

THE MATRIMONIAL CAUSES ACT

ARRANGEMENT OF SECTIONS

*Preliminary*

1. Short title.
2. Interpretation.
3. Supreme Court to have jurisdiction in matrimonial causes.

*Suits of Nullity of Marriage*

4. Grounds for pronouncing decrees of nullity of marriage.

*Suits for Dissolution of Marriage*

5. Dissolution of marriage.
6. Meaning of separation.
7. Effect of resumption of cohabitation.
8. Restriction on petitions during early years.
9. Proceedings for decree of presumption of death and dissolution of marriage.

*Injunctions or other Orders*

10. Court may grant injunctions or make other orders in relation to protection of parties, children or property, etc.

*Counselling and Reconciliation*

11. Conciliation.
12. Counselling.
13. Confidentiality of information given to marriage counselors.
14. Obligation of marriage counsellors to maintain confidentiality.

*Grounds for Jurisdiction of Court*

15. Grounds for Jurisdiction of Court.

*Decree Nisi ad Decree Absolute*

16. Decree *nisi* in first instance.
17. Decree absolute.

## MATRIMONIAL CAUSES

18. Rescission of decree on reconciliation.
19. Rescission of decree for miscarriage of justice.

### *Power of Court to Make Certain Financial Provisions*

20. Powers of Court to make provision for spouse.
21. [*Deleted by Act 30 of 2005, S. 28(1)(a).*]
22. Supplementary provisions as to maintenance, settlement of property, etc.

### *Dispositions and Orders Pending and After Suits*

23. Orders re custody, maintenance and education.

### *Recognition of Foreign Decrees*

24. Recognition of foreign decrees.

### *Ancillary Provisions*

25. [*Deleted by Act 30 of 2005, S. 28(1)(a).*]
26. Avoidance of transactions intended to prevent relief.
27. Restrictions on decrees for dissolution or nullity.
28. [*Deleted by Act 30 of 2005, S. 28(1)(a).*]
29. Power to provide for supervision of children.

### *Practice and Procedure of Court*

30. Notice of petition.
31. Examination of petitioner.
32. Examination of witnesses.
33. Costs.

### *Miscellaneous*

34. Domicile.
35. Abolition of decrees of judicial separation, restitution of conjugal rights and damages by a husband against adulterer.
36. Power of Minister to amend Schedule.

### SCHEDULE

THE MATRIMONIAL CAUSES ACT

[1st February, 1989.]

Acts  
2 of 1989,  
30 of 2005  
S. 28,  
4 of 2004  
S. 25.

*Preliminary*

1. This Act may be cited as the Matrimonial Causes Act.

Short title.

2. In this Act—

Interpretation.

“adopted” means adopted in pursuance of an adoption order made under the Children (Adoption of) Act, or in pursuance of an adoption order made in a country other than Jamaica and recognized by the law of Jamaica as conferring upon the child in question, in relation to the child's custody, maintenance and education, the status of a child of the adopter or adopters;

“appointed day” means 1st day of February, 1989;

“approved marriage counsellor” means a person who has been approved as such pursuant to the provisions of the Schedule;

Schedule.

“matrimonial causes” means—

- (a) proceedings between the parties to a marriage for a decree of dissolution of marriage or nullity of marriage;
- (b) proceedings for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage by decree or otherwise;
- (c) proceedings for a decree of presumption of death and dissolution of marriage;
- (d) proceedings between the parties to a marriage in respect of—

*MATRIMONIAL CAUSES*

- (i) the maintenance of one of the parties to the marriage; or
- (ii) the custody, guardianship or maintenance of, or access to, a relevant child;
- (e) applications for injunctions or other orders pursuant to section 10;
- (f) any proceedings or applications ancillary to proceedings or applications (whether concurrent, pending or completed) referred to in paragraphs (a) to (e) of this definition;

“relevant child” means a child who is—

- (a) a child of both parties to the marriage in question; or
- (b) a child of one party to the marriage who has been accepted as one of the family by the other party, and in paragraphs (a) and (b) of this definition “child” includes adopted child and a child of a void marriage.

Supreme Court to have jurisdiction in matrimonial causes.

