

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M60

MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—
Act 7/2011, in force 2 August 2012

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MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

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MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

PRELIMINARY

Interpretation

1. In this Act—

"child", in relation to one or both of the parties to a marriage, includes a child born out of wedlock or an adopted child of that party or, as the case may be, of both parties;

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

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

(b) any other child who has been treated by both of those parties as a child of their family;

"Court" means the High Court;

"custody", in relation to a child, includes access to the child;

"education" includes training;

"mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind;

"remarriage" includes a marriage which is by law void or voidable.

PART 1

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

Breakdown of marriage to be sole ground for divorce

2. The sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that the marriage has broken down irretrievably.

Proof of breakdown

3. (1) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts—

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of at least 2 years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;

(e) that the parties to the marriage have lived apart for a continuous period of at least 5 years immediately preceding the presentation of the petition.

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

(3) If the Court is satisfied on the evidence of any such fact as is mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 4(4) and 8, grant a decree nisi of divorce.

(4) For the purpose of paragraph (1)(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) For the purposes of this Act, a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made by rules of court for the purpose of ensuring that, where in pursuance of paragraph (1)(d), the petitioner alleges that the respondent consents to a decree being granted, the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

Restriction on petitions for divorce

4. (1) Subject to subsection (2), no petition for divorce shall be presented to the Court before the expiration of the period of 3 years from the date of the marriage (in this section referred to as the "specified period").

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

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

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

(a) dismiss the petition without prejudice to any petition which may be brought after the expiration of the period of 3 years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or

(b) if it grants a decree, direct that no application to make the decree absolute shall be made during that period.

(5) If in any proceedings for divorce the respondent alleges against the petitioner and proves any such fact as is mentioned in section 3(1), the Court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

Divorce not precluded by previous judicial separation

5. (1) A person shall not be prevented from presenting a petition for divorce by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation.

(2) On a petition for divorce in such a case as is mentioned in subsection (1), the Court may treat the decree of judicial separation as sufficient proof of the adultery, desertion or other ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) For the purpose of a petition for divorce in such a case, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed to have immediately preceded the presentation of the petition.

Alleged adulterer as a party

6. (1) On a petition for divorce presented by the husband in which adultery is alleged, or in the answer of a husband praying for divorce and alleging adultery, the husband shall make the alleged adulterer a co-respondent unless excused by the Court on special grounds from doing so.

(2) On a petition for divorce presented by the wife in which adultery is alleged, the Court may, if it thinks fit, direct that the alleged adulteress be made a respondent.

(3) Where an alleged adulterer is made a co-respondent on such a petition as is mentioned in subsection (1) or an alleged adulteress is made a respondent on such a petition as is mentioned in subsection (2), the Court may, after the close of the evidence on the part of the petitioner, direct that the co-respondent or, as the case may be, the respondent (referred to in subsection (2)) be dismissed from the suit, if the Court is of opinion that there is not sufficient evidence against him or her.

Provisions designed to effect reconciliation

7. (1) Provision shall be made by rules of court for requiring the legal representive acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

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

reconciliation and the power conferred by this provision is additional to any other power of the Court to adjourn proceedings.

(3) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery then—

(a) if the length of that period or of those periods together was 6 months or less, their living with each other during that period or those periods shall be disregarded in determining for the purpose of section 3(1)(a) whether the petitioner finds it intolerable to live with the respondent;

but—

(b) if the length of that period or of those periods together exceeded 6 months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 3(1)(a).

(4) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the Court to support his allegation, that fact shall be disregarded in determining for the purposes of section 3(1)(b) whether the petitioner cannot reasonably be expected to live with the respondent, if the length of that period or of those periods together was 6 months or less.

(5) In considering for the purposes of section 3(1) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any 1 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) 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.

Decree to be refused in certain circumstances

8. (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 3(1)(e) may oppose the grant of a decree nisi on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree nisi is opposed by virtue of this section, then—

(a) if the Court is satisfied that the only fact mentioned in section 3(1) on which the petitioner is entitled to rely in support of his petition is that mentioned in the section 3(1)(e); and

(b) if apart from this section it would grant a *decree nisi*,

the Court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned and, if the Court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage, it shall dismiss the petition.

(3) For the purposes of this section, "hardship" shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

Power to rescind decree nisi in certain cases

9. Where the Court on granting a decree of divorce held that the only fact mentioned in section 3(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in section 3(1)(d), it may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree, if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to consent to the grant of a decree.

Financial protection for respondent in certain cases

10. (1) The following provisions have effect where—

(a) the respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 3(1)(d) or (e) has applied to the Court under this section for it to consider for the purposes of subsection (2) the financial position of the respondent after the divorce; and

(b) a decree nisi of divorce has been granted on the petition and the Court has held that the only fact mentioned in section 3(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in section 3(1)(d) or (e).

(2) The Court hearing an application by the respondent under this section shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and notwithstanding anything in the foregoing provisions of this Act, but subject to subsection (3), the Court shall not make absolute the decree of divorce, unless it is satisfied—

(a) that the petitioner should not be required to make any financial provision for the respondent; or

(b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(3) The Court may, if it thinks fit, proceed without observing the requirements of subsection (2) if—

(a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay; and

(b) the Court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the Court may approve.

Rules may enable certain agreements or arrangements to be referred to the Court

11. Provisions may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the Court any agreement or arrangement made or proposed to be made between them which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or have begun, as the case may be, and for enabling the Court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

Nullity, Judicial Separation and Presumption of Death

Grounds on which a marriage is void or voidable

12. (1) A marriage which takes place after 1st July, 1990 shall be void on the following grounds only—

(a) that it is not a valid marriage under the Marriage Act, (that is to say) where—

(i) the parties are within the prohibited degrees of relationship,

(ii) either party is under the age at which he is capable of contracting the marriage, or

(iii) the parties have intermarried in disregard of certain requirements as to the formation of the marriage;

(b) that at the time of the marriage either party was already lawfully married; or

(c) that the parties are not respectively male and female.

(2) A marriage which takes place after 1st July, 1990 shall be 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 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 petitioner.

(3) 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 Anguilla, nothing in subsection (1) or (2) or in section 13(1) shall—

(a) preclude the determination of that matter as aforesaid; or

(b) require the application to the marriage of the grounds or bar there mentioned, except so far as applicable in accordance with those rules.

