



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-35) applied (with modifications) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), [s. 28A\(3\)](#) (as inserted by [Domestic Proceedings and Magistrates' Court Act 1978 \(c. 22\)](#), [SIF 49:3](#)), [ss. 57, 89](#))
- C2** Pt. I (ss. 1-35) applied (with modifications) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), [ss. 28, 28A](#)

Powers of court to make orders for financial provision for parties to a marriage and children of the family

1 Grounds of application for financial provision.

Either party to a marriage may apply to a magistrates' court for an order under section 2 of this Act on the ground that the other party to the marriage . . . ^{F1}—

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

Status: Point in time view as at 03/03/2003.

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Textual Amendments

- F1** Words repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 21](#)

2 Powers of court to make orders for financial provision.

- (1) Where on an application for an order under this section the applicant satisfies the court of any ground mentioned in section 1 of this Act, the court may, subject to the provisions of this Part of this Act, make any one or more of the following orders, that is to say—
- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
 - (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
 - (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.
- (2) Without prejudice to the generality of subsection (1)(b) or (d) above, an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.
- (3) The amount of any lump sum required to be paid by an order under this section shall not exceed £500 or such larger amount as the [^{F2}Lord Chancellor] may from time to time by order fix for the purposes of this subsection.

Any order made by the [^{F2}Lord Chancellor] under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F2** S. 2(3): words substituted (1. 4. 1992) by 1992/709, art.3(2), Sch. 2

Modifications etc. (not altering text)

- C3** S. 2 extended by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18, SIF 49:3\)](#), s. 28A(1) as substituted by [Matrimonial and Family Proceedings Act 1984 \(c.42, SIF 49:3\)](#), ss. 26(2), 48(2)
- C4** S. 2(3): functions of the Secretary of State transferred (1.4.1992) to the Lord Chancellor by [S.I. 1992/709, art. 3\(1\)](#), [Sch.2](#)

[^{F3}3 Matters to which court is to have regard in exercising its powers under s. 2.

- (1) Where an application is made for an order under section 2 of this Act, it shall be the duty of the court, in deciding whether to exercise its powers under that section and, if so, in what manner, to have regard to all the circumstances of the case, first

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consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

- (2) As regards the exercise of its powers under subsection (1)(a) or (b) of section 2, the court shall in particular have regard to the following matters—
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (3) As regards the exercise of its powers under subsection (1)(c) or (d) of section 2, the court shall in particular have regard to the following matters—
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
 - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2) above.
- (4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.]

Textual Amendments

F3 S. 3 substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 9(1), 48(2)**

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4 Duration of orders for financial provision for a party to a marriage.

- (1) The term to be specified in any order made under section 2(1)(a) of this Act shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.
- (2) Where an order is made under the said section 2(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, 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 the order on the date of the remarriage.

5 Age limit on making orders for financial provision for children and duration of such orders.

- (1) Subject to subsection (3) below, no order shall be made under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in an order made under section 2(1)(c) of this Act in favour of a child may begin with the date of the making of an application for the order in question or any later date [^{F4}or a date ascertained in accordance with subsection (5) or (6) below] but—
 - (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age [^{F5}(construed in accordance with section 8 of the Education Act 1996)] [^{F6}unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and
 - (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) The court—
 - (a) may make an order under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen, and
 - (b) may include in an order made under section 2(1)(c) of this Act in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,
 if it appears to the court—
 - (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (ii) that there are special circumstances which justify the making of the order or provision.
- (4) Any order made under section 2(1)(c) of this Act in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

[^{F7}(5) Where—

- (a) a [^{F8}maintenance assessment][^{F8}maintenance calculation] (“the [^{F9}current assessment][^{F9}current calculation]”) is in force with respect to a child; and