3. The Supreme Court (hereinafter referred to as “the Court”) shall have and exercise, subject to the provisions of this Act, jurisdiction and power in relation to matrimonial causes instituted or continued under this Act.

*Suits for Nullity of Marriage*

Grounds for pronouncing decrees of nullity of marriage.

4.—(1) Decrees of nullity of marriage may be pronounced by the Court on the ground that the marriage is void on any of the following grounds, that is to say—

- (a) one of the parties to the marriage had a husband or wife living at the time of the marriage;
- (b) the marriage was void under the provisions of the Marriage Act or any other laws relating to marriage in force for the time being in Jamaica;

- (c) in the case of marriages celebrated on or after the 1st day of February, 1989, the consent of either of the parties to the marriage was not a valid consent because—
- (i) it was obtained by duress or fraud; or
  - (ii) one party was mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
  - (iii) one party was mentally incapable of understanding the nature and effect of the marriage ceremony at the time of the marriage; or
- (d) the parties to the marriage were, at the time of the marriage, of the same sex.

(2) For the purposes of this section marriage includes a purported marriage.

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

### *Suits for Dissolution of Marriage*

5.—(1) A petition for a decree of dissolution of marriage may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably. **Dissolution  
of marriage.**

(2) Subject to subsection (3), in proceedings for a decree of dissolution of marriage the ground shall be held to have been established, and such decree shall be made, if, and only if, the Court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than twelve months immediately preceding the date of filing of the petition for that decree.

(3) A decree of dissolution of marriage shall not be made if the Court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Meaning of separation.

6.—(1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.

(2) The parties to a marriage may be held to have separated and have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

Effect of resumption of cohabitation.

7.—(1) For the purposes of proceedings for a decree of dissolution of marriage, in calculating any period for which the parties have been living separately and apart, and in considering whether such period has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to reconciliation.

(2) For the purpose of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the Court, was not substantial.

Restrictions on petitions during early years.

8.—(1) No petition for a decree of dissolution of marriage shall be presented, without the leave of the Court, unless at the date of the presentation of the petition two years have passed since the date of the marriage.

(2) A Judge of the Court may, upon application being made to him in accordance with rules of court, grant leave for a petition to be presented before two years have passed if he is satisfied that one of the parties has with the assistance of an approved marriage counsellor attempted a reconciliation and there are special circumstances that would justify the hearing of the petition.

(3) If it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition pursuant to this section by any misrepresentation or concealment of the nature of the case, then the Court may—

- (a) if it grants a decree *nisi*, stipulate that the decree be subject to the condition that no application to make the decree absolute shall be made until after the expiration of two years from the date of the marriage; or
- (b) dismiss the petition, but without prejudice to any petition which may be presented after the expiration of the said two years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(4) Nothing in subsection (1) shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of two years from the date of the marriage.

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

Proceedings  
for decree of  
presumption  
of death  
and dissolu-  
tion of  
marriage.

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

(3) Section 17 shall apply to a decree under this section as it applies to a decree of dissolution.

*Injunctions or other Orders*

Court may grant injunctions or make other orders in relation to protection of parties, children or property, etc.

**10.**—(1) Without prejudice to any other powers of the Court, the Court may, upon application made by either party to the marriage whether or not an application has been made by either party for any other relief under this Act, grant an injunction or other order, as the case may be—

- (a) for the personal protection of a party to the marriage or of any relevant child;
- (b) restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or which is the location of the premises in which the other party to the marriage resides;
- (c) restraining a party to the marriage from entering the place of work of the other party to the marriage or restraining a party to the marriage from entering the place of work or the place of education of any relevant child;
- (d) [*Repealed by Act 4 of 2004, S. 25.*]
- (e) relating to the use or occupancy of the matrimonial home.

(2) In exercising its powers under subsection (1), the Court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

(3) If the Court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or other order under this section, then, without prejudice to the power of the Court to punish that person for contempt, the Court may—



- (a) order that person to pay a fine;
- (b) require that person to enter into a recognizance, with or without sureties, in such amount as the Court considers reasonable, to ensure that such person will comply with the injunction or other order, or order that person to be imprisoned until the person enters into such recognizance or until the expiration of three months, whichever first occurs;
- (c) order that person to deliver up to the Court such documents as the Court thinks fit;
- (d) make such other orders as the Court considers necessary to enforce compliance with the injunction or other order.

