

MATRIMONIAL PROCEEDINGS ACT 2003

Chapter 7

Arrangement of sections

PART 1

PROCEEDINGS FOR DIVORCE, ANNULMENT ETC.

Jurisdiction

1. Jurisdiction.

Divorce

2. Divorce on breakdown of marriage.
3. Facts raising presumption of breakdown.
4. Bar on divorce applications within one year of marriage.
5. Divorce not precluded by previous separation order.
6. Refusal of order in 5 year separation cases on hardship grounds.
7. Attempts at reconciliation.
8. Consideration of certain agreements or arrangements.
9. Special protection for respondent in 2- or 5-year separation cases.
10. Relief for respondent in divorce proceedings.

Annulment

11. Annulment of marriage.
12. Grounds on which a marriage is void.
13. Grounds on which a marriage is voidable.
14. Bars to relief where marriage is voidable.
15. Marriages governed by foreign law etc.
16. Effect of annulment order in case of voidable marriage.

Other matrimonial proceedings

17. Separation orders.
18. Presumption of death and dissolution of marriage.
19. Declarations as to marital status.
20. General provisions as to declarations.

General

21. Jurisdiction: further provisions.
22. Intervention of Attorney General.

23. Provisional and final orders.
24. Parties to proceedings under this Part.
25. Restriction on orders affecting children.

PART 2

PROCEEDINGS FOR MAINTENANCE ETC. — HIGH COURT

Financial orders

26. Orders under this Part.
Ancillary relief in connection with divorce proceedings, etc.
27. Maintenance pending suit.
28. Financial provision orders in connection with divorce proceedings, etc.
29. Property adjustment orders in connection with divorce proceedings, etc.
30. Orders for sale of property.
31. Pension sharing orders in connection with divorce proceedings etc.
32. Matters to which court is to have regard.
33. Exercise of court's powers on divorce or annulment.
34. Pensions: "earmarking".
35. Pensions: lump sums.
36. Pensions: supplementary.
37. Commencement of proceedings for ancillary relief, etc.

Financial provision in case of failure to maintain

38. Financial provision in case of failure to maintain.
39. Failure to maintain: supplemental.

Additional provisions with respect to financial provision and property adjustment orders

40. Duration of continuing financial provision orders and effect of remarriage.
41. Duration of continuing financial provision orders in favour of children, and age limit.
42. Direction for settlement of instrument for securing payments etc.
Variation, revocation and enforcement of certain orders, etc.
43. Variation, revocation etc., of certain orders for financial relief.
44. Variation of orders: supplemental.
45. Payment of certain orders.
46. Payment of certain arrears unenforceable without leave.
47. Orders for repayment.

Matrimonial Proceedings Act 2003

Consent orders

48. Consent orders for financial provision or property adjustment.

Maintenance agreements

49. Validity of maintenance agreements.
50. Alteration of agreements by court during lives of parties.
51. Alteration of agreements by court after death of party.

Miscellaneous and supplemental

52. Avoidance of transactions intended to prevent or reduce financial relief.
53. Orders for repayment after remarriage.
54. Avoidance of settlement etc. on settlor's bankruptcy.
55. Payments, etc., under order made in favour of mental patient.
56. Appeals relating to pension sharing orders which have taken effect.

PART 3

PROCEEDINGS FOR MAINTENANCE ETC. — COURTS OF SUMMARY JURISDICTION

Jurisdiction

57. Jurisdiction
58. Refusal of order in case more suitable for High Court.

Maintenance orders

59. Grounds of application for maintenance orders.
60. Powers of court to make maintenance orders.
61. Matters to which court is to have regard.
62. Duration of maintenance orders in favour of party to marriage.
63. Maintenance orders for children: age limit and duration.
64. Orders for payments which have been agreed by the parties.
65. Powers of court where parties are living apart by agreement.

Restrictions on exercise of court's powers

66. Duty to consider exercise of powers as to children.
67. Reconciliation.

Interim orders

68. Interim orders.

Variation, revocation and cessation of orders etc.

69. Variation, revival and revocation of orders for periodical payments.
70. Variation, revival and revocation: supplementary provisions.

Matrimonial Proceedings Act 2003

- 71. Variation of instalments of lump sum.
- 72. Variation or revocation of orders: party outside the Island.
- 73. Effect on certain orders of parties living together.
- 74. Powers of High Court in relation to certain orders.

General

- 75. Constitution of courts.
- 76. Repayment of sums paid after cessation of order by reason of remarriage.
- 77. Interpretation of Part 3.

PART 4

FINANCIAL RELIEF AFTER FOREIGN DIVORCE ETC.

Applications for financial relief

- 78. Applications for financial relief after foreign divorce etc.
- 79. Leave of the court required for applications for financial relief.
- 80. Interim orders for maintenance.
- 81. Jurisdiction.
- 82. Duty to consider whether the Island is appropriate venue for application.

Orders for financial provision and property adjustment

- 83. Orders for financial provision and property adjustment.
- 84. Matters to which the court is to have regard in exercising its powers under s.83.
- 85. Consent orders for financial provision or property adjustment.
- 86. Restriction of powers of court where jurisdiction depends on matrimonial home in the Island.
- 87. Application to orders under ss.80 and 83 of certain provisions of Part 2.

Avoidance of transactions intended to prevent or reduce financial relief

- 88. Avoidance of transactions intended to defeat applications for financial relief.
- 89. Prevention of transactions intended to defeat prospective applications for financial relief.

Interpretation

- 90. Interpretation of Part 4.

PART 5

FAMILY HOMES AND DOMESTIC VIOLENCE

Jurisdiction

91. Jurisdiction.

Rights to occupy matrimonial home

92. Rights concerning matrimonial home where one spouse has no estate, etc.

93. Rights as charge on dwelling-house.

94. Registration of matrimonial home rights.

Occupation orders

95. Occupation orders where applicant has interest or rights.

96. Effect of order where rights are charge on dwelling-house.

97. Former spouse with no existing right to occupy.

98. Cohabitant or former cohabitant with no existing right to occupy.

99. Former spouses and cohabitants: supplemental.

100. Neither spouse or former spouse entitled to occupy.

101. Neither cohabitant or former cohabitant entitled to occupy.

102. Occupation orders: supplementary provisions.

103. Additional provisions that may be included in certain occupation orders.

Non-molestation orders

104. Non-molestation orders.

Further provisions relating to occupation and non-molestation orders

105. Leave of court required for applications by children under 16.

106. Agreements to marry.

107. Ex parte orders.

108. Undertakings.

109. Arrest for breach of order.

110. Remand for medical examination and report.

111. Power to order hospital admission or guardianship.

112. Variation and revocation of orders.

113. Proceedings by mortgagees.

114. Contempt proceedings.

Supplemental

115. Meaning of "cohabitants", "relevant child" and "associated persons".

116. Interpretation of Part 5.

PART 6

RECIPROCAL ENFORCEMENT OF ORDERS MADE IN UNITED KINGDOM ETC.

Reciprocal enforcement of certain financial orders

117. Reciprocal enforcement of certain financial orders.

Enforcement of UK and Channel Island orders in the Isle of Man

118. Recognition of overseas orders.

119. Registration of overseas order in High Court.

120. Cancellation and variation of registration.

121. Enforcement.

122. Staying of enforcement proceedings.

123. Dismissal of enforcement proceedings.

Enforcement of Manx orders in UK and Channel Islands

124. Enforcement of financial order in UK or Channel Islands.

PART 7

PROPERTY OF MARRIED PERSONS ETC.

125. Capacity of married woman.

126. Actions in tort between husband and wife.

127. Policy of assurance effected by married person.

128. Questions as to property between husband and wife.

129. Questions as to property: further powers of Court.

130. Contributions by spouse to improvement of property.

131. Housekeeping allowance.

132. Duty of spouses to maintain each other.

133. Presumption of advancement.

134. Property of engaged couples.

135. Gifts between engaged couples.

PART 8

MISCELLANEOUS AND SUPPLEMENTAL

136. Polygamous marriages.

137. Evidence.

138. Interpretation: general.

139. Transitional provisions, savings, amendments and repeals.

140. Short title and commencement.

Matrimonial Proceedings Act 2003

SCHEDULES

Schedule 1	—	Staying of matrimonial proceedings.
Schedule 2	—	Registration of matrimonial home rights.
Schedule 3	—	Powers of High Court to remand.
Schedule 4	—	Transitional provisions.
Schedule 5	—	Amendment of enactments.
Schedule 6	—	Enactments repealed.



Signed in Tynwald: 17th June 2003
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AN ACT

to re-enact with amendments certain enactments relating to matrimonial proceedings and property; to make new provision for family homes and domestic violence; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

PART 1

PROCEEDINGS FOR DIVORCE, ANNULMENT ETC.

Jurisdiction

1. Jurisdiction.

In this Part "the Court" means the High Court.

Divorce

2. Divorce on breakdown of marriage.

(1) Subject to section 4, an application for a divorce order may be made to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The Court hearing an application for a divorce order shall not hold the marriage to have broken down irretrievably unless the applicant satisfies the Court of one or more of the following facts —

- (a) that the respondent has committed adultery and the applicant finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the applicant for a continuous period of at least 2 years immediately preceding the making of the application;
- (d) that the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the making of the application ("2 years' separation") and the respondent consents to a divorce order being made;
- (e) that the parties to the marriage have lived apart for a continuous period of at least 5 years immediately preceding the making of the application ("5 years' separation").

(3) On an application for a divorce order, it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the applicant and into any facts alleged by the respondent.

(4) If the Court is satisfied on the evidence of any such fact as is mentioned in subsection (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 6, make a divorce order.

3. Facts raising presumption of breakdown.

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

(2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) does not apply, in any proceedings for divorce in which the applicant 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 2(2)(a) whether the applicant finds it intolerable to live with the respondent.

- (3) Where, in any proceedings for divorce, —
 - (a) the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with him, but
 - (b) the parties to the marriage have lived with each other for a period or periods after the occurrence of the final incident relied on by the applicant and held by the Court to support his allegation,

that fact shall be disregarded in determining for the purposes of section 2(2)(b) whether the applicant cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was 6 months or less.

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

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

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

(7) Provision shall be made by rules of court for the purpose of ensuring that, where, in pursuance of section 2(2)(d), the applicant alleges that the respondent consents to a divorce order being made, the respondent has been given such information as will enable him to understand —

- (a) the consequences to him of his consenting to the order being made, and
- (b) the steps which he must take to indicate that he consents to the making of the order.

4. Bar on divorce applications within one year of marriage.

(1) No application for a divorce order shall be made before the expiration of the period of one year from the date of the marriage.

(2) Nothing in this section prohibits the making of an application based on matters which occurred before the expiration of that period.

5. Divorce not precluded by previous separation order.

(1) A person shall not be prevented from making an application for a divorce order, or the Court from making a divorce order, by reason only that there has been made in favour of the applicant or respondent at any time, on the same facts or substantially the same facts as those proved in support of the application, —

- (a) a separation order, or
- (b) an order under, or having effect as if made under, Part 3 or any corresponding enactment in force in any other part of the British Islands.

(2) On an application for a divorce order in a case mentioned in subsection (1), the Court may treat the order as sufficient proof of any adultery, desertion or other fact by reference to which it was made, but shall not make a divorce order without receiving evidence from the applicant.

(3) Where an application for a divorce order in such a case follows a separation order, for the purposes of that application, a period of desertion immediately preceding the institution of the proceedings for the separation order shall, if the parties have not resumed cohabitation and the separation order has been continuously in force since it was made, be deemed immediately to precede the making of the application.

(4) For the purposes of section 2(2)(c) the Court may treat as a period during which the respondent has deserted the applicant any of the following periods —

- (a) any period during which there is in force an injunction granted by the Court which excludes the respondent from the matrimonial home;
- (b) any period during which there is in force an order made by any court under Part 5 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.

6. Refusal of order in 5 year separation cases on hardship grounds.

(1) The respondent to an application for a divorce order in which the applicant alleges 5 years' separation may oppose the making of an order 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 making of an order is opposed by virtue of this section, then —

- (a) if the Court finds that the applicant is entitled to rely in support of his application on the fact of 5 years' separation and makes no such finding as to any other fact mentioned in section 2(2); and
- (b) if, apart from this section, the Court would make a divorce order on the application,

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 application.

(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.

7. Attempts at reconciliation.

(1) 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.

(2) The power conferred by subsection (1) is additional to any other power of the Court to adjourn proceedings.

8. Consideration of certain agreements or arrangements.

Provision may be made by rules of court for —

- (a) enabling the parties to a marriage, or either of them, on application made either before or after the making of an application for a divorce order, 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, or arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and
- (b) 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.

9. Special protection for respondent in 2- or 5-year separation cases.

- (1) Where in any case —

- (a) the Court has made a divorce order on the basis of a finding that the applicant was entitled to rely in support of his application on the fact of 2 years' separation coupled with the respondent's consent to an order being made, and
- (b) has made no such finding as to any other fact mentioned in section 2(2),

the Court may, on an application made by the respondent at any time before the order is made final, revoke the order if it is satisfied that the applicant 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 an application for a divorce order in which the applicant alleged 2 years' or 5 years' separation, coupled, in the former case, with the respondent's consent to an order being made, has applied to the Court for consideration under subsection (3) of his financial position after the divorce; and
 - (b) the Court has made the order on the application on the basis of a finding that the applicant was entitled to rely in support of his application on the fact of 2 years' or 5 years' separation (as the case may be) and has made no such finding as to any other fact mentioned in section 2(2).

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

- (a) that the applicant should not be required to make any financial provision for the respondent; or
- (b) that the financial provision made by the applicant 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, nevertheless make the order final if —

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

10. Relief for respondent in divorce proceedings.

If, in any proceedings for divorce, the respondent alleges and proves any such fact as is mentioned in section 2(2) (treating the respondent as the

applicant and the applicant as the respondent for that purpose), the Court may give to the respondent the relief to which he would have been entitled if he had made an application seeking that relief.

Annulment

11. Annulment of marriage.

(1) Subject to section 14, an application for an annulment order may be made to the Court by either party to a marriage on the ground that the marriage is void or voidable.

(2) On an application for an annulment order, it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the applicant and into any facts alleged by the respondent.

(3) If the Court is satisfied on the evidence of any such ground as is mentioned in section 12 or 13, it shall make an annulment order.

12. Grounds on which a marriage is void.

(1) A marriage is void on the following grounds only —

- (a) that it is not a valid marriage under the provisions of any enactment or rule of law relating to marriage (that is, where —
 - (i) the marriage is void by virtue of section 1 of the Marriage Act 1984¹ (prohibited degrees of relationship);
 - (ii) either party is under the age of 16; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
- (b) that, at the time of the marriage, either party was already lawfully married;
- (c) that the parties are not respectively male and female;
- (d) in the case of a polygamous marriage entered into outside the Island, that either party was, at the time of the marriage, domiciled in the Island.

(2) A marriage entered into outside the Island between parties neither of whom is already married is not void under the law of the Island on the ground that it is entered into under a law which permits polygamy and that either party is domiciled in the Island.

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

¹ 1984 c.13

13. Grounds on which a marriage is voidable.

A marriage is voidable on the following grounds only —

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that, at the time of the marriage, either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder, within the meaning of the Mental Health Act 1998², of such a kind or to such an extent as to be unfitted for marriage;
- (e) that, at the time of the marriage, the respondent was suffering from venereal disease in a communicable form;
- (f) that, at the time of the marriage, the respondent was pregnant by some person other than the applicant.

14. Bars to relief where marriage is voidable.

(1) The Court shall not make an annulment order on the ground that a marriage is voidable if the respondent satisfies the Court —

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

(2) Without prejudice to subsection (1), the Court shall not make an annulment order by virtue of section 13 on the grounds mentioned in section 13(c), (d), (e) or (f) unless —

- (a) it is satisfied that proceedings were instituted within the period of 3 years from the date of the marriage, or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under subsection (4).

(3) Without prejudice to subsections (1) and (2), the Court shall not make an annulment order by virtue of section 13 on the grounds mentioned in section 13(e) or (f) unless it is satisfied that the applicant was, at the time of the marriage, ignorant of the facts alleged.

(4) In the case of proceedings for an annulment order by virtue of section 13 on the grounds mentioned in section 13(c), (d), (e) or (f), the Court

² 1998 c.3

may, on an application made to it, grant leave for the institution of proceedings after the expiration of the period of 3 years from the date of the marriage if —

- (a) it is satisfied that the applicant has at some time during that period suffered from mental disorder within the meaning of the Mental Health Act 1998, and
 - (b) it considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.
- (5) An application for leave under subsection (4) may be made after the expiration of the period of 3 years from the date of the marriage.

15. Marriages governed by foreign law etc.

(1) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside the Island, nothing in sections 12, 13, or 14(1) —

- (a) precludes the determination of that matter as aforesaid; or
 - (b) requires the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.
- (2) In the case of a marriage which —
- (a) purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 (Acts of Parliament), or
 - (b) has taken place outside the Island and purports to be a marriage under common law,

section 12 is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside the Island under common law.

16. Effect of annulment order in case of voidable marriage.

An annulment order in respect of a voidable marriage operates to annul the marriage only as respects any time after the order has been made final, and the marriage shall, notwithstanding the order, be treated as if it had existed up to that time.

Other matrimonial proceedings

17. Separation orders.

(1) An application for a separation order may be made to the Court by either party to a marriage on the ground that any such fact as is mentioned in section 2(2) exists, and section 3 applies accordingly for the purposes of an

application for a separation order alleging any such fact as it applies in relation to an application for a divorce order alleging that fact.

(2) Where the Court makes a separation order, it shall no longer be obligatory for the applicant to cohabit with the respondent.

(3) On an application for a separation order, it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the applicant and into any facts alleged by the respondent, but the Court shall not be concerned to consider whether the marriage has broken down irretrievably; and, if it is satisfied on the evidence of any such fact as is mentioned in section 2(2), it shall, subject to section 25, make a separation order.