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- (b) an application is made for an order under section 2(1)(c) of this Act—
- (i) in accordance with section 8 of the Child Support Act 1991^{F10}; and
 - (ii) before the end of the period of 6 months beginning with the making of the [F11 current assessment][F11 current calculation],
- the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (6) For the purposes of subsection (5) above, “the earliest permitted date ” is whichever is the later of—
- (a) the date 6 months before the application is made; or
 - (b) the date on which the [F12 current assessment][F12 current calculation] took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of [F13 those assessments][F13 those calculations] took effect.
- (7) Where—
- (a) a [F14 maintenance assessment][F14 maintenance calculation] ceases to have effect [F15 or is cancelled] by or under any provision of the Child Support Act 1991; and
 - (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order under section 2(1)(c) of this Act in relation to a child with respect to whom that [F14 maintenance assessment][F14 maintenance calculation] was in force immediately before it ceased to have effect [F15 or was cancelled],
- the term to be specified in any such order, or in any interim order under section 19 of this Act, made on that application, may begin with the date on which that [F14 maintenance assessment][F14 maintenance calculation] ceased to have effect [F15 or, as the case may be, the date with effect from which it was cancelled], or any later date.
- (8) In subsection (7)(b) above—
- (a) where the [F16 maintenance assessment][F16 maintenance calculation] ceased to have effect, the relevant date is the date on which it so ceased; [F17 and
 - (b) where the maintenance assessment was cancelled, the relevant date is the later of—
 - (i) the date on which the person who cancelled it did so, and
 - (ii) the date from which the cancellation first had effect.]]

Textual Amendments

- F4** Words in s. 5(2) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch. 1 para. 4** (the second paragraph so numbered).
- F5** Words in s. 5(2)(a) substituted (1.9.1997) by 1996 c. 56, s. 582(1)(4), **Sch. 37 Pt. II para. 138** (with ss. 1(4), 561, 562, Schs. 39, 40 para. 1); S.I. 1997/1623, **art. 2(2)**
- F6** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 9(2), 47, 48(2)**
- F7** S. 5(5)-(8) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch.1 para. 5**.
- F8** Words in s. 5(5)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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- F9** Words in s. 5(5)(a) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F10** 1991 c.48.
- F11** Words in s. 5(5)(b)(ii) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F12** Words in s. 5(6)(b) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F13** Words in s. 5(6)(b) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(c)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F14** Words in s. 5(7) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F15** Words in s. 5(7) repealed (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(e)(2), Sch. 9 Pt. 1** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F16** Words in s. 5(8)(a) substituted (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), Sch. 3 para. 4(2)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F17** S. 5(8)(b) and preceding word repealed (3.3.2003 for specified purposes) by **Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(e)(2), Sch. 9 Pt. 1** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

[^{F186} Orders for payments which have been agreed by the parties.

- (1) Either party to a marriage may apply to a magistrates' court for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may, if—
- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
 - (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,
- order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.
- (2) In this section “financial provision ” means the provision mentioned in any one or more of the following paragraphs, that is to say—
- (a) the making of periodical payments by one party to the other,
 - (b) the payment of a lump sum by one party to the other,
 - (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
 - (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made

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thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) A party to a marriage who has applied for an order under section 2 of this Act shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 2 of this Act, the application made for the order under section 2 shall be treated as if it had been withdrawn.
- (5) Where on an application under subsection (1) above the court decides—
 - (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,but is of the opinion—
 - (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
 - (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.
- (6) Subject to subsection (8) below, the provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) Subject to subsection (8) below, the provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.
- (8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4) above, an application for an order under section 2 of this Act is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 2 or any later date.
- (9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of—
 - (a) the consent of the respondent to the making of the order,

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

Textual Amendments

F18 S. 6 substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 10, 47, 48(2)**

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

- (1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to a magistrates' court for an order under this section, and any application made under this subsection shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.
- (2) Where on an application for an order under this section the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Part of this Act, make one or both of the following orders, that is to say—
 - (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.
- (3) The court in the exercise of its powers under this section—
 - (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
 - (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under section 1 of this Act;
 - (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under section 1 of this Act.
- (4) Where on an application under this section the court considers that the orders which it has the power to make under this section—
 - (a) would not provide reasonable maintenance for the applicant, or
 - (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards reasonable maintenance for that child,
 the court shall refuse to make an order under this section, but the court may treat the application as if it were an application for an order under section 2 of this Act.

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- (5) The provisions of section 3 of this Act shall apply in relation to an application for an order under this section as they apply in relation to an application for an order under section 2 of this Act subject to the modification that for the reference in [F19 subsection (2)(c)] of the said section 3 to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.
- (6) The provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) The provisions of section 5 of this Act shall apply in relation to an order under this section for the making of periodical payments in respect of a child of the family as they apply in relation to an order under section 2(1)(c) of this Act.