(4) In the case of a marriage which purports to have been celebrated under any written law relating to foreign marriages or has taken place outside Anguilla and purports to be a marriage under common law, subsection (1) is without prejudice to any ground on which the marriage may be void under that written law or, by virtue of the rules governing the celebration of marriages outside Anguilla under common law, as the case may be.

Ancillary provisions concerning voidable marriage

13. (1) The Court shall not, on proceedings after 1st July, 1990, grant a decree of nullity on the ground that a marriage is voidable (whether the marriage took place before or after that date) if the respondent satisfies the Court—

(a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and

(b) that it would be unjust to the respondent to grant the decree.

(2) Without prejudice to subsection (1), the Court shall not grant a decree of nullity by virtue of section 12(2) on the grounds mentioned in paragraphs (c), (d), (e), or (f) of that subsection unless it is satisfied that proceedings were instituted within 3 years from the date of the marriage.

(3) Without prejudice to subsection (1) and (2), the Court shall not grant a decree of nullity by virtue of section 12(2) on the grounds mentioned in paragraph (e) or (f) of that subsection unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

(4) Subsection (1) replaces in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

(5) A decree of nullity granted after 1st July, 1990 on the ground that a marriage is voidable shall operate to annul the marriage only as respects any time after the coming into operation of the decree, and the marriage shall, notwithstanding the decree, be treated as if it existed up to that time.

(6) Where a decree of nullity is granted in respect of a voidable marriage, the relationship between any child (other than a child born in the circumstances referred to in section 12(2)(f)) and the parties to the marriage shall be such as if, at the date of the decree, it had been dissolved instead of being annulled.

Judicial separation

14. (1) After the 1st July, 1990, the existence of any such fact as is mentioned in section 3(1) shall be a ground on which either party to a marriage may present a petition for judicial separation; and the

ground of failure to comply with a decree for restitution of conjugal rights and any ground on which a decree of divorce *a mensa et thoro* might have been pronounced immediately before the commencement of the Matrimonial Causes Act 1857, 20 & 21 Vict. 85 (UK), shall cease to be a ground on which such a petition may be presented.

(2) A petition for judicial separation may be presented to the Court by either party to a marriage on the ground that any such fact as is mentioned in section 3(1) exists, and sections 3(2), (4), (5) and (6), and sections 7 and 10, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

(3) The Court hearing a petition for judicial separation 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 3(1), it shall, subject to section 46, grant a decree of judicial separation.

(4) Where the Court grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(5) A decree of judicial separation that has been obtained in the absence of the respondent may at any time be reversed by the Court on the petition of the respondent, if the Court is satisfied that the decree ought not to have been made.

Presumption of death and dissolution of marriage

15. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party is dead may, subject to subsection (2), present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.

(2) A petition may be presented in pursuance of subsection (1)—

(a) in any case, if the petitioner is domiciled in Anguilla; and

(b) in the case of a petition presented by a wife, if she is resident in Anguilla and has been ordinarily resident there for a period of 3 years immediately preceding the commencement of the proceedings.

(3) 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 petitioner and the petitioner has no reason to believe that the party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

(4) In determining for the purposes of this section whether a woman is domiciled in Anguilla, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living; and in any proceedings brought in pursuance of paragraph (2)(b), the issues shall be determined in accordance with the law which would be applicable thereto if both parties to the marriage were domiciled in Anguilla at the time of the proceedings.

Decrees nisi and absolute and remarriage

16. (1) Every decree of divorce, of nullity of marriage or of presumption of death and dissolution of marriage (in this section and in section 17(1)(b) referred to as a decree nisi shall in the first

instance be a decree nisi and shall not be made absolute before the expiration from its grant of a period of 3 months or such other period as may be fixed by rules of court, unless the Court by special order fixes a shorter period in any particular case.

(2) Where a decree nisi has been granted but not made absolute, then, without prejudice to subsection (1), any person (excluding a party to the proceedings, other than the Attorney General) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the Court.

(3) In such a case as is mentioned in subsection (2) the Court may—

(a) notwithstanding anything in subsection (1), make the decree absolute;

(b) rescind the decree nisi;

(c) require further inquiry; or

(d) otherwise deal with the case as it thinks fit.

(4) Where a decree nisi has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of 3 months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the Court, and on that application the Court may exercise any of the powers mentioned in paragraphs (3)(a) to (d).

(5) Where a decree nisi, other than a decree of nullity of marriage, has been made absolute and either—

(a) there is no right of appeal against the decree absolute;

(b) the time for appealing against the decree absolute has expired without an appeal having been brought; or

(c) an appeal against the decree absolute has been dismissed;

either party to the former marriage may marry again.

Intervention of Attorney General and power of Court to allow intervention on terms

17. (1) In the case of any petition for divorce or for nullity of marriage or for presumption of death and dissolution of marriage—

(a) the Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney General, who may instruct counsel to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued, and all reasonable costs and expenses incurred by the Attorney General in the matter shall be a charge on the Consolidated Fund;

(b) any person may, at any time during the progress of the proceedings or before the decree nisi made absolute, give information to the Attorney General on any matter

material to the due decision of the case, and the Attorney General may thereupon take such steps as he may consider necessary or expedient;

(c) the Court may order the costs or any part thereof arising from such intervention to be paid by any of the parties, including a wife if she has separate property, or by the Attorney General; and

(d) all reasonable costs which the Attorney General may have incurred arising from any such intervention after deducting any costs which may have been paid to him shall be a charge on the Consolidated Fund.

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

Abolition of bars to divorce and judicial separation, of rights to claim restitution of conjugal rights and of damages for adultery

18. (1) Without prejudice to any provision of this Act which empowers or requires the Court to dismiss a petition for divorce, nullity of marriage or judicial separation, or for presumption of death and dissolution of marriage or to dismiss an application for a decree nisi of divorce, nullity of marriage or of presumption of death and dissolution of marriage to be made absolute, nothing in any rule of law shall be taken as empowering or requiring the Court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree nisi or on the ground of any misconduct on the part of the petitioner.

(2) No person shall after 1st July, 1990 be entitled to petition the Court for—

(a) restitution of conjugal rights; or

(b) damages from any other person on the ground of adultery with the wife of the first-mentioned person, or to include in a petition a claim for any such damages.