(4) Sections 7 and 8 apply for the purpose of —

(a) encouraging the reconciliation of parties to proceedings for a separation order, and

(b) enabling the parties to a marriage to refer to the Court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for a separation order,

as they apply in relation to proceedings for divorce.

18. Presumption of death and dissolution of marriage.

(1) Any party to a marriage who alleges that reasonable grounds exist for supposing that the other party is dead may make an application to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court may, if satisfied that such reasonable grounds exist, make an order of presumption of death and dissolution of the marriage.

(2) In any proceedings under this section, the fact that, for a period of 7 years or more, the other party to the marriage has been continually absent from the applicant and the applicant has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead, until the contrary is proved.

(3) Neither collusion nor any other conduct on the part of the applicant which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the making of an order under this section.

19. Declarations as to marital status.

(1) Subject to the following provisions of this section, any person may apply to the Court for one or more of the following declarations in relation to a marriage specified in the application —

(a) a declaration that the marriage was at its inception a valid marriage;

(b) a declaration that the marriage subsisted on a date specified in the application;

- (c) a declaration that the marriage did not subsist on a date so specified;
- (d) a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside the Island in respect of the marriage is entitled to recognition in the Island;
- (e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in the Island.

(2) Where an application under subsection (1) is made by any person other than a party to the marriage to which the application relates, the Court shall refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

20. General provisions as to declarations.

(1) The Court may direct that the whole or any part of any proceedings under section 19 shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the Court otherwise directs.

(2) Where on an application for a declaration under section 19 the truth of a proposition to be declared is proved to the satisfaction of the Court, the Court shall make that declaration unless to do so would manifestly be contrary to public policy.

(3) Any declaration under section 19 shall be binding on Her Majesty and all other persons.

(4) No proceedings under section 19 shall affect any final order, judgment or decree already pronounced by a court of competent jurisdiction.

(5) The Court, on the dismissal of an application for a declaration under section 19, may not make any declaration for which an application has not been made.

(6) No declaration which may be applied for under section 19 may be made otherwise than under that section by any court.

(7) No declaration may be made by any court, whether under section 19 or otherwise, —

- (a) that a marriage was at its inception void, or
- (b) that any person is or was illegitimate.

(8) Nothing in this section affects the power of the Court to make an annulment order.

General

21. Jurisdiction: further provisions.

(1) The Court has jurisdiction to entertain proceedings for a divorce order or separation order if (and only if) either of the parties to the marriage —

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

(2) The Court has jurisdiction to entertain proceedings for an annulment order if (and only if) either of the parties to the marriage —

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

(3) The Court, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (1) or (2) (or of this subsection), also has jurisdiction to entertain other proceedings, in respect of the same marriage, for a divorce order, annulment order or separation order, even though jurisdiction would not be exercisable under subsection (1) or (2).

(4) The Court has jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved under section 18 if (and only if) the applicant —

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

(5) The Court has jurisdiction to entertain an application under section 19(1) if, and only if, either of the parties to the marriage to which the application relates —

- (a) is domiciled in the Island on the date of the application, or
- (b) has been habitually resident in the Island throughout the period of one year ending with that date, or
- (c) died before that date and either —
 - (i) was at death domiciled in the Island, or
 - (ii) had been habitually resident in the Island throughout the period of one year ending with the date of death.

(6) Schedule 1 has effect as to the cases in which matrimonial proceedings in the Island are to be, or may be, stayed by the Court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in that Schedule prejudices any power to stay proceedings which is exercisable by the Court apart from that Schedule.

22. Intervention of Attorney General.

- (1) In proceedings for —
 - (a) a divorce order,
 - (b) an annulment order, or
 - (c) an order under section 18,

the Court may, if it thinks fit, direct all the necessary papers in the matter to be sent to the Attorney General, who shall argue, or shall instruct an advocate to argue, before the Court any question in relation to the matter which the Court considers it necessary or expedient to have fully argued.

(2) In any proceedings mentioned in subsection (1), any person may at any time during the progress of the proceedings or before the provisional order is made final, give information to the Attorney General on any matter material to the due decision of the case, and the Attorney General may thereupon take such steps as he considers necessary or expedient.

(3) At any stage in proceedings on an application for a declaration under section 19, the Court may, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney General.

(4) The Attorney General, whether or not he is sent papers in relation to an application under section 19, may —

- (a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and
- (b) argue before the Court any question in relation to the application which the Court considers it necessary to have fully argued.

(5) Where any costs are incurred by the Attorney General in connection with any proceedings mentioned in subsection (1) or (3), the Court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

23. Provisional and final orders.

(1) Every divorce order, annulment order and order under section 18 shall in the first instance be a provisional order and shall not be made final before the expiration of the period specified in subsection (2).

- (2) The period mentioned in subsection (1) is —

- (a) 6 weeks from the date on which the order is made, or
- (b) such shorter period as may be prescribed by rules of court, or
- (c) if in any particular case the Court by special order fixes a shorter period than the period otherwise applicable under paragraph (a) or (b), that shorter period.

(3) Where a divorce order, annulment order or order under section 18 has been made but has not been made final, then, without prejudice to section 22, any person (excluding a party to the proceedings other than the Attorney General) may show cause why the order should not be made final by reason of material facts not having been brought before the Court; and, in such a case, the Court may —

- (a) notwithstanding anything in subsection (1) (but subject to sections 9(2) to (4) and 25), make the order final; or
- (b) revoke the order; or
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(4) Where a divorce order, annulment order or order under section 18 has been made and no application for it to be made final has been made by the party in favour of whom it was made, then, at any time after the expiration of 3 months from the earliest date on which that party could have made such an application, the party against whom it was made may make an application to the Court, and, on that application, the Court may exercise any of the powers mentioned in subsection (3)(a) to (d).

24. Parties to proceedings under this Part.

(1) Where, in an application for a divorce order or separation order, or in any other pleading applying for either order, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to proceedings unless excused by the Court on special grounds from doing so.

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

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

(4) Rules of court may make provision, in cases not falling within subsection (1), with respect to —

- (a) the joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and
- (b) the dismissal from such proceedings of any parties so joined;

and rules of court made by virtue of this subsection may make different provision for different cases.

- (5) In every case in which —
 - (a) adultery with any party to proceedings is alleged against any person not made a party to the proceedings, or
 - (b) the Court considers, in the interest of any person not already a party, that that person should be made a party to the proceedings,

the Court may, if it thinks fit, allow that person to intervene upon such terms, if any, as the Court thinks just.

25. Restriction on orders affecting children.

(1) In any proceedings for a divorce order, annulment order or separation order, the Court shall consider —

- (a) whether there are any children of the family to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under Part 2 of the Children and Young Persons Act 2001³ with respect to any of them.

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

- (a) the circumstances of the case require it, or are likely to require it, to exercise one or other of its powers under the said Part 2 with respect to any such child;
- (b) it is not in a position to exercise that power or those powers (as the case may be) without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the Court should give a direction under this section,

it may direct that the divorce order or annulment order is not to be made final, or that the separation order is not to be made, until the Court orders otherwise.

- (3) This section applies to —

³ 2001 c.20

- (a) any child of the family who has not reached the age of 16 at the date when the Court considers the case in accordance with this section; and
- (b) any child of the family who has reached that age at that date and in relation to whom the Court directs that this section shall apply.

PART 2

PROCEEDINGS FOR MAINTENANCE ETC. — HIGH COURT

Financial orders

26. Orders under this Part.

(1) The following table indicates the kinds of order which may be made under this Part, their contents and the provisions under which they may be made —

<i>Kind of order</i>	<i>Contents of order</i>	<i>Provision</i>
Periodical payments order	an order that either party to a marriage shall make to the other such periodical payments, for such term, as may be specified in the order	section 28(1) section 38(3)
	an order that a party to a 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	section 28(1), (3) and (5) section 38(3)
Secured periodical payments order	an order that either party to a marriage shall secure to the other to the satisfaction of the Court such periodical payments, for such term, as may be so specified	section 28(1) section 38(3)
	an order that a party to a marriage shall secure to such person as may be so specified for the benefit of a child of the family, or to such a child, to the satisfaction of the Court, such periodical payments, for such term, as may be so specified	section 28(1), (3) and (5) section 38(3)
Order for payment of a lump sum	an order that either party to a marriage shall pay to the other such lump sum or sums as may be so specified	section 28(1) section 38(3)
	an order that a party to a marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified	section 28(1), (3) and (5) section 38(3)
Transfer of property order	an order that a party to a 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	section 29(1)

Matrimonial Proceedings Act 2003

<i>Kind of order</i>	<i>Contents of order</i>	<i>Provision</i>
	a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion	
Order for a settlement of property	an order that a settlement of such property as may be so specified, being property to which a party to the marriage is entitled, either in possession or reversion, 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	section 29(1)
Order for variation of a settlement	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	section 29(1)
	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	section 29(1)
Sale of property order	an 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	section 30(1)
Pension sharing order	an order which provides that the shareable rights under a specified pension arrangement, or the shareable state scheme rights, of a party to the marriage be subject to pension sharing for the benefit of the other party, and specifies the percentage value to be transferred	section Error! Reference source not found. (1)

(2) References in this Part to an order of a kind specified in column 1 of the table in subsection (1) shall be construed in accordance with the corresponding provisions of column 2 of that table.

(3) In this Part —

"the Court" means the High Court;

"financial provision order" means a periodical payments order, a secured periodical payments order or an order for payment of a lump sum;

"property adjustment order" means a transfer of property order, an order for a settlement of property or an order for variation of a settlement.

Ancillary relief in connection with divorce proceedings, etc.

27. Maintenance pending suit.

On an application for a divorce order, annulment order or separation order, the Court may make 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 making of the application and ending with the date of the determination of the proceedings, as the Court thinks reasonable (an "order for maintenance pending suit").

28. Financial provision orders in connection with divorce proceedings, etc.

(1) On making a divorce order, annulment order or separation order or at any time thereafter, the Court may make one or more financial provision orders in favour of either party to the marriage or a child of the family of the parties to the marriage.

(2) Such an order, in the case of a divorce order or annulment order, may be made either before or after that order is made final.

(3) The Court may also make one or more financial provision orders in favour of a child of the family of the parties to the marriage —

- (a) in any proceedings for a divorce order, annulment order or separation order, before making such an order; and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(4) The power of the Court under subsection (1) or (3)(a) to make an order in favour of a child of the family shall be exercisable from time to time.

(5) Where the Court makes an order in favour of a child under subsection (3)(b), it may from time to time make a further financial provision order in his favour.

(6) Without prejudice to the power under section 42 to settle a proper instrument to be executed by all necessary parties, where a financial provision order is made under subsection (1) in favour of a party to the marriage on or after making a divorce order or annulment order, neither the financial provision order nor any settlement made in pursuance of that order shall take effect unless the divorce order or annulment order has been made final.

(7) Without prejudice to the generality of subsection (1), an order for payment of a lump sum under this section —

- (a) may be made in favour of a party to a marriage for the purpose of enabling him or her 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) may be made in favour of a child of the family for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
- (c) may provide for the payment of that sum by instalments of such amount as may be specified in the order, and may require the payment of the instalments to be secured to the satisfaction of the Court.

(8) Where the Court makes an order for payment of a lump sum under this section and directs —

- (a) that payment of the sum or any part of it shall be deferred; or
- (b) that the 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.

(9) This section is subject to the restrictions imposed by section 41(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

29. Property adjustment orders in connection with divorce proceedings, etc.

(1) On making a divorce order, annulment order or separation order or at any time afterwards, the Court may make one or more property adjustment orders in favour of either party to the marriage, a child of the family of the parties to the marriage or (in the case of a transfer of property order) any other person.

(2) Such an order, in the case of a divorce order or annulment order, may be made either before or after that order is made final.

(3) The Court may make an order for variation of a settlement even though there are no children of the family.

(4) Without prejudice to the power under section 42 to settle a proper instrument to be executed by all necessary parties, where a financial provision order is made under this section on or after making a divorce order or annulment order, neither the financial provision order nor any settlement made in pursuance of that order shall take effect unless the divorce order or annulment order has been made final.

(5) This section is subject to the restrictions imposed by section 41(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

30. Orders for sale of property.

- (1) Where the Court makes —
 - (a) a secured periodical payments order,
 - (b) an order for payment of a lump sum, or
 - (c) a property adjustment order,

under section 28 or 29, then, on making that order or at any time thereafter, the Court may make a sale of property order.

(2) Such an order may contain such consequential or supplementary provisions as the Court thinks fit, and in particular 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 a sale of property order is made on or after the making of a divorce order or annulment order, the sale of property order shall not take effect unless the divorce order or annulment order has been made final.

(4) The Court may direct that a sale of property 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 a sale of property order 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) Subsection (7) applies where —
 - (a) a party to a marriage has a beneficial interest in any property, or in the proceeds of sale of it, and
 - (b) 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 of it.

(7) Before deciding whether to make a sale of property order in relation to that property, the Court shall 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 32(1).

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

(1) On making a divorce order or annulment order or at any time afterwards, the Court may make one or more pension sharing orders in favour of either party to the marriage.

(2) A pension sharing order —

(a) may be made either before or after the divorce order or annulment order is made final, but

(b) shall not take effect unless that order has been made final.

(3) A pension sharing order may not be made in relation to a pension arrangement which is the subject of a pension sharing order in relation to the marriage.

(4) A pension sharing order may not be made in relation to shareable state scheme rights if such rights are the subject of a pension sharing order in relation to the marriage.

(5) A pension sharing order 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 35 or 36 which relates to benefits or future benefits to which he is entitled under the pension arrangement.

32. Matters to which court is to have regard.

(1) The Court shall, in deciding whether to exercise its powers under section 28, 29, 30 or 31 and, if so, in what manner, 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 18.

(2) As regards the exercise of its powers to make a financial provision order, property adjustment order, sale of property order or pension sharing order in favour of 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 annulment, 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 its powers to make a financial provision order, property adjustment order or sale of property order in favour of 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 subsection (2)(a), (b), (c) and (e).

(4) As regards the exercise of its powers to make a financial provision order, property adjustment order or sale of property order 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; and
- (c) to the liability of any other person to maintain the child.

33. Exercise of court's powers on divorce or annulment.

(1) Where on or after making a divorce order or annulment order the Court decides to exercise its powers to make a financial provision order, property adjustment order, sale of property order or pension sharing order in favour of a party to the marriage, the Court shall 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 making of the divorce order or annulment order 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 making of a divorce order or annulment order 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 a periodical payments order or secured periodical payments order in his or her favour.

34. Pensions: "earmarking".

(1) The matters to which the Court is to have regard under section 32(2) include —

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

and, accordingly, in relation to benefits under a pension arrangement, section 32(2)(a) shall have effect as if "in the foreseeable future" were omitted.

(2) The following provisions apply where, having regard to any benefits under a pension arrangement, the Court determines to make a financial provision order under section 28.

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

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

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

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

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

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

(8) The power conferred by subsection (3) or (6) may not be exercised in relation to a pension arrangement which is the subject of a pension sharing order in relation to the marriage.

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

35. Pensions: lump sums.

(1) The power of the Court under section 28 to make an order for payment of a lump sum in favour of a party to a marriage 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 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 28 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 is the subject of a pension sharing order in relation to the marriage.

36. Pensions: supplementary.

(1) Where —

(a) an order made under section 28 by virtue of section 34 or 35 imposes any requirement on the person responsible for a pension arrangement ("the first arrangement") and the party with pension rights acquires rights under another pension arrangement ("the new arrangement") which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and

(b) the person responsible for the new arrangement has been given notice in accordance with regulations,

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

(2) 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.

(3) 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 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions Act 1999 (an Act of Parliament).

(4) Regulations may —

(a) in relation to any provision of sections 34 or 35 which authorises the Court making an order under section 28 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,

(b) make, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 34 or 35 in an order under section 28, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due,

(c) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of section 34 or 35,

Matrimonial Proceedings Act 2003

- (d) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 34 and 35,
- (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.

(5) Regulations under subsection (4)(e) 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 (an Act of Parliament)⁴.
- (6) In this section and sections 31, 34 and 35 ,,

"the Department" means the Department of Health and Social Security;

"occupational pension scheme" has the same meaning as in the Pension Schemes Act 1993 (an Act of Parliament);

"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 (an Act of Parliament);

"personal pension scheme" has the same meaning as in the Pension Schemes Act 1993 (an Act of Parliament)⁵;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department;

⁴ 1999 c.30

⁵ 1993 c.48

"retirement annuity contract" means a contract or scheme approved under section 49 of the Income Tax Act 1970⁶;

"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.

(7) In this section and sections 34 and 35, 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.

(8) References in sections 34 and 35 and this section to any Act of Parliament are to that Act as it has effect in the Island.

(9) Regulations under this section shall not have effect unless they are approved by Tynwald.

37. Commencement of proceedings for ancillary relief, etc.

(1) Where an application for a divorce order, annulment order or separation order has been made, then, subject to subsection (2), proceedings for maintenance pending suit under section 27, for a financial provision order or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the making of the application.

(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) shall be made in the application 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 making of the application or filing of the answer as may be so prescribed, shall be made only with the leave of the Court.

⁶ XXI p.260

Financial provision in case of failure to maintain

38. Financial provision in case of failure to maintain.

(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 ("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 the Island at 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
- (c) the respondent is resident there on that date.

(3) Where, on an application under this section, the applicant satisfies the Court of any ground mentioned in subsection (1), the Court may make one or more financial provision orders in favour of either party to the marriage or a child of the family of the parties to the marriage.

(4) 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 order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the Court thinks reasonable (an "interim order for maintenance").

(5) 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 16 or at any time after that date but before the date on which he attains the age of 18, 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 may by order 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 may exercise its power under section 43 in relation to any order so revived.

(6) Without prejudice to the generality of subsection (3), an order for payment of a lump sum under this section —

- (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.

39. Failure to maintain: supplemental.

(1) Where an application under section 38 is made on the ground mentioned in section 38(1)(a), then, in deciding —

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

the Court shall have regard to all the circumstances of the case including the matters mentioned in section 32(2), and where an application is also made under this section in respect of a child of the family who has not attained the age of 18, first consideration shall be given to the welfare of the child while a minor.