*Counselling and Reconciliation*

**11.—(1)** Where proceedings for dissolution of marriage have been instituted by a party to a marriage the Court shall give consideration to the possibility of a reconciliation of the parties. **Conciliation.**

(2) If, in such proceedings, it appears at any time to the Court from the evidence or the attitude of the parties, or of either of them, that there is a reasonable possibility of such a reconciliation the Court may take any or all of the following steps, that is to say—

- (a) adjourn the proceedings to afford the parties an opportunity to consider a reconciliation;
- (b) interview the parties in chambers with or without counsel, as the Court thinks proper, with a view to effecting a reconciliation;
- (c) if the Court thinks it desirable to do so, nominate an approved marriage counsellor to assist those parties in considering a reconciliation.

(3) If, after an adjournment has taken place pursuant to subsection (2), either of the parties requests that the hearing be proceeded with, the Court shall resume the hearing as soon as practicable.

Counselling.

**12.** Where in any proceedings under this Act the Court is of the opinion that counselling may assist the parties to a marriage to improve their relationship to each other and to any relevant child, the Court may advise the parties to attend upon an approved marriage counsellor and, if the Court thinks it desirable to do so, adjourn such proceedings to enable the attendance.

Confidentiality of information given to marriage counsellors.

**13.—(1)** Evidence of anything said or of any admission made while the parties to the marriage are in attendance upon an approved marriage counsellor shall not be admissible in the Court in any proceedings under this Act.

(2) Nothing in subsection (1) shall prevent an approved marriage counsellor from giving evidence in any proceedings to the effect that the parties to the proceedings have, or have not, sought counselling services from him in relation to those proceedings.

Obligation of marriage counsellors to maintain confidentiality.

**14.—(1)** An approved marriage counsellor shall treat as confidential all documents, information and things disclosed to him in the performance of marriage counselling services under this Act.

(2) Subject to section 13 (2), an approved marriage counsellor shall not be called upon to give evidence in respect of, or produce, any document, information or thing aforesaid in any proceedings under this Act.

(3) Breach of the requirements of subsection (1) shall be regarded as a contempt of court.

*Grounds for Jurisdiction of Court*

15.—(1) The Court shall have jurisdiction in proceedings for dissolution of marriage or for a decree of nullity of marriage if either party to the marriage—

Grounds for jurisdiction of Court.

- (a) is a Jamaican national;
- (b) is domiciled in Jamaica at the date of the commencement of the proceedings; or
- (c) is resident in Jamaica at the date of the commencement of the proceedings, and has been ordinarily so resident for a period of not less than twelve months immediately preceding that date.

(2) In proceedings under subsection (1) of section 9, the Court shall have jurisdiction if the petitioner—

- (a) is a Jamaican national;
- (b) is domiciled in Jamaica at the date of commencement of the proceedings; or
- (c) is resident in Jamaica at the date of commencement of the proceedings and has been ordinarily so resident for not less than twelve months immediately preceding that date.

(3) In proceedings under subsection (1) of section 10, the Court shall have jurisdiction in the following cases, that is to say—

- (a) if either party to the marriage—
  - (i) is a Jamaican national;
  - (ii) is domiciled in Jamaica at the date of commencement of the proceedings; or
  - (iii) is resident in Jamaica at the date of commencement of the proceedings; or
- (b) where the proceedings relate to a relevant child, if such child is in Jamaica at the date of commencement of the proceedings.

*Decree Nisi and Decree Absolute*

Decree nisi in first instance.

16. A decree of dissolution or nullity of marriage under this Act shall, in the first instance, be a decree *nisi*.

Decree absolute.

17.—(1) A decree of dissolution or nullity of marriage shall not be made absolute until after the expiration of six weeks from the date of the decree *nisi*, unless the Court by general or special order from time to time fixes a shorter time.

(2) An application for a decree *nisi* to be made absolute may be made by either party to the marriage.

Rescission of decree on reconciliation.

18. Notwithstanding anything contained in this Act, where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the Court may, on the application of a party to the marriage at any time before the decree becomes absolute, rescind the decree if the Court is satisfied that the parties have become reconciled.

Rescission of decree for miscarriage of justice.