Additional jurisdiction in proceedings by a wife

19. (1) Without prejudice to any jurisdiction exercisable by the Court apart from this section, the Court shall have jurisdiction to entertain proceedings by a wife, notwithstanding that the husband is not domiciled in Anguilla—

(a) in the case of any proceedings under this Act (other than proceedings under section 15 or sections 37 to 42), if—

(i) the wife has been deserted by her husband, or

(ii) the husband has been deported from Anguilla under any law for the time being in force relating to deportation,

and the husband was immediately before the desertion or deportation domiciled in Anguilla; and

(b) in the case of proceedings for divorce or nullity of marriage, if the wife is resident in Anguilla and has been ordinarily resident there for a period of 3 years immediately preceding the commencement of the proceedings.

(2) In any proceedings in which the Court has jurisdiction by virtue of subsection (1), the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in Anguilla at the time of the proceedings.

Evidence and hearing *in camera*

20. (1) The evidence of a husband or wife shall be admissible in any proceedings under this Act to prove that marital intercourse did or did not take place between them during any period.

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings.

(3) In any proceedings for nullity of marriages, 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.

(4) Subject to subsection (3), the Court, on the application of any party to any proceedings under this Act or at its discretion, if it thinks it proper in the interests of public morals, may hear and try the whole or any part of such proceedings *in camera*.

(5) An application under subsection (4) shall be heard *in camera* unless the Court otherwise directs.

Restriction on publication of reports of judicial proceedings

21. (1) The Court may at all times in any proceedings under this Act, whether heard and tried in Chambers, *in camera* or in open court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof, and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of court.

(2) No person shall print or publish, or cause or procure to be printed or published, any particulars in relation to any proceedings under this Act, except the following particulars—

(a) the names, addresses, and occupations of the parties, witnesses and any persons intervening and the names of the Judge and of the legal representatives;

(b) the ground of the petition or application and a concise statement of the charges, defences and counter charges in support of which evidence has been given;

(c) submissions on any point of law arising in the course of the proceedings and the decision of the Court on the submissions;

(d) the summing up of the Judge, the decision of the Court and any observations made by the Court in giving it;

but the Court may, if it thinks fit, authorise the publication of any other particulars, subject to such conditions relating to any matter to be published as it thinks fit.

(3) Any person who acts in contravention of subsection (2) and any printer, publisher and editor of a document in which particulars are printed or published in contravention of subsection (2), is liable on summary conviction—

(a) in the case of an individual to a fine of $1,000 and to imprisonment for a term of 3 months; and

(b) in the case of a body corporate, to a fine of $5,000.

(4) No prosecution for an offence against subsection (3) shall be commenced except with the leave of the Attorney General.

(5) Nothing in this section shall apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court, or to the printing or publishing of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions, psychologists, advisers in the sphere of marriage counselling, or other social welfare workers.

(6) Nothing in this section shall be construed to limit the provisions of any other written law relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings.

PART 2

MAINTENANCE AND RELATED MATTERS

Maintenance pending suit in cases of divorce, etc.

22. On a petition for divorce, nullity of marriage or judicial separation, the Court may order either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the Court thinks reasonable.

Financial provision for party to a marriage

23. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute) the Court may, subject to the provisions of section 33(1), make any one or more of the following orders—

(a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;

(b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(c) an order that either party to the marriage shall pay to the other such lump sum as may be so specified.

(2) Without prejudice to the generality of paragraph (1)(c), an order under this section that a party to a marriage shall pay a lump sum to the other party—

(a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section; and

(b) may provide for the payment of that sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

Financial provision for child of the family

24. (1) Subject to the provisions of section 29, in proceedings for divorce, nullity of marriage or judicial separation, the Court may make any one or more of the orders mentioned in subsection (2)—

(a) before or on granting the decree of divorce, of nullity of marriage or of judicial separation, as the case may be, or at any time thereafter;

(b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(2) The orders referred to in subsection (1) are—

(a) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, such a child, such periodical payments and for such term as may be so specified;

(b) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the Court, such periodical payments and for such term as may be so specified; or

(c) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.

(3) Without prejudice to the generality of paragraph (2)(c), an order under this section for the payment of a lump sum to any person for the benefit of a child of the family, or to such a child, may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met.

(4) An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

(5) Where the Court has power to make an order in any proceedings by virtue of paragraph (1)(a), it may exercise that power from time to time and, where the Court makes an order by virtue of

paragraph (1)(b) in relation to a child, it may from time to time make a further order under this section in relation to him.

Orders for transfer and settlement of property and for variation of settlements

25. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may, subject to the provisions of sections 29 and 33(1), make any one or more of the following orders—

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

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

(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

and the Court may make an order under paragraph (c) notwithstanding that there are no children of the family.

(2) The fact that a settlement or transfer of property had to be made in order to comply with an order of the Court under this section shall not prevent that settlement or transfer from being a settlement of property to which section 44(1) of the Bankruptcy Act (avoidance of voluntary settlements) applies.

Matters to which Court is to have regard in deciding what orders to make under sections 23 or 25

26. (1) In deciding whether to exercise its powers under section 23 or 25 in relation to a party to the marriage and, if so, in what manner, the Court shall have regard to all the circumstances of the case including the following matters—

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home under section 52;

(g) any order made under section 52;

(h) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

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

(2) Without prejudice to subsection (3), it shall be the duty of the Court in deciding whether to exercise its powers under section 24 or 25 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters—

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

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

(3) In deciding whether to exercise its powers under section 24 or 25 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, the Court shall have regard (among the circumstances of the case)—

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

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own; and

(c) to the liability of any other person to maintain the child.

Neglect by party to marriage to maintain other party or child of the family

27. (1) Either party to a marriage may apply to the Court for an order under this section on the ground that the other party to the marriage (in this section referred to as the "respondent")—

(a) being the husband, has wilfully neglected—

(i) to provide reasonable maintenance for the applicant, or

(ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;

(b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—

(i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or

(ii) for any child of the family to whom this section applies.

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

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

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

(a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child; and

(b) what order, if any, to make under this section in favour or for the benefit of the child;

the Court shall have regard to the matters mentioned in section 26(3).

(5) Where on an application under this section it appears to the Court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the Court may order the respondent to make to the applicant until the determination of the application such periodical payments as the Court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the Court of any ground mentioned in subsection (1), then, subject to section 29, the Court may make such one or more of the following orders as it thinks just—

(a) an order that the respondent shall make to the applicant such periodical payments and for such term as may be specified in the order;

(b) an order that the respondent shall secure to the applicant, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;

(d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such term as may be so specified;

(e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified.