(2) In relation to an application under this section on the ground mentioned in section 38(1)(a), section 32(2)(c) has effect with the substitution, for the reference in it to the breakdown of the marriage, of a reference to the failure to provide reasonable maintenance for the applicant.

(3) Where an application under section 38 is made on the ground mentioned in section 38(1)(b) then, in deciding —

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

the Court shall have regard to all the circumstances of the case including the matters mentioned in section 32(3)(a) to (e), and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 32(4).

(4) In relation to an application under this section on the ground mentioned in section 38(1)(b), section 32(2)(c) (as it applies by virtue of section 32(2)(e)) shall have effect with the substitution, for the reference in it to the breakdown of the marriage, of 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) An application for the variation under section 43 of a periodical payments order made under section 38 in favour of a child may, if the child has attained the age of 16, be made by the child himself.

(6) Section 38 is subject to the restrictions imposed by section 41(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

(7) If, in proceedings on an application under section 38, the Court is of the opinion that the application would be more conveniently dealt with by a court of summary jurisdiction under Part 3, it may by order —

- (a) stay the proceedings, and
- (b) direct that the application be heard and determined by such court of summary jurisdiction as is specified in the order, as if it had been made to that court under section 59.

Additional provisions with respect to financial provision and property adjustment orders

40. Duration of continuing financial provision orders and effect of remarriage.

(1) Subject in the case of an order made on or after the making of a divorce order or annulment order to sections 33(2) and 43(5) and (6), the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the Court thinks fit, except that the term shall not begin before or extend beyond the following limits —

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

(2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the making of a divorce order or annulment order, the Court may direct that that party shall not be entitled to apply under section 43 for the extension of the term specified in the order.

(3) 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 making of a divorce order or annulment order, 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.

(4) If, after the making of a divorce order or annulment order, 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 making of that order, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

41. Duration of continuing financial provision orders in favour of children, and age limit.

(1) Subject to subsection (3), no financial provision order or transfer of property order shall be made in favour of a child who has attained the age of 18.

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

(a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the Court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date; and

(b) shall not in any event, subject to subsection (3), extend beyond the date of the child's 18th birthday.

(3) Subsections (1) and (2)(b) do not apply in the case of a child if it appears to the Court that —

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

(b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

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

42. Direction for settlement of instrument for securing payments etc.

Where the Court decides to make a secured periodical payments order or a property adjustment order —

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

Variation, revocation and enforcement of certain orders, etc.

43. Variation, revocation etc., of certain orders for financial relief.

- (1) This section applies to the following orders —
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order;
 - (c) any secured periodical payments order;
 - (d) any order for payment of a lump sum by instalments by virtue of section 28(7)(c) or 38(6)(b);
 - (e) any deferred order for payment of a lump sum which includes provision made by virtue of section 34(3) or 35;
 - (f) any order for a settlement of property or for variation of a settlement which is made on or after the making of a separation order;
 - (g) any sale of property order;
 - (h) a pension sharing order which is made at a time before the divorce order or annulment order has been made final.

(2) Where the Court has made an order referred to in subsection (1)(e) which includes provision made by virtue of section 35, this section shall cease to apply to the order on the death of either of the parties to the marriage.

(3) Where the Court has made an order to which this section applies, then, subject to sections 40(2) and 44, the Court may —

- (a) vary or revoke the order,
- (b) suspend any provision of the order temporarily, and
- (c) revive the operation of any provision so suspended.

(4) 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.

(5) 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 18.

- (6) For the purposes of subsection (5) —
- (a) the circumstances of the case 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;
 - (b) in the case of a periodical payments or secured periodical payments order made on or after the making of a divorce order or annulment order, 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 to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
 - (c) 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.

(7) Where the Court in exercise of its powers under this section decides to vary or revoke a periodical payments or secured periodical payments order, the Court may, subject to section 40(1) and (2), direct that the variation or revocation shall not take effect until the expiration of such period as may be specified in the order.

44. Variation of orders: supplemental.

(1) No variation of an order for a settlement or for a variation of settlement made under section 29 shall be made except on an application made in proceedings —

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

(2) In relation to a pension sharing order falling within section 43(1)(h) —

- (a) the powers conferred by this section may be exercised —
 - (i) only on an application made before the order has or, but for paragraph (b), would have taken effect; and
 - (ii) only if, at the time when the application is made, the divorce order or annulment order has not been made final; and

- (b) an application made in accordance with paragraph (a) prevents the order from taking effect before the application has been dealt with.
- (3) No variation of a pension sharing order shall be made so as to take effect before the divorce order or annulment order is made final.
- (4) 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 Department of Health and Social Security.
- (5) Regulations under subsection (4) shall not have effect unless they are approved by Tynwald.
- (6) No property adjustment order shall be made on an application for the variation of a periodical payments order or secured periodical payments order under section 28.
- (7) No order for payment of a lump sum shall be made on an application for the variation of a periodical payments order or secured periodical payments order in favour of a party to a marriage under section 28 or 38.
- (8) Where the person liable to make payments under a secured periodical payments order has died —
 - (a) an application under this section relating to that order (and to any sale of property order which requires the proceeds of sale to be used for securing these 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
 - (b) no such application shall, except with the permission of the Court, be made after the end of the period of 6 months from the date on which representation in regard to the estate of that person is first taken out.
- (9) 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 6 months referred to in subsection (8)(b) 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 does 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.
- (10) In considering, for the purposes of subsection (8), the question when representation was first taken out —
 - (a) a grant limited to settled land or to trust property shall be left out of account; and

- (b) 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.

45. Payment of certain orders.

(1) Where the Court makes a periodical payments order, it shall order that the payments shall be made to the Chief Registrar unless, upon representations expressly made in that behalf by the person to whom the payments under the order fall to be made, it is satisfied that it is undesirable to do so.

(2) Part VIII of the Summary Jurisdiction Act 1989⁷, so far as it relates to the enforcement of an order for, or the recovery of, periodical payments, applies to payments to be made to the Chief Registrar by virtue of an order under subsection (1) as it applies to payments to be so made by virtue of an order under section 54(1) of that Act.

46. Payment of certain arrears unenforceable without leave.

(1) A person shall not be entitled to enforce through the Court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the Court if those arrears became due more than 12 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 the Court thinks proper, or may remit the payment of the arrears or of any part thereof.

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

47. Orders for repayment.

(1) This section applies to the following orders —

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

(2) 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

⁷ 1989 c.15

- (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.

(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 Court for —

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

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

Consent orders

48. Consent orders for financial provision or property adjustment.

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

(2) Subsection (1) applies to an application for a consent order varying or revoking 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; and

"order for financial relief" means a financial provision order, a property adjustment order, a sale of property order or a pension sharing order.

Maintenance agreements

49. 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 50 and 51), be binding on the parties to the agreement.

(2) In this section and in sections 50 and 51 —

"maintenance agreement" means any agreement in writing made at any time 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.

50. 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 the Island, then, subject to subsection (4), either party may apply to the Court or to a court of summary jurisdiction for an order under this section.

(2) The Court may make an order under this section if it 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.

(3) The order which that court (subject to subsection (4), (5) and (6)) may make under this section is an order making 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 appear to the court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 32(4); and the agreement shall have effect afterwards as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(4) A court of summary jurisdiction —

(a) shall not entertain an application under subsection (1) unless both the parties to the agreement are resident in the Island; and

(b) may not make an order on such an application except —

(i) 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;

(ii) 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.

(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 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 limits in subsections (6) and (7).

(6) 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.

(7) Where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of that party.

(8) Where a court decides by order under this section to alter an agreement —

- (a) 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
- (b) 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 section 41(2) and (3) as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(9) For the avoidance of doubt, it is hereby declared that nothing in this section or in section 49 affects —

- (a) 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 Part) to make an order containing financial arrangements, or
- (b) any right of either party to apply for such an order in such proceedings.

51. Alteration of agreements by court after death of party.

(1) Where a maintenance agreement provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in the Island, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3), apply to the Court for an order under section 50.

(2) An application under this section shall not, except with the permission of the Court, be made after the end of the period of 6 months from the date on which representation in regard to the estate of the deceased is first taken out.

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

(4) 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 6 months referred to in subsection (2) on the ground that they ought to have taken into account the possibility that the Court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection does

not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(5) Section 44(10) applies for the purposes of subsection (2) as it applies for the purposes of section 44(8).

Miscellaneous and supplemental

52. Avoidance of transactions intended to prevent or reduce financial relief.

- (1) For the purposes of this section —
- (a) "financial relief" means relief under any of the provisions of sections 27, 28, 29, 31, 38, 43 (except by virtue of section 44(8)) and 50, and
 - (b) any reference in this section to defeating a person's claim for financial relief is a reference to —
 - (i) preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or
 - (ii) reducing the amount of any financial relief which might be so granted, or
 - (iii) 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 ("the applicant") against another, the Court may, on the application of the applicant —

- (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 claimant, make an order setting aside the disposition;
- (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

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

(3) Where the Court makes an order under subsection (2)(b) or (c) setting aside a disposition, it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) In subsection (2) "reviewable disposition" means any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) 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 3 years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the Court is satisfied —

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

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may, is about to do so with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" —

- (a) includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise, but
- (b) excludes any provisions contained in a will or codicil.

(7) This section does not apply to a disposition made before the 21st August 1969.

53. Orders for repayment after remarriage.

(1) Subsections (2) to (5) apply where —

- (a) a periodical payments order or secured periodical payments order in favour of a party to a marriage 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.

(2) The person so liable, or his or her personal representatives, —

- (a) shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in

subsection (1) against the person entitled to payments under the order or her or his personal representatives, but

- (b) may instead make an application against that person or her or his personal representatives under this section.
- (3) On an application under this section, the Court may —
 - (a) order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b), or
 - (b) if it appears to the Court that it would be unjust to make that order, either —
 - (i) order the respondent to pay to the applicant such lesser sum as it thinks fit, or
 - (ii) dismiss the application.

(4) An application under this section may be made in proceedings in the Court for leave to enforce, or for the enforcement of, payment of arrears under the order in question.

(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) The person to whom any payments under a periodical payments order or secured periodical payments order (a "payments order") are required to be made is not liable, in the circumstances specified in subsection (8), for any act done by him in pursuance of the order after the date on which it ceased to have effect by reason of the remarriage of the person entitled to payments under it ("the termination date").

(7) The person to whom payments are made under an attachment of earnings order made to secure payments under a payments order, is not liable, in the circumstances specified in subsection (8), for any act done by him after the termination date in accordance with any enactment specifying how payments made to him in compliance with that order are to be dealt with.

(8) The circumstances mentioned in subsections (6) and (7) are that the act —

- (a) was one which the payee would have been under a duty to do had the payments order not so ceased to have effect, and
- (b) was done before notice in writing of the fact that the person so entitled had remarried was given to the payee 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.

54. Avoidance of settlement etc. on settlor's bankruptcy.

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that

settlement or transfer from being a settlement of property to which section 30(1) of the Bankruptcy Code 1892⁸ (avoidance of certain settlements) applies.

55. Payments, etc., under order made in favour of mental patient.

Where the Court makes an order under this Part requiring a 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 1998, 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 7 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.

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

(1) Subsections (2) and (3) 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 Department of Health and Social Security has acted to its detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of subsection (2) or (3) 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) 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 36(2) only applies to a pension sharing order made under subsection (5) if the decision of the appeal court can itself be the subject of an appeal.

(7) In subsection (2), the reference to the person responsible for the pension arrangement is to be construed in accordance with section 36(7).

⁸ VI p.312

PART 3

PROCEEDINGS FOR MAINTENANCE ETC. — COURTS OF SUMMARY JURISDICTION

Jurisdiction

57. Jurisdiction

(1) Subject to section 49 of the Summary Jurisdiction Act 1989 (composition of courts), in this Part "court" means a court of summary jurisdiction.

(2) A court has jurisdiction to hear an application for an order under this Part if at the date of the making of the application either the applicant or the respondent ordinarily resides in the Island.

(3) Any jurisdiction conferred on a court by this Part is exercisable even though any party to the proceedings is not domiciled in the Island.

58. Refusal of order in case more suitable for High Court.

(1) Where, on hearing an application for a maintenance order (otherwise than pursuant to a direction under section 39(7)), a court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the High Court, the court shall refuse to make any order on the application, and no appeal shall lie from that refusal.

(2) If in any proceedings in the High Court relating to or comprising the same subject matter as that application the High Court so orders, the application shall be reheard and determined by a court.

Maintenance orders

59. Grounds of application for maintenance orders.

Either party to a marriage may apply to a court for an order (a "maintenance order") under section 60 on the ground that the other party to the marriage —

- (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; or
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

60. Powers of court to make maintenance orders.

(1) Where on an application for a maintenance order the applicant satisfies the court of any ground mentioned in section 59 the court may, subject to the provisions of this Part, make any one or more of the following orders —

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

(2) Without prejudice to the generality of subsection (1)(b) or (d) a maintenance order for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

(3) The amount of any lump sum required to be paid by an order under this section shall not exceed £1,000 or such larger amount as the Treasury may from time to time by order fix for the purpose of this subsection.

(4) An order under subsection (3) shall not have effect unless it is approved by Tynwald.

61. Matters to which court is to have regard.

(1) Where an application is made for a maintenance order the court shall, in deciding whether to exercise its powers under section 60 and, if so, in what manner, 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 18.

(2) As regards the exercise of its powers under section 60(1)(a) or (b), 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 parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (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.
- (3) As regards the exercise of its powers under section 60(1)(c) or (d), 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 standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
 - (f) the matters mentioned in relation to the parties to the marriage in subsection (2)(a) and (b).
- (4) As regards the exercise of its powers under section 60 in favour of a child of the family who is not the child of the respondent, the court shall also have regard —
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.

62. Duration of maintenance orders in favour of party to marriage.

(1) The term to be specified in any maintenance order made under section 60(1)(a) shall be such term as the court thinks fit, except that the term —

- (a) shall not begin earlier than the date of the making of the application for the order, and
- (b) shall not extend beyond the death of either of the parties to the marriage.

(2) Where a maintenance order is made under section 60(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, despite anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

63. Maintenance orders for children: age limit and duration.

(1) Subject to subsection (3), no maintenance order shall be made under section 60(1)(c) or (d) in favour of a child who has attained the age of 18.

(2) The term to be specified in a maintenance order under section 60(1)(c) in favour of a child —

- (a) may begin with the date of the making of an application for the order in question or any later date, but
- (b) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date; and
- (c) shall not in any event, subject to subsection (3), extend beyond the date of the child's 18th birthday.

(3) The court —

- (a) may make a maintenance order under section 60(1)(c) or (d) in favour of a child who has attained the age of 18, and
- (b) may include in a maintenance order under section 60(1)(c) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court —

- (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for

a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

- (ii) that there are special circumstances which justify the making of the order or provision.

(4) Any maintenance order under section 60(1)(c) 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.

64. Orders for payments which have been agreed by the parties.

(1) Either party to a marriage may apply to a court for an order under this section (an "agreement order") on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3), the court on such an application may, if —

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

(2) In this section "financial provision" means any one or more of the following —

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) or specified by the court under subsection (5) is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made under it and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(3) Where the financial provision specified in an application under subsection (1) includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(4) A party to a marriage who has applied for a maintenance order is not precluded at any time before the determination of that application from

applying for an agreement order; but if an agreement order is made on the application of either party and either of them has also made an application for a maintenance order, the application made for the maintenance order shall be treated as if it had been withdrawn.

(5) Where on an application under subsection (1) the court decides —

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
- (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion —

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to subsection (8), section 62 applies in relation to an agreement order which requires periodical payments to be made to a party to a marriage for his own benefit as it applies in relation to a maintenance order under section 60(1)(a).

(7) Subject to subsection (8), section 63 applies in relation to an agreement order for the making of financial provision in respect of a child of the family as it applies in relation to a maintenance order under section 60(1)(c) or (d).

(8) Where —

- (a) the court makes an agreement order which contains provision for the making of periodical payments, and
- (b) by virtue of subsection (4), an application for a maintenance order is treated as if it had been withdrawn,

the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the maintenance order or any later date.

(9) Where the respondent is not present or represented by an advocate at the hearing of an application for an agreement order, the court shall not make an agreement order unless there is produced to the court such evidence as the court may require of —

- (a) the consent of the respondent to the making of the order,

- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

65. Powers of court where parties are living apart by agreement.

- (1) Where —
 - (a) the parties to a marriage have been living apart for a continuous period exceeding 3 months, neither party having deserted the other, and
 - (b) one of the parties has been making periodical payments for the benefit of the other party or of a child of the family,

that other party may apply to a court for an order under this section (a "continuance order"), and any application made under this subsection shall specify the aggregate amount of the payments so made during the period of 3 months immediately preceding the date of the making of the application.

(2) Where on an application for a continuance order, the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Part, make one or both of the following orders —

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.
- (3) The court in the exercise of its powers under this section —
- (a) shall not require the respondent to make payments which exceed in aggregate during any period of 3 months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of 3 months immediately preceding the date of the making of the application;
 - (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application for a maintenance order;
 - (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless

the court considers that it would have made an order in favour of that child on an application for a maintenance order.

(4) Where on an application under this section the court considers that the orders which it has the power to make under this section —

- (a) would not provide reasonable maintenance for the applicant, or
- (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards, reasonable maintenance for that child,

the court shall refuse to make a continuance order, but may treat the application as if it were an application for a maintenance order.

(5) Section 61 applies in relation to an application for a continuance order as it applies in relation to an application for a maintenance order subject to the modification that for the reference in section 61(2)(c) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.

(6) Section 62 applies in relation to a continuance order which requires periodical payments to be made to the applicant for his own benefit as it applies in relation to a maintenance order under section 60(1)(a).

(7) Section 63 applies in relation to a continuance order for the making of periodical payments in respect of a child of the family as it applies in relation to a maintenance order under section 60(1)(c).