Textual Amendments

F19 Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 47, 48(3), [Sch. 1 para. 22](#)

Powers of court as to the custody etc. of children

[F20] **Restriction on making of orders under this Act: welfare of children.**

Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act, then, if there is a child of the family who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under the Children Act 1989 with respect to the child.]

Textual Amendments

F20 S. 8 substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#) s. 108, Sch. 13 para. 36 (with Sch. 14 para. 1(1)); [S.I. 1991/828](#), [art. 3\(2\)](#)

F21]

Textual Amendments

F21 Ss. 9-15 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch.15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); [S.I.1991/828](#), [art. 3\(2\)](#)

F22] 10

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Textual Amendments

F22 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F23 **11**

Textual Amendments

F23 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch.15**(with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F24 **12**

Textual Amendments

F24 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), **s. 108(7)**,Sch. 15(with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F25 **13**

Textual Amendments

F25 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), **s. 108(7)**,Sch. 15 (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F26 **14**

Textual Amendments

F26 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), **s. 108(7)**,Sch. 15 (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

F27 **15**

Textual Amendments

F27 Ss. 9-15 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

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*Powers of the court to make orders for the protection
of a party to a marriage or a child of the family*

^{F28}16

Textual Amendments

F28 S. 16 repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch. 10** (with Sch. 9 paras. 5, 8-10); S.I. 1997/1892, art. 3(1)(d)(ii)

^{F29}17

Textual Amendments

F29 S. 17 repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch. 10** (with Sch. 9 paras. 5, 8-10); S.I. 1997/1892, art. 3(1)(d)(ii)

^{F30}18

Textual Amendments

F30 S. 18 repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch. 10** (with Sch. 9 paras. 5, 8-10); S.I. 1997/1892, art. 3(1)(d)(ii)

Interim orders

19 Interim orders.

- (1) Where an application is made for an order under section 2, 6 or 7 of this Act—
- (a) the magistrates' court at any time before making a final order on, or dismissing, the application or on refusing to make an order on the application by virtue of section 27 of this Act, and
 - (b) the High Court on ordering the application to be reheard by a magistrates' court (either after the refusal of an order under section 27 of this Act or on an appeal under section 29 of this Act),

shall, subject to the provisions of this Part of this Act, have the ^{F31} . . .

- (i) power to make an order (in this Part of this Act referred to as an “interim maintenance order”) which requires the respondent to make to the applicant or to any child of the family who is under the age of eighteen, or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable;

^{F31}(ii)

^{F32}(2)

Status: Point in time view as at 03/03/2003.

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- (3) An interim maintenance order may provide for payments to be made from such date as the court may specify, [^{F33}except that, subject to section 5(5) and (6) of this Act, the date shall not be] earlier than the date of the making of the application for an order under section 2, 6 or 7 of this Act; and where such an order made by the High Court on an appeal under section 29 of this Act provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by a magistrates' court shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.
- [^{F34}(3A) Where an application is made for an order under section 6 of this Act by the party to the marriage who has agreed to make the financial provision specified in the application—
- (a) subsection (1) shall apply as if the reference in paragraph (i) to the respondent were a reference to the applicant and the references to the applicant were references to the respondent; and
 - (b) [^{F35}subsection] (3) shall apply accordingly.]
- ^{F32}(4)
- (5) Subject to subsection (6) below, an interim order made on an application for an order under section 2, 6 or 7 of this Act shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the interim order;
 - (b) the date of the expiration of the period of three months beginning with the date of the making of the interim order;
 - (c) the date on which a magistrates' court either makes a final order on or dismisses the application.
- (6) Where an interim order made under subsection (1) above would, but for this subsection, cease to have effect by virtue of subsection (5)(a) or (b) above, the magistrates' court which made the order or, in the case of an interim order made by the High Court, the magistrates' court by which the application for an order under section 2, 6 or 7 of this Act is to be reheard, shall have power by order to provide that the interim order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the order made under this subsection;
 - (b) the date of the expiration of the period of three months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, beginning with the date of the making of the first of those orders;
 - (c) the date on which the court either makes a final order on, or dismisses, the application.
- (7) Not more than one interim maintenance order ^{F36} . . . may be made with respect to any application for an order under section 2, 6 or 7 of this Act, but without prejudice to the powers of a court under this section on any further such application.
- (8) No appeal shall lie from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim maintenance order.