(7) Without prejudice to the generality of paragraphs (6)(c) and (f), an order under this section that the respondent shall pay a lump sum—

(a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met; and

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

Duration of certain orders made in favour of party to marriage and effect of remarriage

28. (1) The term to be specified in any order made by virtue of section 23(1)(a) or (b) or section 27(6)(a) or (b) shall be such term, being a term beginning not earlier than the date of the making of an application for the order in question and lasting not longer than the maximum term, as the Court thinks fit.

(2) In subsection (1), the "maximum term" means—

(a) in the case of an order made by virtue of section 23(1)(a) in proceedings for divorce or nullity of marriage, the joint lives of the parties to the marriage or a term ending with the date of the remarriage of the party in whose favour the order is made, whichever is the shorter;

(b) in the case of an order made by virtue of section 23(1)(b) in any such proceedings, the life of that party or a term ending with the date of the remarriage of that party, whichever is the shorter; and

(c) in the case of an order made by virtue of section 23(1)(a) in proceedings for judicial separation or made by virtue of section 27(6)(b), the life of the party in whose favour the order is made.

(3) Where an order is made by virtue of section 23(1)(a) or (b) in proceedings for judicial separation or by virtue of section 27(6)(a) or (b) and the marriage of the parties affected by the order 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 the party in whose favour it was made except in relation to any arrears due under it on the date of the remarriage.

(4) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under section 23 or 25 against the person to whom he or she was married immediately before the grant of that decree unless the remarriage is with that person and that marriage is also dissolved or annulled or a decree of judicial separation is made on a petition presented by either party to that marriage.

Provisions as to powers of Court to make orders in favour of children and duration of such orders

29. (1) Subject to subsection (3)—

(a) no order under sections 24, 25(1)(a) or 27 shall be made in favour of a child who has attained the age of 18 years; and

(b) the term for which by virtue of an order under section 24 or 27 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date when the child will attain the age of 18 years.

(2) The term for which by virtue of an order under section 24 or 27 any payments are to be made or secured to or for the benefit of a child 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 which makes the order thinks it right in the circumstances of the case to specify a later date therein. For the purposes of this subsection, the upper limit of the compulsory school age means the age of 16 years.

(3) The Court may make such an order as is mentioned in paragraph (1)(a) in favour of a child who has attained the age of 18 years, and may include in an order made under section 24 or 27 in relation to a child who has not attained that age a provision 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 or secured to or for the benefit of that child, if it appears to the Court that—

(a) that 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

(b) there are special circumstances which justify the making of the order or provision.

(4) Any order made by virtue of section 24(2)(a) or section 27(6)(d) 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 such death.

Variation, discharge, etc., of orders for financial provision

30. (1) Where the Court has made an order to which this section applies, then, subject to this section, the Court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say—

(a) any order under section 22;

(b) any order made by virtue of section 23(1)(a) or (b) or 23(2)(b);

(c) any order made by virtue of section 24(2)(a) or (b) or 24(4);

(d) any order made by virtue of section 25(1)(b), (c) or (d) on or after granting a decree of judicial separation;

(e) any order made by virtue of section 27(5), 27(6)(a), (b), (d) or (e) or 27(7)(b).

(3) The powers exercisable by the Court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The Court shall not exercise the powers conferred by this section in relation to any order made by virtue of section 25(1)(b), (c) or (d) on or after granting a decree of judicial separation, except on an application made in proceedings—

(a) for the rescission of that decree; or

(b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) No such order as is mentioned in section 23 shall be made on an application for the variation of an order made by virtue of section 23(1)(a) or (b) or section 24(2)(a) or (b), and no order for the payment of a lump sum shall be made on an application for the variation of an order made by virtue of section 23(1)(a) or (b) or of section 27(6)(a) or (b).

(6) Where the person liable to make payments under an order made by virtue of section 23(1)(b), section 24(2)(b) or section 27(6)(b) or (e) has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the Court, be made after the end of the period of 6 months from the date on which representation in regard to the estate of that person is first taken.

(7) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any change in any of the matters to which the Court was required to have regard when making the order to which the application relates and, where the party against whom that order was made died, the changed circumstances resulting from his or her death.

(8) The personal representatives of a deceased person against whom any such order as is referred to in subsection (6) 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 that subsection on the ground that they ought to have taken into account the possibility that the Court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Payment of certain arrears unenforceable without the leave of the Court

31. (1) A person shall not be entitled to enforce the payment of any arrears due under an order made by virtue of section 22, 23(1), 24(2), 27(5) or 27(6) 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) On an application for the grant of leave under this section, the Court may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the Court thinks proper, or may remit the payment of such arrears 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.

Power of Court to order such sums paid under certain orders to be repaid in certain cases

32. (1) Where on an application made under this section in relation to an order to which this section applies to the Court that by reason of—

(a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made; or

(b) the changed circumstances resulting from the death of the person so liable;

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the Court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the Court thinks just. This section applies to an order made by virtue of section 22, 23(1)(a) or (b), 24(2)(a) or (b), 27(5) or 27(6)(a), (b), (d) or (e).

(2) 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 his or her personal representatives.

(3) An application under this section may be made in proceedings for—

(a) the variation or discharge of the order to which this section applies; or

(b) leave to enforce, or the enforcement of the payment of arrears, under that order.

(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.

Commencement of proceedings for financial provision orders, etc.

33. (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2), proceedings under section 22, 23, 24 or 25 may be begun subject to and in accordance with rules of court, at any time after the presentation of the petition, save that—

(a) no order under section 23 or 25 shall be made unless a decree nisi of divorce or of nullity of marriage or a decree of judicial separation, as the case may be, has been granted; and

(b) without prejudice to the power to give a direction under section 34, no such order made on or after granting a decree nisi of divorce or of nullity of marriage, and no settlement made in pursuance of such an order, shall take effect unless the decree has been made absolute.

(2) Rules of court may provide, in such cases as may be prescribed by the rules—

(a) that application for ancillary relief shall be made in the petition or answer; and

(b) that applications for ancillary relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the Court.

In this subsection, "ancillary relief" means relief under section 22, 23, 24 or 25.