Restrictions on exercise of court's powers

66. Duty to consider exercise of powers as to children.

Where an application is made by a party to a marriage for a maintenance order, agreement order or continuance order, then, if there is a child of the family who is under the age of 18, the court shall not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under Part 2 of the Children and Young Persons Act 2001 with respect to the child.

67. Reconciliation.

(1) If at any stage of proceedings on an application for a maintenance order it appears to the court that there is a reasonable possibility of reconciliation between the parties to the marriage in question, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.

(2) Where the court adjourns any proceedings under subsection (1), it may request the Department of Home Affairs to arrange for a suitable person to attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, that person shall report in writing to the

court whether the attempt has been successful or not, but shall not include in that report any other information.

Interim orders

68. Interim orders.

(1) Where an application is made for a maintenance order, agreement order or continuance order —

- (a) the court at any time before making a final order on, or dismissing, the application or on refusing to make an order on the application by virtue of section 58, and
- (b) the High Court on ordering the application to be reheard by a court (either after the refusal of an order under section 58 or on an appeal under section 104 of the Summary Jurisdiction Act 1989),

may, subject to the provisions of this Part, make an order (an "interim maintenance order") requiring the respondent to make to the applicant or to any child of the family who is under the age of 18, or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable.

(2) An interim maintenance order may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application for a maintenance order, agreement order or continuance order; and where such an order made by the High Court on an appeal under section 104 of the Summary Jurisdiction Act 1989 provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by a court shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.

(3) Where an application is made for an agreement order by the party to the marriage who has agreed to make the financial provision specified in the application —

- (a) subsection (1) applies as if the reference to the respondent were a reference to the applicant and the references to the applicant were references to the respondent; and
- (b) subsection (2) applies accordingly.

(4) Subject to subsection (5), an interim order made on an application for a maintenance order, agreement order or continuance order shall cease to have effect on whichever of the following dates occurs first —

- (a) the date, if any, specified for the purpose in the interim order;
- (b) the date of the expiration of the period of 3 months beginning with the date of the making of the interim order;

- (c) the date on which a court either makes a final order on or dismisses the application.

(5) Where an interim order under subsection (1) would, but for this subsection, cease to have effect by virtue of subsection (4)(a) or (b), the court which made the order or, in the case of an interim order made by the High Court, the court by which the application for a maintenance order, agreement order or continuance order is to be reheard, may by order provide that the interim order shall continue in force for a further period.

(6) Any order continued in force under subsection (5) shall cease to have effect on whichever of the following dates occurs first —

- (a) the date, if any, specified for the purpose in the order made under this subsection;
- (b) the date of the expiration of the period of 3 months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, beginning with the date of the making of the first of those orders;
- (c) the date on which the court either makes a final order on, or dismisses, the application.

(7) Not more than one interim maintenance order may be made with respect to any application for a maintenance order, agreement order or continuance order, but without prejudice to the powers of a court under this section on any further such application.

(8) No appeal lies from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim maintenance order.

(9) An interim order made by the High Court under this section on ordering that an application be reheard by a court shall, for the purpose of its enforcement and for the purposes of section 69, be treated as if it were an order of that court and not of the High Court.

Variation, revocation and cessation of orders etc.

69. Variation, revival and revocation of orders for periodical payments.

(1) Where a court has made a maintenance order for the making of periodical payments the court may, on an application made under this section, vary or revoke that order and may also make a maintenance order under section 60(1)(b) or (d).

(2) Where a court has made an agreement order for the making of periodical payments by a party to a marriage, the court may, on an application made under this section, vary or revoke that order and may also make an order for the payment of a lump sum by that party either —

- (a) to the other party to the marriage, or

(b) to a child of the family or to that other party for the benefit of that child.

(3) Where a court has made a continuance order for the making of periodical payments, the court may on an application made under this section vary or revoke that order.

(4) Where a court has made an interim maintenance order under section 68, the court, on an application made under this section, may vary or revoke that order, except that the court may not by virtue of this subsection extend the period for which the order is in force.

(5) The power of the court under this section to vary an order for the making of periodical payments includes power to suspend any provision thereof temporarily and to revive any provision so suspended.

(6) Where the court has power by virtue of this section to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount that may at that time be required to be paid under section 60(3), but the court may make an order for the payment of a lump sum not exceeding that amount even though the person required to pay the lump sum was required to pay a lump sum by a previous order under this Part.

(7) Where the court has power by virtue of subsection (2) to make an order for the payment of a lump sum and the respondent or the applicant, as the case may be, has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under section 60(3), the court may, despite anything in subsection (6), make an order for the payment of a lump sum of that amount.

(8) An order made by virtue of this section which varies an order for the making of periodical payments may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application under this section.

(9) Where an order made by a court under this Part for the making of periodical payments to or in respect of a child ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to the court for the revival of the order.

(10) If, on application under subsection (9), 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 or would be in gainful employment; or

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

the court may by order revive the order mentioned in subsection (9) from such date as the court may specify, not being earlier than the date of the making of the application.

(11) An order which is revived under subsection (10) may be varied or revoked on the application of any person by or to whom payments are to be made under the order.

(12) An application under this section for the variation or revocation of an order for periodical payments may be made by either party to the marriage or, in the case of an order for payments to or in respect of a child who has attained the age of 16, by the child himself.

(13) Any reference in this section to a maintenance order, agreement order or continuance order for the making of periodical payments includes a reference to such an order revived under subsection (9).

70. Variation, revival and revocation: supplementary provisions.

(1) In exercising the powers conferred by section 69 the court shall —

- (a) so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application, and
- (b) if there is no such agreement or if the court decides not to give effect to the agreement, 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 18.

(2) For the purpose of subsection (1) the circumstances of the case include any change in any of the matters —

- (a) to which the court was required to have regard when making the order to which the application relates or
- (b) in the case of an application for the variation or revocation of an agreement order, or on an appeal under section 104 of the Summary Jurisdiction Act 1989, to which the court would have been required to have regard if that order had been a maintenance order.

(3) Provision may be made by rules of court as to the persons who are to be made respondents on an application for the variation, revival or revocation of an order under section 69.

(4) If on an application under section 69 there are 2 or more respondents, the powers of the court under section 47 of the Summary Jurisdiction Act 1989 include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.

(5) The powers of a court to revoke, revive or vary an order for the periodical payment of money under section 55 of the Summary Jurisdiction

Act 1989 and to suspend or rescind certain other orders under section 102(2) of that Act do not apply in relation to an order made under this Part.

71. Variation of instalments of lump sum.

Where in the exercise of its powers under section 92 of the Summary Jurisdiction Act 1989 a court orders that a lump sum required to be paid under this Part shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, may vary that order by varying —

- (a) the number of instalments payable,
- (b) the amount of any instalment payable, and
- (c) the date on which any instalment becomes payable.

72. Variation or revocation of orders: party outside the Island.

(1) It is hereby declared that any jurisdiction conferred on a court by virtue of section 69 is exercisable even though the proceedings are brought by or against a person residing outside the Island.

(2) Subject to subsection (3), a court may, if it is satisfied that the respondent has been outside the Island during the whole of the period beginning one month before the making of the application and ending with the date of the hearing, proceed on an application made under section 69 even though the respondent has not been served with notice of the complaint and of the time and place appointed for the hearing; and rules of court may prescribe any other matters as to which the court is to be satisfied before proceedings in such a case.

(3) A court shall not exercise its powers under section 69 so as to increase the amount of any periodical payments required to be made by any person under this Part unless —

- (a) the order under that section is made at a hearing at which that person appears, or
- (b) the requirements of section 44(3) of the Summary Jurisdiction Act 1989 with respect to proof of notice of the complaint and of the hearing or appearance on a previous occasion are satisfied in respect of that person.

73. Effect on certain orders of parties living together.

(1) Where periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by a maintenance order or agreement order or by an interim maintenance order (except one made on an application for a continuance order), the order shall be enforceable even though —

- (a) the parties to the marriage are living with each other at the date of the making of the order, or
- (b) where they are not living with each other at that date, they subsequently resume living with each other;

but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding 6 months.

- (2) Where any of the following orders is made under this Part —
 - (a) a maintenance order or agreement order which requires periodical payments to be made to a child of the family,
 - (b) an interim maintenance order (except one made on an application for a continuance order) which requires periodical payments to be made to a child of the family,

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable even though —

- (i) the parties to the marriage in question are living with each other at the date of the making of the order, or
- (ii) where they are not living with each other at that date, they subsequently resume living with each other.

(3) A continuance order, and any interim maintenance order made on an application for a continuance order, shall cease to have effect if the parties to the marriage resume living with each other.

(4) Where an order made under this Part ceases to have effect by virtue of subsection (1) or (3) or by virtue of a direction given under subsection (2), a court may, on an application made by either party to the marriage, make an order declaring that the first mentioned order ceased to have effect from such date as the court may specify.

74. Powers of High Court in relation to certain orders.

(1) This section applies where, after the making by a court of an order under this Part, proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the High Court.

(2) Except in the case of an order for the payment of a lump sum, the High Court may, if it thinks fit, direct that the order referred to in subsection (1) shall cease to have effect on such date as may be specified in the direction.

General

75. Constitution of courts.

(1) Where the hearing of an application for a maintenance order is adjourned after the court has decided that it is satisfied of any ground mentioned in section 59, the court which resumes the hearing of that application may include justices who were not sitting when the hearing began if —

- (a) the parties to the proceedings agree; and
- (b) at least one of the justices composing the court which resumes the hearing was sitting when the hearing of the application began.

(2) Where, by virtue of subsection (1), among the justices composing the court which resumes the hearing of an application for a maintenance order there are any justices who were not sitting when the hearing of the application began, the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the hearing began to be fully acquainted with those facts and circumstances.

76. Repayment of sums paid after cessation of order by reason of remarriage.

- (1) Where —
 - (a) a maintenance order, agreement order or continuance order has ceased to have effect by reason of the remarriage of the party in whose favour it was made, and
 - (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) shall be maintainable by the person so liable or his personal representatives against the person so entitled or his personal representatives, but on an application made under this section the High Court may exercise the powers conferred on it by subsection (2).

(2) The High Court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) or, if it appears to the High 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 by the person liable to make payments under the maintenance order, agreement order or

continuance order or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.

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

(5) Where payments under a maintenance order, agreement order or continuance order are required to be made to the Chief Registrar, the Chief Registrar shall not be liable for any act done by him in pursuance of the order after the date on which the order ceased to have effect by reason of the remarriage of the person entitled to payment under it, if, but only if, —

- (a) the act was one which he would have been under a duty to do had the order not ceased to have effect by reason of the remarriage, and
- (b) 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 the payments under the first-mentioned order or the personal representatives of either of those persons.

77. Interpretation of Part 3.

(1) In this Part —

"agreement order" means an order under section 64;

"applicant" means the applicant for an order;

"child", in relation to one or both of the parties to a marriage, includes a person who is not a marital child of that party or, as the case may be, of both parties;

"continuance order" means an order under section 65;

"court" has the meaning given by section 57;

"interim maintenance order" means an order under section 68(1);

"maintenance order" means an order under section 60;

"respondent" means the respondent to an application for an order.

(2) Reference in this Part to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

PART 4

FINANCIAL RELIEF AFTER FOREIGN DIVORCE ETC.

Applications for financial relief

78. Applications for financial relief after foreign divorce etc.

- (1) Where —
 - (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in a foreign country, and
 - (b) the divorce, annulment or legal separation is entitled to be recognised as valid in the Island,

either party to the marriage may apply to the High Court in the prescribed manner for an order for financial relief under this Part.

(2) If after a marriage has been dissolved or annulled in a foreign country one of the parties to the marriage remarries that party shall not be entitled to make an application in relation to that marriage.

(3) In this Part except sections 85, 88 and 89, "order for financial relief" means an order under section 83 of a description referred to in that section.

79. Leave of the court required for applications for financial relief.

(1) No application for an order for financial relief shall be made under this Part unless the leave of the Court has been obtained in accordance with rules of court; and the Court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.

(2) The Court may grant leave under this section even though an order has been made by a court in a country outside the Island requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.

(3) Leave under this section may be granted subject to such conditions as the Court thinks fit.

80. Interim orders for maintenance.

(1) Where leave is granted under section 79 for the making of an application for an order for financial relief and it appears to the Court that the applicant or any child of the family is in immediate need of financial assistance, the Court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child such periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the

date of the determination of the application for an order for financial relief, as the Court thinks reasonable.

(2) If it appears to the Court that it has jurisdiction to entertain the application for an order for financial relief by reason only of section 81(c), the Court shall not make an interim order under this section.

(3) An interim order under subsection (1) may be made subject to such conditions as the Court thinks fit.

81. Jurisdiction.

The Court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied —

- (a) either of the parties to the marriage was domiciled in the Island on the date of the application for leave under section 79 or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the foreign country took effect in that country; or
- (b) either of the parties to the marriage was habitually resident in the Island throughout the period of one year ending with —
 - (i) the date of the application for leave, or
 - (ii) the date on which the divorce, annulment or legal separation obtained in the foreign country took effect in that country; or
- (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in the Island which was at some time during the marriage a matrimonial home of the parties to the marriage.

82. Duty to consider whether the Island is appropriate venue for application.

(1) Before making an order for financial relief the Court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in the Island, and if the Court is not satisfied that it would be appropriate, the Court shall dismiss the application.

(2) The Court shall in particular have regard to the following matters —

- (a) the connection which the parties to the marriage have with the Island;
- (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;

- (c) the connection which those parties have with any other country outside the Island;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside the Island;
- (e) in a case where an order has been made by a court in a country outside the Island requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside the Island and, if the applicant has omitted to exercise that right, the reason for that omission;
- (g) the availability in the Island of any property in respect of which an order under this Part in favour of the applicant could be made;
- (h) the extent to which any order made under this Part is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

Orders for financial provision and property adjustment

83. Orders for financial provision and property adjustment.

(1) Subject to section 86, the Court on an application by a party to a marriage for an order for financial relief under this section may make any one or more of the orders which it could make under Part 2 if a divorce order, annulment order or separation order in respect of the marriage had been made in the Island, that is —

- (a) a financial provision order;
 - (b) a property adjustment order;
 - (c) if the marriage has been dissolved or annulled, a pension sharing order.
- (2) Subject to section 86, where the Court makes under subsection (1) —
- (a) a secured periodical payments order,
 - (b) an order for payment of a lump sum, or
 - (c) a property adjustment order,

it may, on making that order or at any time afterwards, make a sale of property order which it would have power to make if the order in question had been made under Part 2.

84. Matters to which the court is to have regard in exercising its powers under s.83.

(1) In deciding whether to exercise its powers under section 83 and, if so, in what manner, the Court shall act in accordance with this section.

(2) 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 18.

(3) As regards the exercise of those powers in relation to a party to the marriage, the Court —

(a) shall in particular have regard to the matters mentioned in section 32(2)(a) to (h), and

(b) shall be under duties corresponding with those imposed by section 33(1) and (2) where it decides to exercise under section 83 powers corresponding to the powers referred to in that section.

(4) The matters to which the Court is to have regard under subsection (3) —

(a) so far as relating to section 32(2)(a), include any benefits under a pension arrangement which a party to the marriage has or is likely to have (whether or not in the foreseeable future), and

(b) so far as relating to section 32(2)(h), include 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.

(5) As regards the exercise of those powers in relation to a child of the family, the Court shall in particular have regard to the matters mentioned in section 32(3)(a) to (e).

(6) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the Court shall also have regard to the matters mentioned in section 32(4)(a) to (c).

(7) Where an order has been made by a court outside the Island for the making of payments or the transfer of property by a party to the marriage, the Court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

85. Consent orders for financial provision or property adjustment.

(1) Notwithstanding anything in section 84, on an application for a consent order for financial relief the Court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

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

(3) In this section —

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

"order for financial relief" means an order under section 83.

86. Restriction of powers of court where jurisdiction depends on matrimonial home in the Island.

(1) Where the Court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in the Island of a dwelling-house which was a matrimonial home of the parties, the Court may make under section 83 any one or more of the following orders (but no other)

- (a) a lump sum order;
- (b) a transfer of property order with respect to the interest of a party in the dwelling-house, or such part of that interest as may be specified in the order;
- (c) an order for a settlement of property consisting of that interest or such part of that interest as may be specified in the order;
- (d) an order for variation of a settlement so far as it relates to an interest in the dwelling-house;
- (e) a sale of property order with respect to the interest of a party in the dwelling-house.

(2) Where, in the circumstances mentioned in subsection (1), the Court makes an order for payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount —

- (a) if the interest of that party in the dwelling-house is sold in pursuance of an order under subsection (1)(e) the amount of the proceeds of the sale of that interest after deducting from them any costs incurred in the sale of it;
- (b) if the interest of that party is not so sold, the amount which in the opinion of the Court represents the value of that interest.

(3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons —

- (a) the reference in subsection (1)(e) to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
- (b) the reference in subsection (2)(a) to the amount of the proceeds of a sale ordered under subsection (1)(e) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.

87. Application to orders under ss.80 and 83 of certain provisions of Part 2.

(1) The following provisions of Part 2 apply in relation to an order under section 80 or 83 as they apply in relation to a like order under that Part —

- (a) section 28(7) (lump sums);
- (b) section 30(2) and (4) to (7) (sale of property orders);
- (c) section 31(3) to (5) (pension sharing orders in relation to divorce etc.);
- (d) section 34(3) to (9) (attachment of pension and commutation);
- (e) section 35 (pensions: lump sums)
- (f) section 36(2) and (3) (pension sharing orders: supplemental);
- (g) section 40(1) and (3) (duration of continuing financial provision orders in favour of party to marriage);
- (h) section 41 (orders in favour of children: duration and age limit);
- (i) section 42 (direction for settlement of instrument), except paragraph (b);
- (j) section 43 (variation of orders), except subsection (1)(f);
- (k) section 44 (variation: supplemental), except subsection (1);
- (l) section 45 (payment through Chief Registrar);
- (m) section 46 (payment of certain arrears);
- (n) section 47 (orders for repayment of sums paid under certain orders);
- (o) section 53 (orders for repayment after remarriage);
- (p) section 54 (avoidance of settlement on bankruptcy);
- (q) section 55 (payments under order in favour of mental patient); and
- (r) section 56 (appeals relating to certain pension sharing orders).