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- (9) An interim order made by the High Court under this section on ordering that an application be reheard by a magistrates' court shall, for the purpose of its enforcement and for the purposes of section 20^{F36} . . . of this Act, be treated as if it were an order of that magistrates' court and not of the High Court.

Textual Amendments

- F31** Words in s. 19(1) and s. 19(1)(ii) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with **Sch. 14 paras. 1(1), 27(4)**); S.I. 1991/828, **art. 3(2)**
- F32** S. 19(2)(4) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with **Sch. 14 paras. 1(1), 27(4)**); S.I. 1991/828, **art. 3(2)**
- F33** Words in s. 19(3) substituted (5.4.1993) by S.I. 1993/623, **art. 2, Sch. 1 para. 6.**
- F34** S. 19(3A) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 24**
- F35** Words in s. 19(3A)(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 13 para. 37** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F36** Words in s. 19(7)(9) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with **Sch. 14 paras. 1(1), 27(4)**); S.I. 1991/828, **art. 3(2)**

Variation, revocation and cessation of orders etc.

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

- (1) Where a magistrates' court has made an order under section 2(1)(a) or (c) of this Act for the making of periodical payments the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order under section 2(1)(b) or (d) of this Act.
- [^{F37}(2) Where a magistrates' court has made an order under section 6 of this Act for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—
- (a) to the other party to the marriage, or
 - (b) to a child of the family or to that other party for the benefit of that child.]
- (3) Where a magistrates' court has made an order under section 7 of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order.
- ^{F38}(4)
- (5) Where a magistrates' court has made an interim maintenance order under section 19 of this Act, the court, on an application made under this section, shall have power to vary or revoke that order, except that the court shall not by virtue of this subsection extend the period for which the order is in force.
- (6) The power of the court under this section to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.
- (7) Where the court has power by virtue of this section to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount

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that may at that time be required to be paid under section 2(3) of this Act, but the court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the person required to pay the lump sum was required to pay a lump sum by a previous order under this Part of this Act.

- (8) Where the court has power by virtue of subsection (2) above to make an order for the payment of a lump sum and the respondent [F39 or the applicant, as the case may be,] has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under section 2(3) of this Act, the court may, notwithstanding anything in subsection (7) above, make an order for the payment of a lump sum of that amount.
- (9) An order made by virtue of this section which varies an order for the making of periodical payments may, F40 ... , provide that the payments as so varied shall be made from such date as the court may specify, [F41 except that, subject to subsections (9A) and (9B) below, the date shall not be] earlier than the date of the making of the application under this section.

[F42(9A) Where—

- (a) there is in force an order (“the order ”)—
 - (i) under section 2(1)(c) of this Act,
 - (ii) under section 6(1) of this Act making provision of a kind mentioned in paragraph (c) of section 6(2) of this Act (regardless of whether it makes provision of any other kind mentioned in that paragraph),
 - (iii) under section 7(2)(b) of this Act, or
 - (iv) which is an interim maintenance order under which the payments are to be made to a child or to the applicant for the benefit of a child;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a [F43 maintenance assessment][F43 maintenance calculation] (“[F44 the assessment][F44 the calculation]”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which [F44 the assessment][F44 the calculation] was made, for the variation or revocation of the order,

the court may, in exercise of its powers under this section to vary or revoke the order, direct that the variation or revocation shall take effect from the date on which [F44 the assessment][F44 the assessment] took effect or any later date.

(9B) Where—

- (a) an order (“the child order ”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a [F45 maintenance assessment][F45 maintenance calculation];
- (b) on the date on which the child order became so affected there was in force an order (“the spousal order ”)—
 - (i) under section 2(1)(a) of this Act,
 - (ii) under section 6(1) of this Act making provision of a kind mentioned in section 6(2)(a) of this Act (regardless of whether it makes provision of any other kind mentioned in that paragraph),
 - (iii) under section 7(2)(a) of this Act, or

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(iv) which is an interim maintenance order under which the payments are to be made to the applicant (otherwise than for the benefit of a child); and

(c) an application is made, before the end of the period of 6 months beginning with the date on which the [F46maintenance assessment][F46maintenance calculation] was made, for the spousal order to be varied or revoked,

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

(9C) For the purposes of subsection (9B) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.]