Directions for instrument to be settled by counsel

34. Where the Court decides to make an order under this Part requiring any payments to be secured or an order under section 25—

(a) it may direct that the matter be referred to counsel approved, or designated, by the Court for him to settle a proper instrument to be executed by all necessary parties; and

(b) in the case of an order under section 23, 24 or 25, it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

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

35. Where the Court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the Court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder, 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 any law relating to the custody of persons and the estates of persons of unsound mind, 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.

Application of Maintenance Orders (Reciprocal Enforcement) Act to orders under s. 22, 23, 24 or 27

36. Any order made by virtue of section 22, 23, 24 or 27 shall be a maintenance order within the meaning of the Maintenance Orders (Reciprocal Enforcement) Act.

Validity of maintenance agreements

37. (1) Where a maintenance agreement includes a provision purporting to restrict any right to apply to a Court for an order containing financial arrangements, then that provision shall be void, but 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 38 and 39), be binding on the parties to the agreement.

(2) In this section—

"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;

"maintenance agreement" means any agreement in writing made, whether before or after 1st July, 1990, 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.

Alteration of agreements by Court during lives of parties

38. (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 Anguilla, then, subject to subsection (3), either party may apply to the Court for an order under this section.

(2) If the Court is satisfied either—

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the family;

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

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

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

as may appear to that Court to be just, having regard to all the circumstances, including, if relevant, the matters mentioned in section 26(3); and the agreement shall have effect thereafter as if any alteration made by the order had been by agreement between the parties and for valuable consideration.

(3) Where the 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 that the agreement provides are to 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, so much of the payments as is attributable to the increase, are or is to be made under the agreement as altered by the order, shall be such term as the Court may specify, but that term shall not exceed—

(a) where the payments will not be secured, the joint lives of the parties to the agreement or a term ending with the remarriage of the party to whom the payments are to be made, whichever is the shorter; or

(b) where the payments will be secured, the life of the party to whom the payments are to be made, or a term ending with the remarriage of that party, whichever is the shorter.

(4) Where the Court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments that the agreement provides are to 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, so much of the payments as is attributable to the increase are or is to be made or secured for the benefit of the child, the Court shall apply the provisions of section 29(1), (2) and (3) as if the order to which this subsection relates were an order under section 24.

(5) For the avoidance of doubt, it is hereby declared that nothing in this section or in section 37 affects any power of the Court before which any proceedings between the parties to a maintenance agreement are brought under any other written law (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

(6) In this section, the expressions “financial arrangements” and “maintenance agreement” have the meanings assigned to them in section 37.

Alteration of agreements by Court after death of one party

39. (1) Where a maintenance agreement within the meaning of section 37 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies

domiciled in Anguilla, the surviving party may, subject to subsections (2) and (3), apply to the Court for an order under section 38.

(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) Where 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 on the ground that they ought to have taken into account the possibility that a Court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(5) Section 30(9) shall apply for the purposes of subsection (2) as it applies for the purposes of section 30(6).

Orders for maintenance from deceased's estate

40. (1) Where after 1st July, 1990 a person dies domiciled in Anguilla and is survived by a former spouse of his or hers (hereinafter in this section referred to as the "survivor") who has not remarried, the survivor may apply to the Court for an order under this section on the ground that the deceased has not made reasonable provision for the survivor's maintenance after the deceased's death.

(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 on an application under this section the Court is satisfied—

(a) that it would have been reasonable for the deceased to make provision for the survivor's maintenance; and

(b) that the deceased has made no provision, or has not made reasonable provision, for the survivor's maintenance;

the Court may order that such reasonable provision for the survivor's maintenance as the Court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the Court may impose.

(4) Where the Court makes an order under this section requiring provision to be made for the maintenance of the survivor, the order shall require that provision to be made by way of periodical payments terminating not later than the survivor's death and, if the survivor remarries, not later than the remarriage; but, if the Court thinks fit, the order may require that provision to be made wholly or in part by way of a lump sum payment.

(5) On an application under this section, the Court shall have regard—

(a) to the past, present or future capital of the survivor and to any income of the survivor from any source;

(b) to the survivor's conduct in relation to the deceased and otherwise;

(c) to any application made or deemed to be made by the survivor during the lifetime of the deceased—

(i) where the survivor is a former wife or husband of the deceased, for such an order as is mentioned in the statutory provisions repealed by this Act, or

(ii) where the survivor is a former husband of the deceased, for an order under section 23 or 25,

and to the order (if any) made on any such application, or (if no such application was made by the survivor, or such an application was made by the survivor and no order was made on the application) to the circumstances appearing to the Court to be the reasons why no such application was made, or no such order was made, as the case may be; and

(d) to any other matter or thing which, in the circumstances of the case, the Court may consider relevant or material in relation to the survivor, to persons interested in the estate of the deceased, or otherwise.

(6) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the Court shall have regard to the nature of the property representing the net estate of the deceased and shall not order any such provision to be made as would necessitate a realisation that would be imprudent having regard to the interests of the dependants of the deceased, of the survivor, and of the persons who apart from the order would be entitled to that property.

(7) In this section—

"former spouse", in relation to a deceased person, means a person whose marriage with the deceased was during the deceased's lifetime dissolved or annulled by a decree made or deemed to be made under this Act, and "former wife" and "former husband" shall be construed accordingly;

"property" means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not.

(8) In considering for the purposes of subsection (2) the question when representation was first taken out, a grant limited to settled property or to trust property shall be left out of account, and a grant limited to real 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.

Discharge and variation of orders under section 40

41. (1) Subject to the following provisions of this section, where an order (in this section referred to as the "original order") has been made under section 40, the Court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) An application under this section may be made by any of the following persons—

(a) the former spouse on whose application the original order was made;

(b) any other former spouse of the deceased;

(c) any dependant of the deceased;

(d) the trustees of any relevant property;

(e) any person, who, under the will or codicil of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.

(3) An order under this section varying the original order, reviving any suspended provision of it, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.

(4) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any change in the circumstances to which the Court was required to have regard in determining the application for the original order.

(5) In this section, the expressions "former spouse", "dependant" and "property" have the meanings assigned to them in section 40(7); and "relevant property" means property the income of which, in accordance with the original order or any consequential directions given by the Court in connection with it, is applicable wholly or in part for the maintenance of the former spouse on whose application the original order was made.