(2) Subsection (1)(d) and (e) do not apply where the Court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in the Island of a dwelling-house which was a matrimonial home of the parties.

(3) Section 36(1) applies in relation to an order made under section 83 by virtue of subsection (1)(c) or (f) as it applies in relation to an order made under section 28 by virtue of section 36(2) or (3).

(4) The Department of Health and Social Security may by regulations make for the purposes of this Part provision corresponding to any provision which it may make under section 36(4) or (5).

(5) Regulations under subsection (4) shall not have effect unless they are approved by Tynwald.

Avoidance of transactions intended to prevent or reduce financial relief

88. Avoidance of transactions intended to defeat applications for financial relief.

(1) For the purposes of this section "financial relief" means relief under section 80 or 83, and any reference to defeating a claim by a party to a marriage for financial relief is a reference to —

- (a) preventing financial relief from being granted or reducing the amount of relief which might be granted, or
- (b) frustrating or impeding the enforcement of any order which might be or has been made under either of those provisions at the instance of that party.

(2) Where leave is granted under section 79 for the making by a party to a marriage of an application for an order for financial relief under section 83 the Court may, on an application by that party —

- (a) if it is satisfied that the other party to the marriage 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.

(3) Where an order for financial relief under section 80 or 83 has been made by the Court at the instance of a party to a marriage, then, on an application made by that party, the Court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a reviewable disposition, make an order setting aside the disposition.

(4) Where the Court has jurisdiction to entertain the application for an order for financial relief by reason only of section 81(c), it shall not make any order under subsection (2) or (3) in respect of any property other than the dwelling-house concerned.

(5) Where the Court makes an order under subsection (2)(b) or (3) 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).

(6) In subsections (2) and (3) "reviewable disposition" means any disposition made by the other party to the marriage (whether before or after the commencement of the application), 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.

(7) Where an application is made under subsection (2) or (3) with respect to a disposition which took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the Court is satisfied —

- (a) in a case falling within subsection (2)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence, or
- (b) in a case falling within subsection (3), that the disposition has had the consequence,

of defeating a claim by the applicant 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.

(8) In this section "disposition" —

- (a) includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise; but
- (b) excludes any provisions contained in a will or codicil.

(9) This section is without prejudice to any power of the Court to grant injunctions.

89. Prevention of transactions intended to defeat prospective applications for financial relief.

(1) Where, on an application by a party to a marriage, it appears to the Court —

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in a foreign country; and

- (b) that the applicant intends to apply for leave to make an application for an order for financial relief under section 82 as soon as he or she has been habitually resident in the Island for a period of one year; and
- (c) that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property,

the Court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in paragraph (c).

- (2) For the purposes of an application under subsection (1) —
 - (a) the reference to defeating a claim for financial relief shall be construed in accordance with section 88(1) (omitting the reference to any order which has been made); and
 - (b) subsections (7) and (8) of section 88 apply as they apply for the purposes of an application under that section.
- (3) This section is without prejudice to any power of the Court to grant injunctions.

Interpretation

90. Interpretation of Part 4.

In this Part —

"the Court" means the High Court;

"dwelling-house" includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;

"order for financial relief" has the meaning given by section 78(3);

"foreign country" means a country or territory outside the British Islands;

"possession" includes receipt of, or the right to receive, rents and profits;

"prescribed" means prescribed by rules of court;

"rent" does not include mortgage interest.

PART 5

FAMILY HOMES AND DOMESTIC VIOLENCE

Jurisdiction

91. Jurisdiction.

(1) Subject to section 49 of the Summary Jurisdiction Act 1989 (composition of courts) and to the following provisions of this section, in this Part "the court" means the High Court or a court of summary jurisdiction.

(2) A court of summary jurisdiction shall not be competent to entertain any application, or make any order, involving any disputed question as to a party's entitlement to occupy any property by virtue of a beneficial estate or interest or contract, unless it is unnecessary to determine the question in order to deal with the application or make the order.

(3) Subject to subsection (2), if, in proceedings on an application to the High Court for an order under this Part, the High Court is of the opinion that the application would be more conveniently dealt with by a court of summary jurisdiction, it may by order —

- (a) stay the proceedings, and
- (b) direct that the application be heard and determined by such court of summary jurisdiction as is specified in the order.

(4) Where on hearing an application for an order under this Part (otherwise than pursuant to a direction under subsection (3)(b)) a court of summary jurisdiction is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the High Court, the court shall refuse to make any order on the application, and no appeal shall lie from that refusal.

(5) If, in any proceedings in the High Court relating to or comprising the same subject matter as an application which has been refused under subsection (4), the High Court so orders, the application shall be reheard and determined by such court of summary jurisdiction as is specified in the order.

(6) The powers of a court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised —

- (a) where the order was made by the High Court, by any judge of that Court; or
- (b) where the order was made by a court of summary jurisdiction, by any court of summary jurisdiction.

(7) An order of the High Court made on an appeal under section 104 of the Summary Jurisdiction Act 1989 against an order, decision or other act of a court of summary jurisdiction under this Part (other than one directing that an application be re-heard by a court of summary jurisdiction) shall, for the purposes of —

- (a) the enforcement of the order, and
- (b) any power to vary, revive or revoke orders,

be treated as if it were an order of the court of summary jurisdiction from which the appeal was brought and not an order of the High Court.

Rights to occupy matrimonial home

92. Rights concerning matrimonial home where one spouse has no estate, etc.

- (1) This section applies if —
 - (a) one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract; and
 - (b) the other spouse is not so entitled.

(2) Subject to the provisions of this Part, the spouse not so entitled has the following rights ("matrimonial home rights") —

- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 95;
- (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

(3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 103, as good as if made or done by the other spouse.

- (4) If a spouse ("the first spouse") —
 - (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
 - (b) makes any payment in or towards satisfaction of any liability of the other spouse ("the second spouse") in respect of mortgage payments affecting the dwelling-house,

the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.

(5) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, subsections (3) and (4) apply in relation to the trustees as they apply in relation to the other spouse.

(6) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.

- (7) A spouse's matrimonial home rights continue —
- (a) only so long as the marriage subsists, except to the extent that an order under section 95(4) otherwise provides; and
 - (b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 93 for those rights to be a charge on an estate or interest in the dwelling-house.
- (8) It is hereby declared that a spouse —
- (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
 - (b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in customary fee simple or a legal term of years absolute in the dwelling-house,

is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

93. Rights as charge on dwelling-house.

(1) If, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest —

- (a) the other spouse's matrimonial home rights are a charge on the estate or interest; and
- (b) that charge has the same priority as if it were an equitable interest created at whichever is the latest of the following dates —
 - (i) the date on which the spouse so entitled acquired the estate or interest;
 - (ii) the date of the marriage; and
 - (iii) 21st August 1972 (the commencement date of the Matrimonial Homes Act 1971)⁹.

(2) If, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust —

- (a) the rights are a charge also on the estate or interest of the trustees for the other spouse;

⁹ 1971 c.23

- (b) that charge has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.

(3) In determining for the purposes of subsection (2) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).

(4) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by —

- (a) the death of the other spouse, or
- (b) the termination (otherwise than by death) of the marriage,

unless the court directs otherwise by an order made under section 95(4).

(5) If —

- (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and
- (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,

the surrender has effect subject to the charge, and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.

(6) Where a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse, and the other spouse —

- (a) is adjudged bankrupt;
- (b) makes a conveyance or assignment of his property (including that estate or interest) to trustees for the benefit of his creditors generally; or
- (c) dies and his estate is insolvent;

then, even though it is registered within the meaning of Schedule 2, the charge shall be void against the trustee in bankruptcy, the trustees under the conveyance or assignment or the personal representatives of the other spouse, as the case may be.

94. Registration of matrimonial home rights.

Schedule 2 has effect with respect to the registration of matrimonial home rights.

Occupation orders

95. Occupation orders where applicant has interest or rights.

- (1) If —
 - (a) a person ("the person entitled") —
 - (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or
 - (ii) has matrimonial home rights in relation to a dwelling-house, and
 - (b) the dwelling-house —
 - (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
 - (ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (2), (3) and (4).

- (2) An order under this section may —
 - (a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");
 - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (c) regulate the occupation of the dwelling-house by either or both parties;
 - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
 - (e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;
 - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (g) exclude the respondent from a defined area in which the dwelling-house is included.

(3) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.

(4) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by —

- (a) the death of the other spouse; or

(b) the termination (otherwise than by death) of the marriage.

(5) In deciding whether to exercise its powers under subsection (2) and (if so) in what manner, the court shall have regard to all the circumstances including —

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (2), on the health, safety or well-being of the parties and of any relevant child; and
- (d) the conduct of the parties in relation to each other and otherwise.

(6) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (2) is not made, the court shall make the order unless it appears to it that —

- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
- (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

(7) The court may exercise its powers under subsection (4) in any case where it considers that in all the circumstances it is just and reasonable to do so.

(8) An order under this section —

- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
- (b) except in the case of an order made by virtue of subsection (4)(a), ceases to have effect on the death of either party.

(9) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

96. Effect of order where rights are charge on dwelling-house.

(1) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse —

- (a) an order under section 95 against the other spouse has, except so far as a contrary intention appears, the same effect against

persons deriving title under the other spouse or under the trustees and affected by the charge, and

- (b) sections 95(1), (2), (3) and (9) and 92(3) to (5) apply in relation to any person deriving title under the other spouse or under the trustees and affected by the charge as they apply in relation to the other spouse.

(2) The court may make an order under section 95 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

97. Former spouse with no existing right to occupy.

(1) This section applies if —

- (a) one former spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract;
- (b) the other former spouse is not so entitled; and
- (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.

(2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse ("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision —

- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
- (b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision —

- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
- (b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also —

- (a) regulate the occupation of the dwelling-house by either or both of the parties;
- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including —

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
- (d) the conduct of the parties in relation to each other and otherwise;
- (e) the length of time that has elapsed since the parties ceased to live together;
- (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
- (g) the existence of any pending proceedings between the parties —
 - (i) for an order under section 29;
 - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children and Young Persons Act 2001 (orders for financial relief against parents); or
 - (iii) relating to the legal or beneficial ownership of the dwelling-house.

(7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).

(8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that —

- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and
- (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

98. Cohabitant or former cohabitant with no existing right to occupy.

- (1) This section applies if —
 - (a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract;
 - (b) the other cohabitant or former cohabitant is not so entitled; and
 - (c) that dwelling-house is the home in which they live together as husband and wife or a home in which they at any time so lived together or intended so to live together.

(2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant ("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision —

- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
- (b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision —

- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
- (b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also —

- (a) regulate the occupation of the dwelling-house by either or both of the parties;
- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including —

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;

- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise;
 - (e) the nature of the parties' relationship;
 - (f) the length of time during which they have lived together as husband and wife;
 - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
 - (h) the length of time that has elapsed since the parties ceased to live together; and
 - (i) the existence of any pending proceedings between the parties —
 - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children and Young Persons Act 2001 (orders for financial relief against parents); or
 - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) and (if so) in what manner, the court shall have regard to all the circumstances including —
- (a) the matters mentioned in subsection (6)(a) to (d);
 - (b) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if that provision is not included in the order; and
 - (c) whether the harm likely to be suffered by the respondent or child if that provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

99. Former spouses and cohabitants: supplemental.

- (1) An order under section 97 or 98 —
 - (a) may not be made after the death of either of the parties; and
 - (b) ceases to have effect on the death of either of them.
- (2) An order under section 97 or 98 must be limited so as to have effect for a specified period not exceeding 6 months, but may be extended —

- (a) in the case of an order under section 97, on one or more occasions,
- (b) in the case of an order under section 98, on one occasion,

for a further specified period not exceeding 6 months.

(3) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in customary fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under section 97 or 98) as not being entitled to occupy the dwelling-house by virtue of that interest.

(4) Subsection (3) does not prejudice any right of such a person to apply for an order under section 95.

(5) So long as an order under section 97 or 98 remains in force, section 92(3) to (5) applies in relation to the applicant —

- (a) as if he were a spouse entitled to occupy the dwelling-house by virtue of section 92; and
- (b) as if the respondent were the other spouse.
- (6) Where —
 - (a) the parties to proceedings for or relating to an occupation order are cohabitants or former cohabitants, and
 - (b) the court is required to consider the nature of their relationship,

the court shall have regard to the fact that they have not given each other the commitment involved in marriage.

100. Neither spouse or former spouse entitled to occupy.

- (1) This section applies if —
 - (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but
 - (b) neither of them is entitled to remain in occupation by virtue of a beneficial estate or interest or contract.

(2) Either of the parties may apply to the court for an order against the other under this section.

- (3) An order under this section may —
 - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the spouses;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) Section 95(5) and (6) applies to the exercise by the court of its powers under this section as it applies to the exercise by the court of its powers under section 95(2).

(5) An order under this section must be limited so as to have effect for a specified period not exceeding 6 months, but may be extended on one or more occasions for a further specified period not exceeding 6 months.

101. Neither cohabitant or former cohabitant entitled to occupy.

(1) This section applies if —

(a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they live or lived together as husband and wife; but

(b) neither of them is entitled to remain in occupation by virtue of a beneficial estate or interest or contract.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may —

(a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(b) regulate the occupation of the dwelling-house by either or both of the parties;

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including —

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;

(d) the conduct of the parties in relation to each other and otherwise; and

(e) the questions mentioned in subsection (5).

(5) The questions are —

- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the relevant provision is not included in the order; and
- (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(6) An order under this section shall be limited so as to have effect for a specified period not exceeding 6 months, but may be extended on one occasion for a further specified period not exceeding 6 months.

102. Occupation orders: supplementary provisions.

(1) In this Part an "occupation order" means an order under section 95, 97, 98, 100 or 101.

(2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.

(3) If —

(a) an application for an occupation order is made under section 95, 97, 98, 100 or 101, and

(b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,

the court may make an order under that other section.

(4) The fact that a person has applied for an occupation order under sections 97 to 101, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

103. Additional provisions that may be included in certain occupation orders.

(1) The court may on, or at any time after, making an occupation order under section 95, 97 or 98 —

(a) impose on either party obligations as to —

(i) the repair and maintenance of the dwelling-house; or

(ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;

(b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract) to make periodical

payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract;

- (c) grant either party possession or use of furniture or other contents of the dwelling-house;
- (d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;
- (e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

(2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including —

- (a) the financial needs and financial resources of the parties; and
- (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

Non-molestation orders

104. Non-molestation orders.

(1) In this Part a "non-molestation order" means an order containing either or both of the following provisions —

- (a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;
- (b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order —

- (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
- (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

(3) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being —

- (a) of the applicant or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and
- (b) of any relevant child.
- (4) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (5) A non-molestation order may be made for a specified period or until further order.
- (6) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

Further provisions relating to occupation and non-molestation orders

105. Leave of court required for applications by children under 16.

- (1) A child under the age of 16 may not apply for an occupation order or a non-molestation order except with the leave of the court.
- (2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

106. Agreements to marry.

- (1) This section applies where an application under this Part is made by virtue of section 115(3)(e) (agreement to marry).
- (2) Where the relevant agreement to marry has been terminated, an application under section 95 or 104 may not be made after the end of the period of 3 years beginning with the day on which it was terminated.
- (3) Subject to subsection (4), the court shall not make an order under section 95 or 104 unless there is produced to it evidence in writing of the existence of the agreement to marry.
- (4) Subsection (3) does not apply if the court is satisfied that the agreement to marry was evidenced by —
 - (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

107. Ex parte orders.

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings

as would otherwise be required by rules of court (in the case of the High Court) or section 43 of the Summary Jurisdiction Act 1989 (in the case of a court of summary jurisdiction).

(2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including —

- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved in effecting service of the proceedings.

(3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

(4) If, at a full hearing, the court makes an occupation order ("the full order"), then —

- (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, section 95(9), 99(2), 100(5) or 101(6), as the case may be, is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
- (b) the provisions of section 99(2) or 101(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.

(5) In this section —

"full hearing" means a hearing of which notice has been given to all the parties in accordance with rules of court or section 43 of the Summary Jurisdiction Act 1989, as the case may be;

"initial order" means an occupation order made by virtue of subsection (1).

108. Undertakings.

(1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.

(4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.

(5) This section has effect without prejudice to the powers of the High Court apart from this section.

109. Arrest for breach of order.

(1) If —

(a) the court makes an occupation order or a non-molestation order; and

(b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

(2) Subsection (1) does not apply in any case where the occupation order or a non-molestation order is made by virtue of section 107(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it —

(a) that the respondent has used or threatened violence against the applicant or a relevant child; and

(b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.

(3) If, by virtue of subsection (2), the court attaches a power of arrest to any provisions of an occupation order or a non-molestation order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.

(4) Any period specified for the purposes of subsection (3) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.

(5) If, by virtue of subsection (1) or (2), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

(6) If a power of arrest is attached under subsection (1) or (2) to certain provisions of the order and the respondent is arrested under subsection (5) —

(a) he must be brought before a judge within the period of 24 hours beginning at the time of his arrest; and

- (b) if the matter is not then disposed of forthwith, the judge before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

(7) If the court has made an occupation order or a non-molestation order but —

- (a) has not attached a power of arrest under subsection (1) or (2) to any provisions of the order, or

- (b) has attached that power only to certain provisions of the order,

then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to a judge for the issue of a warrant for the arrest of the respondent.

(8) The judge shall not issue a warrant on an application under subsection (7) unless —

- (a) the application is substantiated on oath; and

- (b) the judge has reasonable grounds for believing that the respondent has failed to comply with the order.

(9) If a person is brought before a court by virtue of a warrant issued under subsection (8) and the court does not dispose of the matter forthwith, the court may remand him.