19. Where a decree *nisi* has been made, but has not become absolute, the Court may, on the application of a party to the proceedings or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or of any other circumstances, rescind the decree and, if it thinks fit, order the rehearing of the proceedings.

*Power of Court to Make Certain Financial Provisions*

Power of Court to make provision for spouse.  
30/2005  
S. 28 (1)

20.—(1) On any decree for dissolution of marriage, the Court may, if it thinks fit—

(a) order a spouse (hereinafter in this section referred to as the contributing spouse) to secure to the other spouse (hereinafter in this section referred to as the dependant spouse), to the satisfaction of the Court—

- (i) such gross sum of money; or
- (ii) such annual sum of money for any term not exceeding the life of the dependant spouse,

as having regard to the means of the dependant spouse, the ability of the contributing spouse and to all the circumstances of the case, the Court thinks reasonable;

- (b) for the purposes of paragraph (a), refer the matter to any attorney-at-law to settle and approve a proper instrument to be executed by all necessary parties, and may order the costs of such instrument to be paid by the parties, or such of them as the Court thinks fit; and
- (c) where the matter is referred under paragraph (b), suspend the pronouncement of the decree until the instrument has been duly executed,

and on any petition for dissolution of marriage the Court shall have power to make interim orders for such payments of money to the dependant spouse as the Court thinks reasonable.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the contributing spouse to pay to the dependant spouse during their joint lives such monthly or weekly sum for the maintenance and support of the dependant spouse as the Court may think reasonable.

30/2005  
S. 28 (1)(b)  
(iii).

(3) If, after any such order has been made, the Court is satisfied that the means of either or both of the parties have changed, the Court may, if it thinks fit, discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money order to be paid, and subsequently revive it wholly or in part as the Court thinks fit.

(4) An order under subsection (1)(a) or (2) shall have regard to the matters specified in section 14(4) of the Maintenance Act.

30/2005  
S. 28 (1)(b)  
(iv).

21. [*Deleted by Act 30 of 2005, S. 28(1)(a).*]

Supplemen-  
tary provisions  
as to mainten-  
ance settle-  
ment of  
property, etc.  
30/2005  
S. 28(1)(c).

**22.** When a petition for dissolution or nullity of marriage has been presented, proceedings under section 20 or section 23(2) may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the sections referred to in this section (other than an interim order for the payment of money under section 20) shall be made unless and until a decree *nisi* has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument, and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute.

### *Dispositions and Orders Pending and After Suits*

Orders re  
custody,  
maintenance  
and education.  
30/2005  
S. 28(1)(d)  
(i) & (ii).

**23.—(1)** The Court may make such order as it thinks just for the custody, maintenance and education of any relevant child or for the maintenance of a spouse—

- (a) in any proceedings under section 10, or in any proceedings for dissolution or nullity of marriage before, by or after the final decree;
- (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 paragraph (a) to make an order in respect of a child the Court may, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the Court.

30/2005  
S. 28(1)  
(d)(iii).

(2) An order under subsection (1) for the maintenance and education of any relevant child or for the maintenance of a spouse shall be in accordance with the provisions of the Maintenance Act.

(3) Parties to a marriage or two persons in contemplation of their marriage to each other may, for the purpose of facilitating the settlement of their affairs under this section with respect to the issue of maintenance, make such maintenance agreement as they think fit.

30/2005  
S. 28(1)  
(d)(iii).

(4) For the purposes of this Part, a maintenance agreement means an agreement that—

30/2005  
S. 28(1)  
(d)(ii).

(a) makes provision in respect of the support rights and obligations of the parties with respect to each other or any child that either party has an obligation to maintain under the Maintenance Act; and

(b) includes provisions in respect of—

- (i) financial matters;
- (ii) the right to direct the education and moral training of their children; or
- (iii) any other matter in the settlement of the affairs of the spouses, including an agreement that varies an earlier maintenance agreement.

(5) The provisions of section 24(3) to (11), 24(13) and 25 of the Maintenance Act shall have effect, with the necessary modifications, to maintenance agreements made under this section.

30/2005  
S. 28(1)  
(d)(iii).

### *Recognition of Foreign Decrees*

24.—(1) A decree of dissolution or nullity of marriage effected in accordance with the law of a foreign country shall, subject to subsection (3) and (4), be recognized as valid in Jamaica—

Recognition  
of foreign  
decrees.