Interim orders and additional provisions as to orders to be made under sections 40 and 41

42. (1) Where on an application for maintenance under section 40 it appears to the Court—

(a) that the applicant 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 for the provision of maintenance for the applicant; and

(b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;

the Court may order that, subject to such conditions or restrictions, if any, as the Court may impose and to any further order of the Court, there shall be paid to or for the benefit of the applicant out of the deceased's net estate such sum or sums and (if more than one) at such intervals as the Court thinks reasonable.

(2) In determining what order, if any, should be made under this section, the Court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in

determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.

(3) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.

(4) The provisions of sections 40 and 41 shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period mentioned in section 40(3) on the ground that they ought to have taken into account the possibility that the Court might permit an application under that section after the end of that period, or that an order under the section might be varied under section 41; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order under section 40 or 41.

Avoidance of transactions intended to defeat certain claims

43. (1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as "financial provision") are brought by a person (hereafter in this section referred to as the "applicant") against any other person (hereafter in this section referred to as the "other party"), the Court may, on an application by the applicant—

(a) if it is satisfied that the other party is, with the intention of defeating the claim for financial provision, 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 the intention mentioned in paragraph (a), made a disposition to which this paragraph applies and that if the disposition were set aside, financial provision or different financial provision would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property); or

(c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention mentioned in paragraph (a), made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in paragraph (b);

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

(2) Paragraphs (1)(b) and (c) apply respectively to any disposition made by the other party (whether before or after the commencement of the proceedings for financial provision), not being a disposition 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 such intention as is mentioned in paragraph (1)(a) on the part of the other party.

(3) 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 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 paragraph (1)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence; or

(b) in a case falling within paragraph (1)(c) that the disposition has had the consequence;

of defeating the applicant's claim for financial provision, it shall be presumed, unless the contrary is shown, that the other party disposed of the property with the intention mentioned in paragraph (1)(a) or, as the case may be, with that intention, is about to dispose of or deal with the property.

(4) In this section—

"disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

"property" has the meaning assigned to it in section 40(7);

"relevant provisions of this Act" means any of the provisions of sections 22, 23, 24, 25, 26, 30 (except subsection (6) thereof) and 38, and any reference to defeating an applicant's claim for financial provision is a reference to preventing financial provision from being granted to the applicant, or the applicant for the benefit of a child of the family, or reducing the amount of any financial provision which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of the applicant under the relevant provisions of this Act.

(5) The provisions of this section shall not apply to a disposition made more than 3 years before 1st July, 1990.

Existing orders for alimony, etc., of the party to marriage to cease to have effect on remarriage of the other party

44. An order for alimony made, or deemed to have been made, under any statutory provision (and repealed by this Act) shall, notwithstanding anything in section 62(1) or in the order, cease to have effect on the remarriage after 1st July, 1990 of the person in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

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

45. (1) Where—

(a) an order to which this section applies has ceased to have effect by reason of the remarriage of the person entitled to payments under the order; 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 such 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 or her personal representatives against the person so entitled or her or his personal representatives; but on an application made under this section the Court may exercise the powers conferred on it by subsection (2). This section applies to an order made by virtue of section 23(1)(a) or (b) or 27(6)(a) or (b) and to any such order as is referred to in section 44.

(2) The 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 paragraph (1)(b) or, if it appears to the Court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) Sections 32(2), (3) and (4) shall apply to an application made under this section and to an order made on such an application as they apply to an application made under that section and to an order made on the last-mentioned application.

(4) The collecting officer under an attachment of earnings order made to secure payments made under an order to which this section applies shall not be liable for any act done by him after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it in accordance with any written law or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with, if, but only if, the act was one which he would have been under a duty to do had the order to which this section applies not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the order to which this section applies, or the personal representatives of either of those persons.

(5) In this section, "collecting officer", in relation to an attachment of earnings order, means the officer of the Court to whom a person makes payments in compliance with the order.

PART 3

PROTECTION AND CUSTODY OF CHILDREN

Restrictions on decrees for dissolution, annulment or separation affecting children

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

(a) that for the purposes of this section there are no children of the family to whom this section applies;

(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—

(i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances, or

(ii) it is impracticable for the party or parties appearing before the Court to make any such arrangements; or

(c) that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the Court is unable to make a declaration in accordance with paragraph (b).

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

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

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

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

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

(i) under the age of 16 years, or

(ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and

(b) any other child of the family to whom the Court by an order under that subsection directs that this section shall apply;

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

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

Orders for custody and education of children affected by matrimonial suits

47. (1) The Court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of 18 years—

(a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree; or

(b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal,

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

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

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

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

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

Orders for custody of children in cases of neglect to maintain

48. (1) Where the Court makes an order under section 27, the Court shall also have power from time to time to make such orders as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of 18 years; but the power conferred by this section and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(2) Sections 47(2) and (5) shall apply in relation to an order made under this section as they apply in relation to an order made under that section.

Power to provide for supervision of children

49. (1) Where the Court has jurisdiction by virtue of this Part to make an order for the custody of a child and it appears to the Court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the Court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of a welfare officer designated by the Court.

(Act 7/2011, s. 43)

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

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

PART 4

THE MATRIMONIAL HOME

Interpretation

50. In this Part—

"dwelling" or "dwelling house" means a building used or intended to be used mainly as a separate dwelling or place of residence, and includes a flat;

"flat" means a separate and self-contained set of premises constructed for use as a dwelling and forming part of a building from some other part of which it is divided;

"furniture" includes household appliances and effects and furniture and household appliances and effects that are the subject of a hire-purchase agreement;

"matrimonial home" or "home" means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage in respect of which a decree of divorce is or has been granted, in any case where—

(a) either or both of the parties or the personal representative of one of them—

(i) owns the dwelling,

(ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling, or

(iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated, and by reason of holding those shares is entitled to the exclusive occupation of the dwelling; and

(b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of the decree.

Rights of mortgagee, etc., not affected by order under this Part

51. (1) Subject to subsection (2), the rights conferred on the husband or wife by any order made under this Part shall be subject to the rights of the person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made, if it

was registered before the date of the making of the order, or if the rights of that person arise under an instrument executed before that date.

(2) Notwithstanding anything in any written law or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of any such order, not being an order under section 53 directing the sale of a matrimonial home.