(10) Schedule 3 (which makes provision corresponding to that applying in courts of summary jurisdiction in civil cases under sections 84 and 85 of the Summary Jurisdiction Act 1989) has effect in relation to the powers of the High Court to remand a person by virtue of this section.

(11) If a person remanded under this section is granted bail (whether in the High Court under Schedule 3 or in a court of summary jurisdiction under section 84 or 85 of the Summary Jurisdiction Act 1989), he may be required by the judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

(12) In this section and section 110, "judge", in relation to an occupation order or a non-molestation order, means —

- (a) where the order was made by the High Court, a judge of that court; or

- (b) where the order was made by a court of summary jurisdiction, any justice of the peace.

110. Remand for medical examination and report.

(1) If the judge has reason to consider that a medical report will be required, any power to remand a person under section 109(6)(b) or (9) may be exercised for the purpose of enabling a medical examination and report to be made.

(2) If such a power is so exercised, the adjournment must not be for more than —

- (a) 21 days at a time where the respondent is remanded in custody; or
- (b) 28 days at a time where the respondent is remanded on bail.
- (3) If there is reason to suspect that a person who has been arrested

—

- (a) under section 109(6), or
- (b) under a warrant issued on an application made under section 109(8),

is suffering from mental illness or severe mental impairment, the judge has the same power to make an order under paragraph 1 of Schedule 1A to the Criminal Jurisdiction Act 1993¹⁰ or paragraph 1 of Schedule 2A to the Summary Jurisdiction Act 1989 (remand for report on accused's mental condition) as a Court of General Gaol Delivery or a court of summary jurisdiction, as the case may be, has under the paragraph in question in the case of a person to whom that paragraph applies.

111. Power to order hospital admission or guardianship.

- (1) The High Court has the same power to make —
 - (a) a hospital order or guardianship order under section 54(1) of the Criminal Jurisdiction Act 1993, or
 - (b) an interim hospital order under section 54(4) of that Act,

in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of an occupation order or non-molestation order as a Court of General Gaol Delivery has under those provisions in the case of a person convicted of an offence punishable with custody.

- (2) A court of summary jurisdiction has the same power to make

—

- (a) a hospital order or guardianship order under paragraph 2 of Schedule 2A to the Summary Jurisdiction Act 1989, or
- (b) an interim hospital order under paragraph 3 of that Schedule,

in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of an occupation order or non-molestation order as a court of summary jurisdiction has under those paragraphs in the case of a person convicted of an offence punishable on summary conviction with custody.

¹⁰ 1993 c.9

112. Variation and revocation of orders.

(1) An occupation order or non-molestation order may be varied or revoked by the court on an application by —

- (a) the respondent, or
- (b) the person on whose application the order was made.

(2) In the case of a non-molestation order made by virtue of section 104(2)(b), the order may be varied or revoked by the court even though no such application has been made.

(3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 95 against the other spouse may also be varied or revoked by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.

(4) If, by virtue of section 109(2), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or revoke the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or revoke any other provision of the order).

113. Proceedings by mortgagees.

(1) Where a mortgagee of land which consists of or includes a dwelling-house brings proceedings in the High Court for the enforcement of his security, a connected person who is not already a party to the proceedings is entitled to be made a party if —

- (a) the connected person is enabled by section 92(3) or (5) (or by section 92(3) or (5) as applied by section 99(5)), to meet the mortgagor's liabilities under the mortgage;
- (b) he has applied to the High Court before the proceedings are finally disposed of in that Court; and
- (c) the Court sees no special reason against his being made a party to the proceedings and is satisfied that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings.

(2) In subsection (1) "connected person" in relation to any person, means that person's spouse, former spouse, cohabitant or former cohabitant.

(3) Where —

- (a) a mortgagee of land which consists of or includes a dwelling-house brings proceedings in the High Court for the enforcement of his security, and
- (b) at the relevant time a charge arising under section 93 is registered as a burden on the title register in accordance with

section 36(1) of the Land Registration Act 1982¹¹, or under paragraph 2 of Schedule 2, as the case may be, and

- (c) the person on whose behalf the charge is registered is not a party to the proceedings,

the mortgagee shall serve notice of the proceedings on him.

- (4) For the purpose of subsection (3) —

- (a) where —

- (i) an official search has been made on behalf of the mortgagee which would disclose any burden within subsection (3)(b),
- (ii) a certificate of the result of the search has been issued, and
- (iii) the proceedings are commenced within the priority period,

the relevant time is the date of the certificate;

- (b) in any other case, the relevant time is the time when the proceedings are commenced.

- (5) In subsection (4)(a) —

"official search" means a search in the title register in accordance with rules under section 73(2) of the Land Registration Act 1982;

"the priority period" means the period prescribed for the purpose of section 73(4) of that Act in relation to a certificate of the result of an official search.

114. Contempt proceedings.

The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised —

- (a) where the order was made by the High Court, by any judge of that court; or
- (b) where the order was made by a court of summary jurisdiction, by any court of summary jurisdiction.

Supplemental

115. Meaning of "cohabitants", "relevant child" and "associated persons".

- (1) For the purposes of this Part —

¹¹ 1982 c.7

Matrimonial Proceedings Act 2003

- (a) "cohabitants" are a man and a woman who, although not married to each other, are living together as husband and wife; and
 - (b) "former cohabitants" is to be read accordingly, but does not include cohabitants who have subsequently married each other.
- (2) In this Part "relevant child", in relation to any proceedings under this Part, means —
- (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
 - (b) any child in relation to whom an order under the Adoption Act 1984 or the Children and Young Persons Act 2001 is in question in the proceedings; and
 - (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Part, a person is associated with another person if —
- (a) they are or have been married to each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
 - (d) they are relatives;
 - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
 - (f) in relation to any child, they are both persons falling within subsection (4); or
 - (g) they are parties to the same family proceedings (other than proceedings under this Part).
- (4) A person falls within this subsection in relation to a child if —
- (a) he is a parent of the child; or
 - (b) he has or has had parental responsibility for the child.
- (5) If a child has been adopted, 2 persons are also associated with each other for the purposes of this Part if —
- (a) one is a natural parent of the child or a parent of such a natural parent; and
 - (b) the other is the child or any person ,
 - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
 - (ii) with whom the child has at any time been placed for adoption.

(6) Where there is in force in respect of the child an order mentioned in section 5(2A) of the Adoption Act 1984, the child shall be treated as adopted for the purpose of subsection (5).

(7) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

116. Interpretation of Part 5.

(1) In this Part —

"adoption order" means an order under section 1(1) of the Adoption Act 1984¹²;

"associated", in relation to a person, is to be read with section 115(3) to (7);

"child" means a person under the age of 18 years;

"cohabitant" and "former cohabitant" have the meaning given by section 115(1);

"the court" has the meaning given by section 91(1);

"development" means physical, intellectual, emotional, social or behavioural development;

"dwelling-house" includes (subject to subsection (3)) —

(a) any building or part of a building which is occupied as a dwelling,

(b) any caravan, house-boat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it;

"harm" —

(a) in relation to a person who has reached the age of 18 years, means ill-treatment or the impairment of health; and

(b) in relation to a child, means ill-treatment or the impairment of health or development;

"health" includes physical or mental health;

"ill-treatment" includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

"matrimonial home rights" has the meaning given by section 92;

"mortgage", "mortgagor" and "mortgagee" have the same meanings as in the Conveyancing Act 1908¹³;

¹² 1984 c.14

¹³ VIII p.241

"mortgage payments" includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

"non-molestation order" has the meaning given by section 104(1);

"occupation order" has the meaning given by section 102;

"relative", in relation to a person, means —

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, or
- (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse,

and includes, in relation to a person who is living or has lived with another person as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other;

"relevant child", in relation to any proceedings under this Part, has the meaning given by section 115(2).

(2) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(3) For the purposes of sections 93, 94 and 113 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of "dwelling-house" were omitted.

PART 6

RECIPROCAL ENFORCEMENT OF ORDERS MADE IN UNITED KINGDOM ETC.

Reciprocal enforcement of certain financial orders

117. Reciprocal enforcement of certain financial orders.

(1) If the Council of Ministers is satisfied that provision is or will be made by the law of any part of the United Kingdom or any of the Channel Islands providing for the enforcement in that territory of a financial order of any description, it may by order designate that territory for the purposes of this Part with respect to any order of a description specified in the designation order, being an order —

- (a) made by a court in that territory on or after the making of a decree or order dissolving or annulling a marriage or providing for the separation of the parties to a marriage, and
- (b) appearing to the Council of Ministers to correspond to a financial order of that description.

(2) Where a designation order is in force in relation to any territory, the following provisions of this Part shall apply in relation to any order of the specified description.

(3) A designation order shall not have effect unless it is approved by Tynwald.

(4) In this Part —

"the Court" means the High Court;

"designated territory" means a territory designated by a designation order;

"designation order" means an order under subsection (1);

"financial order" means a financial provision order, a property adjustment order, a sale of property order or a pension sharing order made by the Court on or after the making of a divorce order, annulment order or separation order, but does not include —

(a) an interim order, or

(b) a maintenance order within the meaning of Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1995¹⁴;

"overseas order" means an order to which the following provisions of this Part apply by virtue of subsection (2);

"the relevant territory", in relation to an overseas order, means the territory in which the order was made.

Enforcement of UK and Channel Island orders in the Isle of Man

118. Recognition of overseas orders.

(1) Subject to subsection (2), an overseas order shall be recognised and have the same effect in the Island as if it had been made by the Court and as if the Court had had jurisdiction to make it.

(2) Where an overseas order includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) shall not apply to that provision.

(3) A court in the Island shall not enforce an order which is recognised in accordance with subsection (1) unless it has been registered in the Court under section 119 and proceedings for enforcement are taken in accordance with section 121.

119. Registration of overseas order in High Court.

Where the Chief Registrar receives a certified copy of an overseas order and sent to him for registration by a court or other authority in the

¹⁴ 1995 c.15

relevant territory, he shall forthwith cause the order, together with particulars of any variation, to be registered in the Court in the prescribed manner.

120. Cancellation and variation of registration.

(1) Where the Chief Registrar receives notice from a court or other authority in the relevant territory of the revocation or variation of an overseas order registered in the Court under section 119, he shall —

- (a) in the case of the revocation of the order, cancel the registration, and
- (b) in the case of the variation of the order, cause particulars of the variation to be registered in the prescribed manner.

(2) Where an order registered under section 119 ceases (in whole or in part) to have effect in the relevant territory, otherwise than because of its revocation or variation, the Court may, of its own motion or on the application of any person who appears to the Court to have an interest in the matter, —

- (a) cancel the registration, or
- (b) if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect.

121. Enforcement.

(1) Where an overseas order has been registered under section 119, the Court shall have the same powers for the purpose of enforcing the order as it would have if it had itself made the order and had jurisdiction to make it; and proceedings for or with respect to enforcement may be taken accordingly.

(2) The Court may, of its own motion or on the application of any person who appears to the Court to have an interest in the matter, direct that periodical payments due under an overseas order so registered shall be made to the Chief Registrar; and in that case Part VIII of the Summary Jurisdiction Act 1989, so far as it relates to the enforcement of an order for, or the recovery of, periodical payments, applies to payments to be made to the Chief Registrar by virtue of the direction as it applies to payments to be so made by virtue of an order under section 54(1) of that Act.

(3) The references in subsections (1) and (2) to an overseas order does not include a reference to any provision of the order as to the means by which rights conferred by the order are to be enforced.

122. Staying of enforcement proceedings.

(1) Where in accordance with section 121 proceedings are taken in any court for the enforcement of an order registered in the Court, any person who appears to the Court to have an interest in the matter may apply for the proceedings to be stayed on the ground that he has taken or intends to take

other proceedings (in the Island or the relevant territory or elsewhere) as a result of which the order may cease to have effect, or may have a different effect, in the Island.

(2) If after considering an application under subsection (1) the Court considers that the proceedings for enforcement should be stayed in order that other proceedings may be taken or concluded, it shall stay the proceedings for enforcement accordingly.

(3) The Court may remove a stay granted in accordance with subsection (2) if it appears to the Court —

- (a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or
- (b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.

(4) Nothing in this section affects any power exercisable apart from this section to grant or remove a stay.

123. Dismissal of enforcement proceedings.

(1) Where in accordance with section 121 proceedings are taken in any court for the enforcement of an overseas order registered in the Court under section 119, any person who appears to that court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the relevant territory.

(2) After considering an application under subsection (1) —

- (a) if that court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement;
- (b) if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect.

Enforcement of Manx orders in UK and Channel Islands

124. Enforcement of financial order in UK or Channel Islands.

(1) Any person on whom any rights are conferred by a financial order of any description specified in a designation order may apply to the Court for steps to be taken with a view to its enforcement in a designated territory under any provision for enforcement of orders of that description made by the law of that territory.

(2) An application under subsection (1) shall be made in the prescribed manner, contain the prescribed information and be accompanied by such documents as may be prescribed.

(3) On receiving an application under this section the High Court, or such officer of the Court as may be prescribed, shall, unless it appears to it or him that the financial order is no longer in force, —

- (a) cause the prescribed documents to be sent to the appropriate authority in the designated territory specified in the application, and
- (b) take such other steps as may be prescribed for the purpose of securing its enforcement there.

(4) Where a court in the Island revokes or varies an order in respect of which steps have been taken under subsection (3) for its enforcement in a designated territory, that court shall cause notice of the revocation or variation to be given in the prescribed manner to the appropriate authority in that territory.

PART 7

PROPERTY OF MARRIED PERSONS ETC.

125. Capacity of married woman.

- (1) A married woman is —
 - (a) capable of acquiring, holding, and disposing of, any property; and
 - (b) capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and
 - (c) capable of suing and being sued, either in tort or in contract or otherwise; and
 - (d) subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were unmarried.

(2) The husband of a married woman is not, by reason only of his being her husband, liable —

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

(3) No restriction upon anticipation or alienation attached, or purported to be attached, to the enjoyment of any property by a woman which cannot be attached to the enjoyment of that property by a man, is of any effect.

(4) Section 13 of the Wills Act 1985¹⁵ (will speaks from death) applies to the will of a married woman as it applies to any other will, and such

¹⁵ 1985 c.11

a will does not need to be re-executed or re-published after her husband's death.

126. Actions in tort between husband and wife.

(1) Subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears —

- (a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or
- (b) that the question or questions in issue could more conveniently be disposed of on an application made under section 128.

(3) Without prejudice to subsection (2)(b), the court may in such an action either —

- (a) exercise any power which could be exercised on an application under section 128, or
- (b) give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

127. Policy of assurance effected by married person.

(1) This section applies to a policy of insurance effected by one party to a marriage ("the insured") on his own life, and expressed to be for the benefit of the other party, or of his children, or of the other party and his children, or any of them.

(2) A policy to which this section applies shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts

(3) If it is proved that a policy to which this section applies was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.

- (4) The insured under a policy to which this section applies —
 - (a) may by the policy, or by any memorandum under his hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof; and
 - (b) may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy.

(5) In default of any such appointment of a trustee, a policy to which this section applies, immediately on its being effected, shall vest in the insured and his legal personal representatives, in trust for the purposes aforesaid.

(6) The receipt of a trustee duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

(7) In this section "children" includes children who are not marital children.

128. Questions as to property between husband and wife.

(1) In any dispute between the parties to a marriage as to the title to or possession of property —

- (a) either party, or
- (b) any person in whose books any stocks, funds, or shares of either party are standing,

may apply in a summary way to a judge of the High Court.

(2) On an application under subsection (1) the judge may —

- (a) make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or
- (b) adjourn the application from time to time, and direct any inquiry concerning the matters in dispute to be made in such manner as he thinks fit.

(3) An application under subsection (1) may be heard in camera.

(4) On an application under subsection (1) a person mentioned in subsection (1)(b) shall be treated as a stakeholder only.

(5) Any power conferred by this section to make orders with respect to any property includes power to order a sale of the property.

(6) An application may be made to the High Court under subsection (1) by either of the parties to a marriage even though the marriage has been dissolved or annulled, so long as the application is made within 3 years beginning with the date on which the marriage was dissolved or annulled.

(7) Where an agreement to marry is terminated, this section applies, as if the parties were married, to any dispute between them in relation to property in which either or both had a beneficial interest while the agreement was in force.

(8) An application made under subsection (1) by virtue of subsection (7) shall be made within 3 years of the termination of the agreement.

129. Questions as to property: further powers of Court.

(1) Any right of a party to a marriage, or to an agreement to marry, to make an application under section 128(1) includes the right to make such an application where it is claimed by the applicant —

(a) that the other party has had in his possession or under his control —

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

(ii) property (other than money) to which, or to an interest in which, the applicant was beneficially entitled, and

(b) that either —

(i) that money or other property has ceased to be in the other party's possession or under his control, or

(ii) that the applicant does not know whether it is still in the other party's possession or under his control.

(2) Where, on an application made by virtue of subsection (1), the judge is satisfied —

(a) that the other party has had in his possession or under his control money or other property as mentioned in subsection (1)(a)(i) or (ii); and

(b) that he has not made to the applicant, in respect of that money or other property, such payment or disposition as would have been appropriate in the circumstances,

the judge may, in addition to any order which he may make under section 128, make an order specified in subsection (3) or (4).

(3) An order under subsection (2) may require the other party to pay to the applicant —

(a) in a case falling within subsection (1)(a)(i), such sum in respect of the money to which the application relates, or the applicant's share of it, as the case may be; or

(b) in a case falling within subsection (1)(a)(ii), such sum in respect of the value of the property to which the application relates, or the applicant's interest therein, as the case may be,

as the judge may consider appropriate.

(4) Where on an application made by virtue of this section it appears to the judge that there is any property which —

- (a) represents the whole or part of the money or property in question; and
- (b) is property in respect of which an order could have been made under section 128 if an application had been made by the party under that section in a question as to the title to or possession of that property,

an order under subsection (2) may make any provision (either in substitution for or in addition to a provision under subsection (3)) which could have been made on an application mentioned in paragraph (b).

130. Contributions by spouse to improvement of property.

(1) This section applies where a party to a marriage contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of the parties has or have a beneficial interest.