(a) if either party to the marriage was, at the relevant date—

- (i) a national of; or

- (ii) domiciled in; or
- (iii) ordinarily resident in,  
the country in which the decree was obtained; or
- (b) if the decree, though made in a country in which neither party to the marriage was domiciled, would be recognized by the courts of the country in which either party was domiciled at the relevant date; or
- (c) in a case where the country in which the decree was obtained uses domicile as a ground of jurisdiction for the dissolution or nullity of marriage, if, in the sense that the concept of domicile is understood in the law of that country—
  - (i) the respondent was, at the relevant date, domiciled in that country; or
  - (ii) the petitioner was, at the relevant date, domiciled in that country;
 and either—
  - (iii) the petitioner had been ordinarily resident in that country for not less than one year immediately preceding the relevant date; or
  - (iv) the last place of cohabitation of the parties to the marriage was in that country.

(2) A decree of presumption of death and dissolution of marriage effected in accordance with the law of a foreign country shall, subject to subsections (3) and (4), be recognized as valid in Jamaica—

- (a) if the petitioner was, at the relevant date—
  - (i) a national of; or
  - (ii) domiciled in; or
  - (iii) ordinarily resident in,



the country in which the decree was obtained; or

- (b) if the decree, though made in a country in which the petitioner was not domiciled, would be recognized by the courts of the country in which the petitioner was domiciled at the relevant date; or
- (c) in a case where the country in which the decree was obtained uses domicile as a ground of jurisdiction for a decree of presumption of death and dissolution of marriage, the petitioner was, at the date of the institution of the proceedings, domiciled in that country, in the sense that the concept of domicile is understood in the law of that country and either—
  - (i) the petitioner had been ordinarily resident in that country for not less than one year immediately preceding the relevant date; or
  - (ii) the last place of cohabitation of the parties to the marriage was in that country.

(3) A decree referred to in subsection (1) or (2) shall be recognized as valid in Jamaica if and only if, in addition to the circumstances described in subsection (1) or (2), the following conditions are satisfied, that is to say, the decree—

- (a) was obtained by some form of proceedings;
- (b) is officially recognized in the country in which it was obtained; and
- (c) is effective in the law of the country in which it was obtained.

(4) A decree of dissolution or nullity of marriage shall not be recognized as valid by virtue of subsection (1), (2) or (3) if, under the common law rules of private international law, recognition of the validity of such decree would be refused by a court in Jamaica notwithstanding that the foreign court by which the decree was granted was competent to do so.

(5) In this section—

“marriage” includes a purported marriage that is void;

“relevant date” means the date of the institution of the proceedings for a decree of dissolution or nullity;

“respondent” means the party to the marriage other than the party at whose instance the dissolution or annulment was effected.

### *Ancillary Provisions*

25. [*Deleted by Act 30 of 2005, S. 28(1)(a).*]

Avoidance of transactions intended to prevent relief. 30/2005 S. 28(1)(e).

26.—(1) Where proceedings for financial relief under any of the provisions of section 20 or 23 are brought by a person against his or her spouse or former spouse (hereafter in this section referred to as “the other party”), the Court may, on an application by that person—

- (a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction, or otherwise deal with, any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
  
- (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition 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);
  
- (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 aforesaid, 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 relief in question.

(2) Paragraphs (b) and (c) of subsection (1) apply, respectively, to a disposition made by the other party (whether before or after the commencement of the proceedings for financial relief) within the period of three years ending with the date of the application made for the purposes of the paragraph in question, 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 aforesaid on the part of the other party.

(3) Where an application is made under this section with respect to a disposition or other transaction and the Court is satisfied—

(a) in a case falling within paragraph (a) or (b) of subsection (1), that the disposition or other transaction would (apart from this section) have the consequence; or

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

of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention aforesaid.

(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” 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,

and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.

**27.—(1)** Notwithstanding anything in this Act but subject to subsection (2), the Court shall not make absolute a decree for the dissolution or nullity of marriage in any proceedings unless it is satisfied as respects every relevant child who is under eighteen that—

Restrictions  
on decrees  
for dis-  
solution or  
nullity.