Court may make order for occupation of matrimonial home

52. (1) The Court may, if it thinks fit, on granting a decree of divorce or at any subsequent time, instead of or in addition to making any order under Part 2, make an order against the husband or the wife, or his or her personal representative, granting to the wife or husband, as the case may be, for such period and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the matrimonial home.

(2) Where an order is made under subsection (1), the wife or husband, as the case may be, shall be entitled personally to occupy the land on which the matrimonial home is situated or which is appurtenant to the matrimonial home, or such part of that land as is specified in the order.

(3) The Court may make such other orders and give such directions as may be necessary or desirable to give effect to any order made under subsection (1).

(4) An order made under subsection (1) against the husband or wife shall be enforceable against the personal representative of the person against whom it is made, unless the Court otherwise directs.

(5) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) The Court may at any time, if it thinks fit, cancel any order made under subsection (1).

(7) The Court may from time to time vary or extend any order made under subsection (1) in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it is made.

(8) An application under subsection (6) or subsection (7) to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by any person having an interest in the matrimonial home.

(9) Where an order made under this section in respect of any matrimonial home relates to any estate or interest in land, a copy of the order sealed with the seal of the Court shall, upon application by either of the parties, or in the case of an order under subsection (6) or (7), by the person upon whose application the order was made, and upon payment of the prescribed fee, be deemed for the purposes of the Registered Land Act to be an order for rectification of the register by the Court and shall be registered under that Act.

(10) An order made under subsection (1) shall cease to have effect where—

(a) the order is cancelled by the Court under subsection (6);

(b) the period for which the order was made has expired; or

(c) the Court so directs in any other case, including in particular where the person in whose favour and the person against whom the order is made so agree in writing.

Court may direct sale of home or direct payment

53. (1) The Court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make an order—

(a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit; or

(b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the Court thinks fair and reasonable in return for the contributions made by that other party.

(2) Where the home comprises part of a building that is not used exclusively or principally as the home of the parties, or where the land appurtenant to the home is not used exclusively or principally for the purposes of a home, the Court shall not make an order under this section, unless in the special circumstances of the case the Court considers it is fair and equitable.

(3) In any case to which subparagraph (a)(iiii) the definition of the term "matrimonial home" in section 50 applies, an order made under paragraph (1)(a) shall direct the sale of the shares held in relation to the matrimonial home, and the succeeding provisions of this section shall be modified and construed accordingly.

(4) Where the Court makes an order under subsection (1), it may make such other orders and may give such directions as may be necessary or desirable to give effect to the order.

(5) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having any interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) Where the Court directs the sale of the matrimonial home pursuant to subsection (1), it may, if it thinks fit, instead of directing division of the proceeds between the parties to the marriage, direct that the whole or any part of the proceeds be paid or applied for the benefit of the children of the family or any of them, and may give such other directions as may be necessary or desirable to give effect to that direction.

(7) The amount payable to either party to the marriage under any order made pursuant to paragraph (1)(b) shall constitute a debt owing to that party by the other and shall be recoverable accordingly, and, in the case of an order made in respect of any estate or interest in land, shall also constitute a charge against that estate or interest; and such an order shall for the purposes of the Registered Land Act be deemed to be an instrument of charge in the prescribed form and may be registered under that Act.

(8) Where an order is made under subsection (1) and a party to the marriage who has an estate or interest in the matrimonial home dies before the order has been complied with, the order shall be binding on and be complied with by the personal representative of that party.

(9) Without limiting the provisions of subsection (4), where the Court under subsection (1) directs the sale of the matrimonial home and the division of the proceeds pursuant to paragraph (1)(a) or the application of the proceeds pursuant to subsection (6), the Court may appoint a person to sell the matrimonial home and divide or apply the proceeds accordingly.

(10) The execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the matrimonial home is vested.

(11) The Court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of any such instrument and its execution by the person so appointed.

Court may vest matrimonial home in parties in common

54. (1) Where—

(a) the matrimonial home is owned by the petitioner or the respondent or by both of them as joint owners; and

(b) the Court is satisfied that both parties have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever);

the Court, on granting a decree of divorce, may, if it thinks fit, on the application of either party made before the decree is made, make an order vesting the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) in the parties as owners in common in such shares as the Court thinks fit.

(2) In any case to which subparagraph (a)(iii) of the definition of the term "matrimonial home" in section 50 applies, an order made under subsection (1) shall vest the shares held in relation to the matrimonial home, and the provisions of this section shall be modified and construed accordingly.

(3) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(4) Where any order made under this section in respect of any matrimonial home relates to any estate or interest in land which is registered under the Registered Land Act, a copy of the order sealed with the seal of the Court shall, upon application by either of the parties and upon payment of the prescribed fee, be deemed for the purposes of the Registered Land Act to be an order for rectification of the register by the Court and shall be registered under that Act.

(5) The provisions of this section and of any order thereunder shall have effect notwithstanding any prohibition or restrictions in the articles of incorporation of any company relating to the transfer or ownership of shares.

Court may vest tenancy of dwelling house in petitioner or respondent

55. (1) Where the Court grants a decree of divorce, it may at the same or any subsequent time, if it thinks fit, make an order vesting in the petitioner or the respondent (in this section referred to as the "applicant") the tenancy of any dwelling house—

(a) of which at the time of the making of the decree the applicant's wife or husband (in this section referred to as the "other party") is or was either the sole tenant or a tenant holding jointly or in common with the applicant;

(b) of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and

(c) in which the applicant or the other party resides at the time of the order under this subsection.

(2) On the taking effect of an order made under subsection (1), unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the order, and the other party shall cease to be the tenant.

(3) Nothing in this section or in any order made thereunder shall be construed to limit or affect the operation of any law for the time being applicable to any tenancy, or to authorise the Court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

(4) On the application of the other party in any case in which an order is made under subsection (1), the Court may, if the tenant has died and the tenancy has not been determined by reason thereof, or if in the opinion of the Court the circumstances have so changed since the making of the order that the tenancy should be revested in the person or any of the persons in whom it was vested before the making of that order, make an order cancelling the first-mentioned order and revesting the tenancy accordingly.

(5) On the taking effect of any revesting order under subsection (4), unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

(6) Any order under this section may be made upon and subject to such terms and conditions, not inconsistent with this Act, as the Court thinks fit.

