Section 23(6) above apply where the court makes an order for the payment of a lump sum under subsection (7B) above as they apply where it makes such an order under section 23 above.

(7E) If under subsection (7B) above the court makes more than one property adjustment order in favour of the same party to the marriage, each of those orders must fall within a different paragraph of section 21(2) above.

(7F) Sections 24A and 30 above apply where the court makes a property adjustment order under subsection (7B) above as they apply where it makes such an order under section 24 above.

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(7G) Subsections (3) to (5) of section 24B above apply in relation to a pension sharing order under subsection (7B) above as they apply in relation to a pension sharing order under that section.

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

(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.

(11) Where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and

(d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or discharge of the order, the court may, in exercise of its powers under this section to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.

(12) Where—

(a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a maintenance assessment;

(b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and

(c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance assessment was made, for the spousal order to be varied or discharged,

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

(13) For the purposes of subsection (12) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.

(14) Subsections (11) and (12) above are without prejudice to any other power of the court to direct that the variation or discharge of an order under this section shall take effect from a date earlier than that on which the order for variation or discharge was made.

(15) The power to make regulations under subsection (4C) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Section 32: Payment of certain arrears unenforceable without the leave of the court**

(1) A person shall not be entitled to enforce through the High Court or any county 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 that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(2) The court hearing an application for the grant of leave under this section 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 that 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.

**Section 33 Orders for repayment in certain cases of sums paid under certain orders**

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

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

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

(2) This section applies to the following orders, that is to say—  
(a) any order for maintenance pending suit and any interim order for maintenance;  
(b) any periodical payments order; and  
(c) any secured periodical payments order.

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

(4) An application under this section may be made in proceedings in the High Court or a county court for -

- (a) the variation or discharge of the order to which this section applies, or
- (b) leave to enforce, or the enforcement of, the payment of arrears under that order;

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

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

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

### **Section 33A: Consent orders for financial provision or property adjustment**

(1) Notwithstanding anything in the preceding provisions of this Part of this Act, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other



circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

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

(3) In this section –

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

“order for financial relief” means an order under any of sections 23, 24, 24A, 24B or 27 above; and

“prescribed means” prescribed by rules of court.

#### **Section 34: Validity of maintenance agreements**

(1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a 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 35 and 36 below), be binding on the parties to the agreement.

(2) In this section and in section 35 below—

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Act, 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.

**Section 35: Alteration of agreements by court during lives of parties**

(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 England and Wales, then, subject to subsection (3) below, 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) below, that court may by order make such alterations in the agreement -

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

(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 25(4) above; and the agreement shall have effect thereafter as if any

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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) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident within the commission area for which the court is appointed; 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, that is to say -

(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 29(2) and (3) above 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) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any 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.

**Section 36: Alteration of agreements by court after death of one party**

(1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 35 above.

(2) An application under this section shall not, except with the permission of the High Court or a county 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) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of section 22 of the Inheritance (Provision for Family and Dependents) Act 1975 (which

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confers jurisdiction on county courts in proceedings under that Act if the value of the property mentioned in that section does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under section 2 of that Act in relation to the deceased's estate.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, 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.

(5) The provisions of this section shall not render the personal 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) above on the ground that they ought to have taken into account the possibility that a 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.

(6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.

(7) Subsection (3) of section 22 of the Inheritance (Provision for Family and Dependants) Act 1975 (which enables rules of court to provide for the transfer from a county court to the High Court or from the High Court to a county court of proceedings for an order under section 2 of that Act) and paragraphs (a) and (b) of subsection (4) of that section (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to proceedings for an order under section 2 of that Act.

**Section 37: Avoidance of transactions intended to prevent or reduce financial relief**

(1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 22, 23, 24, 24B, 27, 31 (except subsection (6)) and 35 above, 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) above 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) above 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) above 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) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above 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) above, that the disposition or other dealing would (apart from this section) have the consequence, or

(b) in a case falling within subsection (2)(c) above, 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 1st January 1968.

**Section 38: Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage**

(1) Where—

(a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of that party, and

(b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

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

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

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

(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.

(6) A justices' chief executive 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 justices' chief executive, 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 enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, 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 personal representatives of either of those persons.

(7) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or a justices' chief executive to whom a person makes payments in compliance with the order.

**Section 39: Settlement, etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor**

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 transaction in respect of which an order may be made under section 339 or 340 of the Insolvency Act 1986 (transactions at an undervalue and preferences.)

**Section 40: Payments, etc., under order made in favour of person suffering from mental disorder**

Where the court makes an order under this Part of this Act 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 1959, 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 VIII 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.

**Section 40A: Appeals relating to pension sharing orders which have taken effect**

(1) Subsections (2) and (3) below apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

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

(3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.

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

(5) Where subsection (2) or (3) above applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(6) Section 24C above only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.

(7) In subsection (2) above, the reference to the person responsible for the pension arrangement is to be read in accordance with section 25D(4) above.

**FAMILY LAW ACT 1996**

**Section 1: The general principles underlying Parts II and III**

The court and any person, in exercising functions under or in consequence of Parts II and III, shall have regard to the following general principles –

- (a) that the institution of marriage is to be supported;
- (b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
- (c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end -
  - (i) with minimum distress to the parties and to the children affected;
  - (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and
  - (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
- (d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.