- (a) arrangements for his care and upbringing have been made and are satisfactory or are the best that can be devised in the circumstances; or
- (b) it is impracticable for the party or parties appearing before the Court to make any such arrangements.

(2) The Court may, if it thinks fit, proceed without observing the requirements of subsection (1) if—

- (a) it appears 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; and
- (b) the Court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the Court within a specified time.

28. [*Deleted by Act 30 of 2005, S. 28 (1)(a).*]

Power to  
provide for  
supervision of  
children.

29.—(1) Where the Court has jurisdiction by virtue of section 23 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.

(2) Where the Court makes an order under this section for supervision by a welfare officer, the person responsible for carrying out such supervision shall be such public officer as may be selected under arrangements made by the Minister.

(3) Where a child is under the supervision of a welfare officer 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 section 23 shall, subject to any rules of court, be exercisable at the instance of the Court itself.

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

*Practice and Procedure of Court*

**30.** All parties to be affected by a petition shall be served with notice thereof in such manner as may be provided by rules of court, except in cases where the Court deems it expedient to dispense with notice.

Notice of  
petition

**31.—(1)** The Court may, if it thinks fit, order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition

Examina-  
tion of  
petitioner

(2) The Court may from time to time adjourn the hearing of a petition, and may require further evidence thereon if it thinks fit.

Examination  
of witnesses.

**32.—**(1) The witnesses in proceedings before the Court where their attendance can be had shall be examined *viva voce* and in open Court:

Provided that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in such case shall, on the application of the opposite party or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party *viva voce* in open Court, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

(2) Where the Court dispenses with the attendance of a witness for illness or other sufficient cause, it may order him or her to be examined by interrogatories, or otherwise by a commissioner or examiner to be appointed by the Court.

Costs.

**33.—**(1) Each party to proceedings under this Act shall, subject to subsection (2), bear his or her own costs.

(2) Where the Court is of the opinion that the circumstances in any case are such as to justify it in so doing, it may, subject to rules of court, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as it thinks fit.



*Miscellaneous*

34.—(1) For the purposes of this Act, except section 24 <sup>Domicile</sup>  
(1) (c) and section 24 (2) (c)—

(a) the domicile of a woman who is, or has at any time been, married shall be determined as if she had never been married;

(b) the domicile of a person who has not attained the age of eighteen years but who is, or at any time has been, married shall be determined as if that person had attained the age of eighteen years at the date of the marriage, or, where the person has been married more than once, at the date of the first of such marriages.

(2) For the purposes of this Act, except section 24  
(1) (c) and section 24 (2) (c), the domicile of a person—

(a) at a time before the 1st day of February, 1989, shall be determined as if this Act had not been enacted; and

(b) at any time after the 1st day of February, 1989, shall be determined as if this Act had always been in force.

(3) Nothing in this section affects the jurisdiction of any court in any proceedings commenced before the 1st day of February, 1989.

35.—(1) Proceedings for a decree of judicial separation, restitution of conjugal rights and proceedings by a husband for damages against an adulterer are hereby abolished.

(2) Any such proceedings instituted before the appointed day shall not be continued after that day.

Abolition of decrees of judicial separation, restitution of conjugal rights and damages by a husband against adulterer.

Power of  
Minister to  
amend  
Schedule.

36. The Minister may, by order, amend the Schedule with regard to the approval, duties and conduct of approved marriage counsellors in the performance of functions under this Act.

#### SCHEDULE

(Section 2)

##### *Approved Marriage Counsellors*

1. Any person who is qualified by training or experience to offer marriage counselling services to the public may apply to the Minister for approval as an approved marriage counsellor for the purposes of this Act.

2. The Minister shall, by notice in the *Gazette*, approve an applicant under paragraph 1 to be an approved marriage counsellor for the purposes of this Act.

3. The approval under paragraph 2 may be given subject to such conditions as the Minister may determine, and the Minister may, from time to time, revoke or vary all or any of those conditions or add further conditions.

4. The Minister may, at any time, by notice in the *Gazette*, revoke any approval granted under paragraph 2 where—

- (a) the counsellor concerned fails to comply with a condition of the approval; or
- (b) the Minister is satisfied that the counsellor is not adequately carrying out marriage counselling services.