(7) Every order under this section shall take effect on such date as may be specified in that behalf in the order, but, if an appeal is lodged, the operation of the order shall be suspended until the appeal is determined.

(8) The Registrar of the Court shall, on the taking effect of the order, send a copy of the order, sealed with the seal of the Court, to the Registrar of Lands, who shall upon payment of the prescribed registration fee, register it in the prescribed manner under the Registered Land Act. The registration fee shall be payable by the person in whose favour the order is made.

(9) For the purposes of this section, the term "tenant", in relation to any dwelling house, includes any person whose tenancy has expired or been determined and who is for the time being deemed under or by virtue of any law to continue to be the tenant of the dwelling house; and "tenancy" has a corresponding meaning.

Landlord to have right to appear and be heard

56. Notice in the prescribed form of any application for an order under section 55 shall be served in the prescribed manner on the landlord of the dwelling house, who shall be entitled to appear and be heard as a party to the application.

Order in respect of furniture

57. (1) Where the Court makes an order for occupation of the matrimonial home under section 52 or an order vesting the tenancy of a dwelling house under section 55, it may, if it thinks fit, by the same or any subsequent order, grant possession of the furniture or any specified articles of furniture in the matrimonial home or, as the case may be, in the dwelling house to the party in whose favour the order is made for such period and on such terms and subject to such conditions as the Court thinks fit.

(2) The Court, on making a decree of divorce and, whether or not it makes any other order under this Part, may make an order vesting the furniture or any specified articles of furniture owned by one or both of the parties to the marriage in the other party, or, as the case may be, in one of the parties, if the Court thinks it reasonable to do so having regard to the contribution made to the home (whether a matrimonial home or not) by the party in whose favour the order is made (whether in the form of money payments, or services, or prudent management, or otherwise howsoever).

(3) Before any order is made under subsection (1) or (2), such notice as the Court directs shall be given to any person having an interest in the furniture that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(4) In any case where any furniture is in the possession of one or both of the parties to the marriage under a hire-purchase agreement, the Court, on making a decree of divorce, may, if it thinks fit, make an order vesting the rights under the hire-purchase agreement in respect of all or any of the articles that are subject to the agreement in the other party, or, as the case may be, in one of the parties, and any such order shall have effect notwithstanding anything in any such agreement.

(5) The owner of any furniture to which any such hire-purchase agreement relates shall be entitled to appear and be heard as a party to the application for an order under subsection (4).

(6) The Court may make an order under this section in respect of any specified article of furniture, notwithstanding that the article is by law affixed to the realty, save that where any such order is made under subsection (2), the article shall thereupon cease for all purposes to be part of the realty and shall thereupon become the personal property owned by the person in whose favour the order is made.

(7) The Court may at any time, if it thinks fit, cancel any order made under subsection (1).

(8) The Court may from time to time vary or extend any order made under subsection (1) in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made.

(9) An application under subsection (7) or (8) to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by the personal representative of the person against whom it was made, or by any person having any interest in the furniture affected by the order.

Exclusion of common law rights

58. Notwithstanding any rule of law to the contrary, a party to a marriage in respect of which a decree has been made under this Act who has no interest in the matrimonial home as owner or under any deed, written agreement, or instrument shall have no right, licence, or equity to occupy or to be or remain in possession of the matrimonial home otherwise than in accordance with this Part.

Power of the Court under Married Women's Property Act, unaffected

59. (1) Nothing in this Part shall affect the powers of the Court under section 18 of the Married Women's Property Act (which relates to the settlement of disputes between husband and wife as to property).

(2) Where at the time when a petition for divorce is filed, proceedings under section 18 of the Married Women's Property Act are pending in the Court between the parties to the petition or such proceedings are commenced before the making of the decree absolute, the Court may hear and determine those proceedings in conjunction with any proceedings between the parties under this Act.

Application of this Part to nullity and other proceedings

60. The provisions of this Part, as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and a decree of nullity or judicial separation as they apply with respect to a petition for and a decree of divorce.

PART 5

MISCELLANEOUS AND GENERAL

Recognition of overseas decrees

61. (1) The validity of any decree or order or written law for divorce or dissolution or nullity of marriage made (whether before or after 1st July, 1990) by a court or legislature of any country outside Anguilla shall by virtue of this section be recognised in Anguilla if—

(a) one or both of the parties were domiciled in that country at the time of the decree, order or written law;

(b) that court or legislature has exercised jurisdiction—

(i) in any case, on the basis of the residence of one or both of the parties to the marriage in that country if at the commencement of the proceedings any such party had in fact been resident in that country for a continuous period of not less than 2 years,

(ii) in any case, on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the sovereign State of which that country forms part,

(iii) in any case, on the basis that the wife has been deserted by her husband, or the husband has been deported, and that the husband was immediately before the desertion or deportation domiciled in that country,

(iv) in any case, on the basis that the wife was legally separated from her husband, whether by order of a competent court or by agreement, and that the husband was at the date of the order or agreement domiciled in that country, or

(v) in a case of nullity of marriage on any ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or

(c) the decree or order or written law is recognised as valid in the courts of a country in which at least one of the parties to the marriage is domiciled.

(2) Nothing in this section shall affect the validity of any decree or order or written law for divorce or dissolution or nullity of marriage, or of any dissolution of marriage otherwise than by judicial process, that would be recognised in the courts of Anguilla apart from this section.

Savings

62. (1) Every decree for divorce, nullity of marriage or judicial separation made or continuing in force under the statutory provisions (repealed by this Act) specified in subsection (3) and in force on 1st July, 1990 shall continue in force as if made under this Act.

(2) All proceedings for divorce, nullity of marriage or judicial separation pending in the Court at the commencement of this Act shall be heard and determined in accordance with the statutory provisions (repealed by this Act) specified in subsection (3) as if this Act had not been passed, and the provisions of subsection (1) shall apply accordingly as if every decree made in any such proceedings was in force at the commencement of this Act.

(3) The statutory provisions referred to in subsections (1) and (2) are the Matrimonial Causes Act Chapter 50 of the Laws of Anguilla.

Transitional provisions

63. The provisions of Part 2 and 4, as far as they are applicable and with any necessary modifications, shall apply with respect to every decree or order made under the statutory provisions specified in section 62(3), as if it had been made under this Act.

Citation

64. This Act may be cited as Matrimonial Proceedings and Property Act, Revised Statutes of Anguilla, Chapter M60.