(2) The party so contributing shall, if the contribution is of a substantial nature and subject to any express or implied agreement between them to the contrary, be treated as having then acquired by virtue of his contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent —

- (a) as may have been agreed, or
- (b) in default of such agreement, as the High Court thinks just in all the circumstances in any proceedings (whether between them or otherwise) in which the question of the existence or extent of the beneficial interest of either party arises.

131. Housekeeping allowance.

If any question arises as to the right of one party to a marriage to money derived from any allowance made by the other for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the parties in equal shares.

132. Duty of spouses to maintain each other.

(1) Any rule of law which obliges a husband to maintain his wife according to his means of supporting her shall be taken as also obliging a wife to maintain her husband according to her means of supporting him.

(2) Where in any circumstances a wife is by law presumed to have her husband's authority to pledge his credit for necessaries suitable to their

style of living, a husband, in corresponding circumstances, shall be presumed also to have his wife's authority to pledge her credit for such necessities.

(3) Subsection (2) applies to a man and a woman living together as husband and wife as it applies to husband and wife.

(4) Nothing in this section affects —

(a) section 32, 39, 61 or 84;

(b) section 33 of the National Assistance (Isle of Man) Act 1951¹⁶;
or

(c) section 78(6) of the Social Security Administration Act 1992 (an Act of Parliament)¹⁷, as it has effect in the Island¹⁸ (including that provision as applied by any other statutory provision).

133. Presumption of advancement.

(1) Where either party to a marriage or intended marriage transfers any property to or for the benefit of the other ("the transferee") without any consideration in money or money's worth, it shall be presumed, unless the contrary is shown, that the transfer was intended as a gift or advancement to the transferee.

(2) Where the father or mother of any person transfers any property to or for the benefit of that person without any consideration in money or money's worth, it shall be presumed, unless the contrary is shown, that the transfer was intended as a gift or advancement to that person.

(3) This section applies notwithstanding any rule of law or equity to the contrary, but does not apply to any transfer made before the coming into operation of this section.

134. Property of engaged couples.

Where an agreement to marry is terminated, any rule of law relating to the rights of husbands and wives in relation to property in which either or both has or have a beneficial interest shall apply, in relation to any property in which either or both of the parties to the agreement had a beneficial interest while the agreement was in force, as it applies in relation to property in which a husband or wife has a beneficial interest.

135. Gifts between engaged couples.

(1) A party to an agreement to marry who makes a gift of property to the other party on the condition (express or implied) that it shall be returned

¹⁶ XVII p.1008

¹⁷ 1992 c.5

¹⁸ SD 506/94

if the agreement is terminated shall not be prevented from recovering the property by reason only of his having terminated the agreement.

(2) The gift of an engagement ring shall be presumed to be an absolute gift; but this presumption may be rebutted by proving that the ring was given on the condition (express or implied) that it should be returned if the marriage did not take place for any reason.

PART 8

MISCELLANEOUS AND SUPPLEMENTAL

136. Polygamous marriages.

- (1) A court is not precluded from making —
- (a) an order or declaration under Part 1;
 - (b) an order under Part 2, 3, 4, 5 or 6; or
 - (c) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for, any such order or declaration as is mentioned in paragraph (a) or (b);

by reason only that either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person.

- (2) Provision may be made by rules of court —
- (a) for requiring notice of proceedings brought by virtue of this section to be served on any additional spouse of a party to the marriage in question; and
 - (b) for conferring on any such additional spouse the right to be heard in any such proceedings,

in such cases as may be prescribed by the rules.

137. Evidence.

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

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

138. Interpretation: general.

- (1) In this Act —

Matrimonial Proceedings Act 2003

"5 years' separation" and "2 years' separation" have the meanings given by section 2(2);

"child", in relation to one or both of the parties to a marriage, includes a child of that party or, as the case may be, of both parties which is not a marital child;

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

- (a) a child of both of those parties; and
- (b) any other child, not being a child who is placed with those parties as foster parents by the Department of Health and Social Security, who has been treated by both of those parties as a child of their family;

"education" includes training;

"family proceedings" means —

- (a) any proceedings under any inherent jurisdiction of the High Court in relation to children;
- (b) any proceedings under any of the following enactments —
 - (i) this Act;
 - (ii) Part 1, Part 2, Part 4, Part 5 or section 89 of the Children and Young Persons Act 2001;
 - (iii) the Adoption Act 1984;

"pension arrangement" has the meaning given by section 36(6);

"the pension sharing provisions" means Part IV of the Welfare Reform and Pensions Act 1999 (an Act of Parliament), as it has effect in the Island;

"prescribed" (except in section 36) means prescribed by rules of court;

"shareable rights under a pension arrangement" means rights in relation to which pension sharing is available under Chapter I of the pension sharing provisions;

"shareable state scheme rights" means rights in relation to which pension sharing is available under Chapter II of the pension sharing provisions.

(2) In this Act —

- (a) references to the following matters shall be construed in accordance with section 26 „,

financial provision orders;

orders for payment of a lump sum;

orders for a settlement of property;

orders for variation of a settlement;

pension sharing orders;

periodical payments orders;

property adjustment orders;
sale of property orders;
secured periodical payments orders;
transfer of property orders;

- (b) references to orders for maintenance pending suit and (except in section 80) to interim orders for maintenance shall be construed in accordance with section 27 and section 38(7) respectively;
 - (c) references to any order of any description "in favour of" a party to a marriage, a child of the family or any other person are to an order of that description providing for a payment or transfer to or for the benefit of, or other provision for the benefit of, that party, child or person, as the case may be.
- (3) For the avoidance of doubt, it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.

139. Transitional provisions, savings, amendments and repeals.

- (1) The transitional provisions and savings in Schedule 4 shall have effect.
- (2) The enactments specified in Schedule 5 are amended in accordance with that Schedule.
- (3) The enactments specified in Schedule 6 are repealed to the extent specified in column 3 of that Schedule.

140. Short title and commencement.

- (1) This Act may be cited as the Matrimonial Proceedings Act 2003.
- (2) This Act shall come into operation on such day as the Council of Ministers may by order appoint.

Matrimonial Proceedings Act 2003

Section 21(6).

SCHEDULE 1

STAYING OF MATRIMONIAL PROCEEDINGS

Interpretation

1. (1) In this Schedule —
"another jurisdiction" means any country outside the Island;
"matrimonial proceedings" means any proceedings so far as they are one or more of the 5 following kinds, namely, proceedings for —
divorce,
separation,
annulment of marriage,
a declaration as to the validity of a marriage of the applicant, and
a declaration as to the subsistence of such a marriage;
"prescribed" means prescribed by rules of court;
"related jurisdiction" means any of the following countries —
England and Wales,
Scotland,
Northern Ireland,
Jersey,
Guernsey (including Alderney and Sark).
(2) References in this Schedule to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.
(3) For the purposes of this Schedule, proceedings in the High Court are continuing if they are pending and not stayed.
(4) Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.

Duty to furnish particulars of concurrent proceedings in another jurisdiction

2. While matrimonial proceedings are pending in the court in respect of a marriage and the trial or first trial in those proceedings has not begun, it is the duty of any person who is an applicant in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which —
 - (a) he knows to be continuing in another jurisdiction; and
 - (b) are in respect of that marriage or capable of affecting its validity or subsistence.

Obligatory stays

3. (1) Where before the beginning of the trial or first trial in any proceedings for a divorce order which are continuing in the court it appears to the court on the application of a party to the marriage —
 - (a) that in respect of the same marriage proceedings for divorce or annulment of marriage are continuing in a related jurisdiction; and
 - (b) that the parties to the marriage have resided together after its celebration; and

Matrimonial Proceedings Act 2003

- (c) that the place where they resided together when the proceedings in the court were begun or, if they did not then reside together, where they last resided together before those proceedings were begun, is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the court were begun,

the court shall, subject to paragraph 5(2), order that the proceedings in the court be stayed.

(2) References in sub-paragraph (1) to the proceedings in the court are, in the case of proceedings which are not only proceedings for a divorce order, to the proceedings so far as they are proceedings for a divorce order.

Discretionary stays

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

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

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

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

(3) In the case of any proceedings so far as they are proceedings for a divorce order, the court shall not exercise the power conferred on it by sub-paragraph (1) while an application under paragraph 3 in respect of the proceedings is pending.

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

Supplementary

5. (1) Where an order staying any proceedings is in force in pursuance of paragraph 3 or 4, the court may, if it thinks fit, on the application of a party to the proceedings, revoke the order if it appears to the court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(2) If the court revokes an order staying any proceedings and made in pursuance of paragraph 3, the court shall not again stay those proceedings in pursuance of that paragraph.

6. (1) This paragraph applies (subject to paragraph 8) where proceedings for divorce order, annulment order or separation order are stayed by reference to proceedings in a related jurisdiction for divorce, annulment or judicial separation.

(2) In this paragraph —

"lump sum order" means an order for payment of a lump sum made under section 28(1) or (3)(a) in favour of a child of the family of the parties;

Matrimonial Proceedings Act 2003

"the other proceedings", in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed;

"relevant order" means —

- (a) an order under section 27 (maintenance pending suit);
- (b) a periodical payments order or secured periodical payments order made under section 28(1) or (3)(a) in favour of a child of the family of the parties;
- (c) an order under section 11 of the Children and Young Persons Act 2001 (residence, contact etc.), including (except for the purposes of sub-paragraphs (5) to (7)) an order restraining a person from removing a child out of the Island or out of the care of another person;

"stayed" means stayed in pursuance of this Schedule.

(3) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph —

- (a) the court shall not have power to make a relevant order or a lump sum order in connection with the stayed proceedings except in pursuance of sub-paragraph (4); and
- (b) subject to sub-paragraph (4), any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously revoked, cease to have effect on the expiration of the period of 3 months beginning with the date on which the stay was imposed.

(4) If the court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after the period mentioned in sub-paragraph (3)(b) to make a relevant order or a lump sum order in connection with the stayed proceedings or to extend or further extend the duration of a relevant order made in connection with the stayed proceedings, the court may do so and the order shall not cease to have effect by virtue of sub-paragraph (3)(b).

(5) Sub-paragraph (6) applies where —

- (a) any proceedings are stayed, and
- (b) at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which —
 - (i) was made in connection with the other proceedings, and
 - (ii) provides for periodical payments for a party to the marriage in question, periodical payments for a child or any matter in relation to which an order under section 11 of the Children and Young Persons Act 2001 may be made with respect to a child.

(6) Where this sub-paragraph applies, on the imposition of the stay in a case where the order is in force when the stay is imposed, and on the coming into force of the order in any other case —

- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a spouse or child any provision for any of those matters as respects which the same or different provision for that spouse or child is made by the other order;
- (b) the court shall not have power in connection with the stayed proceedings to make a relevant order containing for a spouse or child provision for any of those matters as respects which any provision for that spouse or child is made by the other order; and
- (c) if the other order contains provision for periodical payments for a child, the court shall not have power in connection with the stayed proceedings to make a lump sum order for that child.

(7) Where a secured periodical payments order (within the meaning of Part 2) made under section 28(1) or (3)(a) in favour of a child of the family of the parties ceases to have effect by virtue of sub-paragraph (3) or (6), any sale of property order made under

Matrimonial Proceedings Act 2003

section 30 which requires the proceeds of sale of property to be used for securing periodical payments under the first-mentioned order shall also cease to have effect.

7. (1) If any proceedings are stayed so far as they consist of matrimonial proceedings of a particular kind but are not stayed so far as they consist of matrimonial proceedings of a different kind, paragraph 6(3) to (6) shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the court shall not have power to make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed.

(2) In this paragraph references to matrimonial proceedings do not include proceedings for a declaration.

8. Nothing in paragraph 6 or 7 affects any power of the court —

- (a) to vary or revoke a relevant order so far as the order is for the time being in force; or
- (b) to enforce a relevant order as respects any period when it is or was in force; or
- (c) to make a relevant order or a lump sum order in connection with proceedings which were but are no longer stayed.

Matrimonial Proceedings Act 2003

Section 94.

SCHEDULE 2

REGISTRATION OF MATRIMONIAL HOME RIGHTS

Interpretation

1. In this Schedule —
- "registered", in relation to a charge under section 93(1) or (2), means registered —
- (a) in the case of registered land, as a burden on the title register in accordance with section 36(1) of the Land Registration Act 1982;
 - (b) in any other case, under paragraph 2;
- and "registrable" means capable of being so registered;
- "registered land" means land the title to which is registered under the Land Registration Act 1982.

Registration of charge: unregistered land

2. (1) A charge under section 93(1) or (2) may be evidenced by a declaration in writing made by the spouse entitled to it stating —
- (a) the nature of the charge,
 - (b) the estate or interest on which the charge exists, and
 - (c) such other matters as may be prescribed by regulations under section 48 of the Registration of Deeds Act 1961.
- (2) A declaration under sub-paragraph (1) may be registered as a deed in accordance with the Registration of Deeds Act 1961.
- (3) This paragraph does not apply to registered land.

Restriction on registration where spouse entitled to more than one charge

3. (1) Where one spouse is entitled by virtue of section 93 to a registrable charge in respect of each of 2 or more dwelling-houses, only one of the charges to which that spouse is so entitled shall be registered at any one time.
- (2) If any of those charges is registered under either of those provisions the Chief Registrar, on being satisfied that any other of them is so registered, shall cancel the registration of the charge first registered.

Contract for sale of house affected by registered charge

4. (1) Where one spouse is entitled by virtue of section 93 to a charge on an estate in a dwelling-house and the charge is registered, it shall be a term of any contract for the sale of that estate whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract that the vendor will before such completion procure the cancellation of the registration of the charge at his expense.
- (2) Sub-paragraph (1) does not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge.
- (3) If, on the completion of such a contract as is referred to in sub-paragraph (1), there is delivered to the purchaser or his advocate an application by the spouse entitled to the charge for the cancellation of the registration of that charge, the term of the contract for which sub-paragraph (1) provides shall be deemed to have been performed.
- (4) This paragraph applies only if and so far as a contrary intention is not expressed in the contract.
- (5) This paragraph applies to a contract for exchange as it applies to a contract for sale.
- (6) This paragraph applies, with the necessary modifications, to a contract for the grant of a lease or underlease of a dwelling-house as it applies to a contract for the sale of an estate in customary fee simple in a dwelling-house.

Matrimonial Proceedings Act 2003

Cancellation of registration after termination of marriage, etc.

5. (1) Where a spouse's matrimonial home rights are a charge on an estate in the dwelling-house and the charge is registered, the Chief Registrar shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied —
- (a) by the production of a certificate or other sufficient evidence, that either spouse is dead, or
 - (b) by the production of an official copy of an order or decree of a court, that the marriage in question has been terminated otherwise than by death, or
 - (c) by the production of an order of the court, that the spouse's matrimonial home rights constituting the charge have been terminated by the order.
- (2) Where —
- (a) the marriage in question has been terminated by the death of the spouse entitled to an estate in the dwelling-house or otherwise than by death, and
 - (b) an order affecting the charge of the spouse not so entitled had been made under section 95(4),

the Chief Registrar shall not cancel the registration of the charge in accordance with sub-paragraph (1) unless he is also satisfied that the order has ceased to have effect.

Cancellation of registration: unregistered land

6. (1) On the cancellation of the registration of a charge by the Registrar pursuant to paragraph 3 or 5 the Chief Registrar shall —
- (a) certify the fact of such cancellation on the deed or the enrolment of it, or on the memorial or official copy of an order relating to the charge, with the date of such certificate, and
 - (b) certify that such deed, enrolment, memorial or official copy, as the case may be, is cancelled in the place where it is entered in the Grantor's Index referred to in section 27(1) of the Registration of Deeds Act 1961.
- (2) This paragraph does not apply to registered land.

Release of matrimonial home rights

7. (1) A spouse entitled to matrimonial home rights may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.
- (2) Where a contract is made for the sale of an estate or interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge which is registered, then, without prejudice to sub-paragraph (1), the matrimonial home rights constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs —
- (a) the delivery to the purchaser or lessee, as the case may be, or his advocate on completion of the contract of an application by the spouse entitled to the charge for the cancellation of the registration of the charge; or
 - (b) the lodging of such an application at the General Registry.

Postponement of priority of charge

8. A spouse entitled by virtue of section 93 to a charge on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest shall rank in priority to the charge to which that spouse is so entitled.

Matrimonial Proceedings Act 2003

Section 109(10).

SCHEDULE 3

POWERS OF HIGH COURT TO REMAND

Interpretation

1. In this Schedule "the court" means the High Court and includes a judge of that court.

Remand in custody or on bail

2. (1) Where the court has power to remand a person under section 109, the court may —

(a) remand him in custody, that is, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require; or

(b) remand him on bail, that is, take from him a recognizance in accordance with the Bail Act 1952.

(2) Instead of taking recognizances under sub-paragraph (1)(b), the court may fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 7 of the Bail Act 1952, and may in the meantime commit him to custody under sub-paragraph (1)(a).

(3) Where a person is brought before the court after remand, the court may further remand him.

(4) Subject to paragraph 3, the court shall not remand a person for a period exceeding 8 clear days except that —

(a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and

(b) if the court adjourns a case under section 110(1), the court may remand him for the period of the adjournment.

Further remand

3. (1) If the court is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may in his absence remand him for a further time; and paragraph 2(4) shall not apply.

(2) Where a person remanded on bail is bound by the recognizance to appear before the court at any time, the court may in his absence enlarge the recognizance and those of his sureties, if any, to a later time; and the enlargement of the recognizance shall be deemed to be a further remand.

Matrimonial Proceedings Act 2003

Section 139(1).

SCHEDULE 4

TRANSITIONAL PROVISIONS

Divorce on grounds of desertion

1. For the purposes of section 2(2)(c) the Court may treat as a period during which the respondent has deserted the petitioner any of the following periods ..

(a) any period during which there is in force an order made by the Court under

—

(i) section 1 of the Matrimonial Homes Act 1971; or

(ii) section 3 of the Domestic Violence and Matrimonial Proceedings Act 1978,

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;

(b) any period during which there is in force an order made by a court of summary jurisdiction under section 15(3) of the Domestic Proceedings Act 1983 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

Grounds for annulment

2. (1) Sections 11, 13 and 16 do not apply to a marriage celebrated before the 1st April 1976.

(2) Subject to sub-paragraphs (3) and (4), a marriage celebrated before the 1st April 1976 shall (without prejudice to any other grounds on which a marriage celebrated before that date is by law void or voidable) be voidable on the ground —

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or

(b) that, at the time of the marriage, either party to the marriage —

(i) was of unsound mind; or

(ii) was suffering from mental disorder within the meaning of the Mental Health Act 1974 of such a kind or to such an extent as to be unfitted for marriage and the procreation of children; or

(iii) was subject to recurrent attacks of insanity or epilepsy; or

(c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

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

(3) In relation to a marriage celebrated before the 1st January 1976, for heads (i) and (ii) of sub-paragraph (2)(b) there shall be substituted the following heads —

"(i) was a defective within the meaning of the Mental Diseases Acts 1924 to 1960; or

(ii) was subject to recurrent fits of insanity or epilepsy; or".

(4) The court shall not make an annulment order in a case falling within sub-paragraph (2)(b), (c) or (d) unless it is satisfied that —

(a) the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for an annulment.

Matrimonial Proceedings Act 2003

(5) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which an annulment order has not been made.

(6) Where a decree of nullity was granted on or before the 1st April 1976 in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if, at the date of the decree, it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

Polygamous marriages

3. (1) Subject to sub-paragraphs (2) and (3), section 12(2) applies, and shall be deemed always to have applied, to any marriage entered into before the commencement of section 12.

(2) Section 12(2) does not apply to a marriage a party to which has (before the commencement of section 12) entered into a later marriage which either —

(a) is valid apart from this paragraph but would be void if section 12(2) applied to the earlier marriage; or

(b) is valid by virtue of this paragraph.

(3) Section 12(2) does not apply to a marriage has been annulled before the commencement of section 12, whether by a decree granted in the Island or by an annulment obtained elsewhere and recognised in the Island at such commencement.

(4) An annulment of a marriage resulting from legal proceedings begun before the commencement of section 12 shall be treated for the purposes of sub-paragraph (3) as having taken effect before that time.

(5) For the purposes of sub-paragraphs (3) and (4) a marriage which has been declared to be invalid by a court of competent jurisdiction in any proceedings concerning either the validity of the marriage or any right dependent on its validity shall be treated as having been annulled.

(6) Nothing in section 12(2), in its application to marriages entered into before the commencement of section 12 —

(a) gives or affects any entitlement to an interest —

(i) under the will or codicil of, or on the intestacy of, a person who died before such commencement; or

(ii) under a settlement or other disposition of property made before that time (otherwise than by will or codicil);

(b) gives or affects any entitlement to a benefit, allowance, pension or other payment —

(i) payable before, or in respect of a period before, such commencement; or

(ii) payable in respect of the death of a person before that time;

(c) affects tax in respect of a period or event before such commencement; or

(d) affects the succession to any dignity or title of honour.

References to decrees etc.

4. In relation to proceedings pending at, or commenced after, the commencement of Part 2, any reference (however expressed) in any statutory provision, instrument or document (whenever passed or made) to a matter specified in column 1 of the following table shall be construed as a reference to the corresponding matter specified in column 2 of that table .,

<i>Reference to</i>	<i>to be construed as reference to</i>
decree of divorce	divorce order
decree of nullity of marriage	annulment order
decree of judicial separation	separation order
petition for a decree of divorce, nullity of	application for a divorce order,

Matrimonial Proceedings Act 2003

marriage or judicial separation	annulment order or separation order, as the case may be
petitioner for such a decree	applicant for such an order
decree nisi	provisional order
decree absolute	final order

Pending applications for orders relating to occupation and molestation

5. (1) In this paragraph and paragraph 6 "the existing enactments" means —
- (a) section 1 of the Matrimonial Homes Act 1971;
 - (b) the Domestic Violence and Matrimonial Proceedings Act 1978¹⁹;
 - (c) sections 15 to 17 of the Domestic Proceedings Act 1983²⁰; and
 - (d) section 28 of the Family Law Act 1991.
- (2) Nothing in Part 3 or Schedule 6 affects any application for an order or injunction under any of the existing enactments which is pending immediately before the commencement of the repeal of that enactment.

Existing orders relating to occupation and molestation

6. (1) In this paragraph "an existing order" means any order or injunction under any of the existing enactments which —
- (a) is in force immediately before the commencement of the repeal of that enactment; or
 - (b) was made or granted after that commencement in proceedings brought before that commencement.
- (2) Subject to sub-paragraphs (3) and (4), nothing in Part 3 or Schedule 6 —
- (a) prevents an existing order from remaining in force; or
 - (b) affects the enforcement of an existing order.
- (3) Nothing in Part 5 or Schedule 6 affects any application to extend, vary or revoke an existing order, but the court may, if it thinks it just and reasonable to do so, treat the application as an application for an order under Part 5.
- (4) The making of an order under Part 5 between parties with respect to whom an existing order is in force revokes the existing order.

Matrimonial home rights

7. (1) Any reference (however expressed) in any statutory provision, instrument or document (whether passed or made before or after the passing of this Act) to rights of occupation under, or within the meaning of, the Matrimonial Homes Act 1971 shall be construed, so far as is required for continuing the effect of the instrument or document, as being or as the case requires including a reference to matrimonial home rights under, or within the meaning of, Part 3.
- (2) Any reference (however expressed) in this Act or in any other statutory provision, instrument or document (including any enactment amended by this Act) to matrimonial home rights under, or within the meaning of, Part 3 shall be construed as including, in relation to times, circumstances and purposes before the commencement of sections 92 to 94, a reference to rights of occupation under, or within the meaning of, the Matrimonial Homes Act 1971.
- (3) In sections 92 to 94 and Schedule 2 any reference to an order made under section 95 shall be construed as including a reference to an order made under section 1 of the Matrimonial Homes Act 1971.

¹⁹ 1978 c.8

²⁰ 1983 c.13

Matrimonial Proceedings Act 2003

MWPA policies

8. Section 127(7) does not apply in relation to a policy effected before the 1st January 1986 (the commencement of the Legitimacy Act 1985).

Rules of court

9. Rules under section 49 of the Judicature (Matrimonial Causes) Act 1976 which are in force immediately before the repeal of that section comes into operation shall have effect as if they were made under —

- (a) section 25 of the High Court Act 1991, in relation to proceedings in the High Court; or
- (b) section 91 of the Summary Jurisdiction Act 1989, in relation to proceedings in courts of summary jurisdiction.

Fees

10. Any fees prescribed under section 50 of the Judicature (Matrimonial Causes) Act 1976 which are in force immediately before the repeal of that section comes into operation shall have effect as if they were prescribed under the Fees and Duties Act 1989.

Abolition of remedies etc.

11. Without prejudice to section 15 of the Interpretation Act 1976, the repeal by this Act of any enactment does not operate to revive any right, remedy, cause of action, restriction or liability abolished by that enactment.

Matrimonial Proceedings Act 2003

Section 139(2).

SCHEDULE 5

AMENDMENT OF ENACTMENTS

The Church (Ecclesiastical Jurisdiction) Act 1978 (c.3)

1. For paragraph 1 of the Schedule substitute —

"1. In section 1, in the substituted section 55 of the Ecclesiastical Jurisdiction Measure 1963 —

(a) in subsection (1)(b), for "section 1(2) of the Matrimonial Causes Act 1973", substitute "section 2(2) of the Matrimonial Proceedings Act 2003";

(b) for subsection (1)(d) substitute —

"(d) has an order made against him in proceedings under any enactment requiring him to make payments in respect of the maintenance of a child of his who is not a marital child;"

(c) for subsection (1)(e) substitute —

"(e) has a maintenance order made against him under section 60 of the Matrimonial Proceedings Act 2003;"

(d) in subsection (1)(f), for "section 27 of the Matrimonial Causes Act 1973", where they appear in subsection (1)(f) of the new section 55, there shall be substituted the words "section 38 of the Matrimonial Proceedings Act 2003";

(e) in subsection (7), omit the definition of "affiliation order", and for the definition of "suspended sentence" substitute ,,

""suspended sentence" means a sentence to which an order under paragraph 1 of Schedule 1 to the Custody Act 1995 (an Act of Tynwald) relates."."

The Administration of Justice Act 1981 (c.9)

2. In Schedule 4 (as substituted by the Children and Young Persons Act 2001), at the end of paragraph 1 insert —

"(p) Schedule 1 or 2 to the Children and Young Persons Act 2001;

(q) Part 2, 3 or 4 of the Matrimonial Proceedings Act 2003."

The Acquisition of Land Act 1984 (c.9)

3. In section 23A(6), for "Matrimonial Homes Act 1971" substitute "Part 5 of the Matrimonial Proceedings Act 2003".

The Civil Registration Act 1984 (c.12)

4. In section 17(2)(c), for "section 45 of the Judicature (Matrimonial Causes) Act 1976" substitute "section 19 of the Matrimonial Proceedings Act 2003".

The Adoption Act 1984 (c.14)

5. In section 49A, for subsection (4) substitute —

"(4) The following provisions of the Matrimonial Proceedings Act 2003

—

(a) section 20 (general provisions as to declarations),

(b) section 22(2) to (5) (intervention by Attorney General), and

(c) section 136 (polygamous marriages) where the proceedings involve a determination as to the validity of a marriage,

apply to proceedings under this section with the substitution, for references to section 19 or Part 1 of that Act, of references to this section."

Matrimonial Proceedings Act 2003

The Legitimacy Act 1985 (c.10)

6. In section 10A, for subsection (4) substitute —
- “(4) The following provisions of the Matrimonial Proceedings Act 2003 —
- (a) section 20 (general provisions as to declarations),
 - (b) section 22(2) to (5) (intervention by Attorney General), and
 - (c) section 136 (polygamous marriages) where the proceedings involve a determination as to the validity of a marriage,
- apply to proceedings under this section with the substitution, for references to section 19 or Part 1 of that Act, of references to this section.”

The Summary Jurisdiction Act 1989 (c.15)

7. (1) In section 48(1), for paragraph (h) substitute —
- “(h) Part 3 of the Matrimonial Proceedings Act 2003;”
- (2) In section 54(2), for “Part I of the Domestic Proceedings Act 1983” substitute “Part 3 of the Matrimonial Proceedings Act 2003”.
- (3) In section 82(3A)(c)(i), for “section 17(4) of the Domestic Proceedings Act 1983” substitute “section 109(8) of the Matrimonial Proceedings Act 2003”.
- (4) In section 102 —
- (a) in subsection (5), for “This section does” substitute “Subsections (1) to (4) do”;
 - (b) and at the end insert —
- “(4A) If under subsection (3) a court of summary jurisdiction has power to commit a person to custody for breach of —
- (a) an occupation order or non-molestation order under Part 5 of the Matrimonial Proceedings Act 2003;
 - (b) an exclusion requirement included by virtue of section 36 of the Children and Young Persons Act 2001 in an interim care order made under section 35 of that Act; or
 - (c) an exclusion requirement included by virtue of section 43 of that Act in an emergency protection order under section 42 of that Act;
- the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.
- (4B) A court of summary jurisdiction has the same power to make —
- (a) a hospital order or guardianship order under paragraph 2 of Schedule 2A, or
 - (b) an interim hospital order under paragraph 3 of that Schedule,
- in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of an order or requirement mentioned in subsection (4)(a), (b) or (c) as it has under those paragraphs in the case of a person convicted of an offence punishable on summary conviction with custody.”
- (6) In section 104(6), in the definition of “agreement order”, for “section 6 of the Domestic Proceedings Act 1983” substitute “section 64 of the Matrimonial Proceedings Act 2003”.

The Family Law Act 1991 (c.3)

8. (1) In section 9(4), for paragraph (b) substitute —
- “(b) any proceedings under any of the following enactments —
- (i) Part I or this Part (including subsection (2));

Matrimonial Proceedings Act 2003

- (ii) the Adoption Act 1984;
- (iii) Part 1, 2, 3, 4 or 5 of the Matrimonial Proceedings Act 2003;".

(2) In section 24(5), for "section 2(3) of the Domestic Proceedings Act 1983" substitute "section 60(3) of the Matrimonial Proceedings Act 2003".

The Maintenance Orders (Reciprocal Enforcement) Act 1995 (c.15)

9. (1) In section 3(1), for "the Domestic Proceedings Act 1983 or the Family Law Act 1991" substitute "Part 3 of the Matrimonial Proceedings Act 2003 or Part 2 of the Children and Young Persons Act 2001".

(2) In section 17(1)(a), for "section 2(1)(a) of the Domestic Proceedings Act 1983" substitute "section 60(1)(a) of the Matrimonial Proceedings Act 2003".

(3) In section 21(2), for paragraphs (a) and (b) substitute —

"(a) in the case of an application for maintenance for a minor or minors alone, Part 2 of the Children and Young Persons Act 2001;

(b) in any other case, Part 2 of the Matrimonial Proceedings Act 2003."

(4) In section 22(1) —

(a) for "the Domestic Proceedings Act 1983" substitute "Part 2 of the Matrimonial Proceedings Act 2003";

(b) for "section 2 or 18(1)(i)" substitute "section 60 or 68(1)".

(5) In section 23(1), for "the Domestic Proceedings Act 1983" substitute "Part 2 of the Matrimonial Proceedings Act 2003".

(6) In Schedule 1, in section 3(1), for "the Domestic Proceedings Act 1983 or the Family Law Act 1991" substitute "Part 3 of the Matrimonial Proceedings Act 2003 or Part 2 of the Children and Young Persons Act 2001".

The Children and Young Persons Act 2001 (c.20)

10. (1) In section 19(5), for "section 2(3) of the Domestic Proceedings Act 1983" substitute "section 60(3) of the Matrimonial Proceedings Act 2003".

(2) In section 102(1), in the definition of "family proceedings", for paragraph (b) substitute —

"(b) any proceedings under any of the following enactments —

(i) Part 1, Part 2, Part 4 or Part 5;

(ii) the Adoption Act 1984;

(iii) Part 1, 2, 3, 4 or 5 of the Matrimonial Proceedings Act 2003;".

(3) In Schedule 5, after paragraph 6 insert —

"Hospital admission or guardianship

6A. (1) The High Court has the same power to make —

(a) a hospital order or guardianship order under section 54(1) of the Criminal Jurisdiction Act 1993, or

(b) an interim hospital order under section 54(4) of that Act,

in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of an exclusion requirement as a Court of General Gaol Delivery has under those provisions in the case of a person convicted of an offence punishable with custody.

(2) A court of summary jurisdiction has the same power to make —

(a) a hospital order or guardianship order under paragraph 2 of Schedule 2A to the Summary Jurisdiction Act 1989, or

Matrimonial Proceedings Act 2003

(b) an interim hospital order under paragraph 3 of that Schedule,
in the case of a person suffering from mental illness or severe mental impairment
who could otherwise be committed to custody for breach of an exclusion requirement
as it has under those paragraphs in the case of a person convicted of an offence
punishable on summary conviction with custody."

Matrimonial Proceedings Act 2003

Section 139(3).

SCHEDULE 6

ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal</i>
VIII p.241	The Conveyancing Act 1908.	Section 21.
XI p.135	The Married Women's Property, Dower and Widowright Act 1921.	The whole Act.
XI p.331	The Conveyancing Act 1922.	Section 12.
XIV p.422	The Law Reform (Married Women and Tortfeasors) Act 1936.	The whole Act.
XVII p.965	The Married Women (Restraint upon Anticipation) Act 1950.	The whole Act.
XIX p.964	The Law Reform (Husband and Wife) Act 1963.	The whole Act.
XIX p.1395	The Married Women's Property Act 1965.	The whole Act.
XIX p.1396	The Judicature (Matrimonial Causes) Act 1965.	Section 42.
1971 c.23	The Matrimonial Homes Act 1971.	The whole Act.
1972 c.5	The Judicature (Matrimonial Proceedings and Property) Act 1972.	The whole Act.
1974 c.15	The Domicile and Matrimonial Proceedings Act 1974.	Sections 5 and 6. Schedule 1.
1976 c.14	The Judicature (Matrimonial Causes) Act 1976.	The whole Act.
1978 c.8	The Domestic Violence and Matrimonial Proceedings Act 1978.	The whole Act.
1982 c.7	The Land Registration Act 1982.	In Schedule 12, paragraphs 2 to 6.
1983 c.13	The Domestic Proceedings Act 1983.	The whole Act.
1984 c.13	The Marriage Act 1984.	Section 56(2). Schedule 4.
1985 c.7	The Collection of Fines etc. Act 1985.	Section 5. Part I of Schedule 1.
1985 c.10	The Legitimacy Act 1985.	In Schedule 3, paragraphs 1 and 4.
1985 c.11	The Wills Act 1985.	Schedule 3.
1985 c.25	The Treasury Act 1985.	In Schedule 2, paragraphs 299 and 300.
1986 c.14	The Health and Social Security Act 1986.	In Schedule 2, paragraphs 50, 75 and 76.
1986 c.22	The Matrimonial Proceedings Act 1986.	Sections 1 and 2. Sections 11 to 13. Sections 30 to 34. Section 36. Schedule 1. Schedule 2.
1987 c.11	The Child Custody Act 1987.	In Schedule 5, paragraph 5.

Matrimonial Proceedings Act 2003

1989 c.15	The Summary Jurisdiction Act 1989.	Section 80(9). In Schedule 5, paragraph 19.
1991 c.3	The Family Law Act 1991.	Section 17. Sections 27 and 28. In Schedule 5, paragraphs 7, 12 and 14.
1997 c.1	The Law Reform Act 1997.	In Schedule 5, paragraph 8.
1998 c.3	The Mental Health Act 1998.	In Schedule 5, paragraph 6.
2001 c.5	The Matrimonial Proceedings Act 2001.	The whole Act.