F47(10)

(11) In exercising the powers conferred by this section the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, the court shall have regard to all the circumstances of the case, [F48first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change] in any of the matters to which the court was required to have regard when making the order to which the application relates or, in the case of an application for the variation or revocation of an order made under section 6 of this Act or on an appeal under section 29 of this Act, to which the court would have been required to have regard if that order had been made under section 2 of this Act.

[F49(12) An application under this section may be made—

- (a) where it is for the variation or revocation of an order under section 2, 6, 7 or 19 of this Act for periodical payments, by either party to the marriage in question; and
- (b) where it is for the variation of an order under section 2(1)(c), 6 or 7 of this Act for periodical payments to or in respect of a child, also by the child himself, if he has attained the age of sixteen.]

F50(13)

Textual Amendments

F37 S. 20(2) substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 11, 48(2)**

F38 S. 20(4) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), **Sch. 15** (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, **art. 3(2)**

F39 Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), **Sch. 1 para. 25**

F40 Words in s. 20(9) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), **Sch. 15** (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, **art. 3(2)**

F41 Words in s. 20(9) substituted (5.4.1993) by S.I. 1993/623, **art. 2, Sch. 1 para.7.**

F42 S. 20(9A)-(9C) added (5.4.1993) by S.I. 1993/623, **art. 2, Sch. 1 para.8.**

F43 Words in s. 20(9A)(c) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), **Sch. 3 para. 4(3)(a)** (with s. 83(6)); S.I. 2003/192, **art. 3, Sch.**

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- F44** Words in s. 20(9A) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), [Sch. 3 para. 4\(3\)\(b\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F45** Words in s. 20(9B)(a) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), [Sch. 3 para. 4\(3\)\(a\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F46** Words in s. 20(9B)(c) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), [Sch. 3 para. 4\(3\)\(a\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F47** S. 20(10) repealed (1.4.1989 subject to a saving in S.I. 1989/382, art. 3, [Sch. 2 para. 3](#)) by [Family Law Reform Act 1987 \(c. 42, SIF 49:3\)](#), s. 33(4), [Sch. 4](#)
- F48** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 9\(3\)](#), 48(2)
- F49** S. 20(12) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 38](#) (with Sch. 14 para. 1(1); S.I. 1991/828, [art. 3\(2\)](#))
- F50** S. 20(13) repealed (1.4.1989 subject to a saving in S.I. 1989/382, art. 3, [Sch. 2 para. 3](#)) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(4), [Sch. 4](#)

Modifications etc. (not altering text)

- C5** S. 20 amended (14.10.1991) by S.I. 1991/1991, [rule 22\(1\)](#)
 S. 20 restricted (14.10.1991) by S.I. 1991/1991, [rule 22\(4\)](#)

[^{F51}20ZAVariation of orders for periodical payments: further provisions.

- (1) Subject to subsections (7) and (8) below, the power of the court under section 20 of this Act to vary an order for the making of periodical payments shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.
- (2) In any case where—
 - (a) a magistrates' court has made an order under this Part of this Act for the making of periodical payments, and
 - (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),
 an application may be made under this subsection to the clerk to the justices for the petty sessions area for which the court is acting for the order to be varied as mentioned in subsection (3) below.
- (3) Subject to subsection (5) below, where an application is made under subsection (2) above, the clerk, after giving written notice (by post or otherwise) of the application to the respondent and allowing the respondent, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made [^{F52}to the justices' chief executive for the court]]
- (4) The clerk may proceed with an application under subsection (2) above notwithstanding that the respondent has not received written notice of the application.
- (5) Where an application has been made under subsection (2) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (3) above, refer the matter to the court which, subject to subsections (7) and (8) below, may vary the order

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- by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.
- (6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to order that account be opened) shall apply for the purposes of subsections (1) and (5) above as it applies for the purposes of that section.
- (7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980, the court shall have regard to any representations made by the parties to the application.
- (8) If the court does not propose to exercise its power [^{F53}under paragraph (c), (cc) or (d)] of subsection (3) of section 59 of the Magistrates' Courts Act 1980, the court shall, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.
- (9) Subsection (12) of section 20 of this Act shall have effect for the purposes of applications under subsection (2) above as it has effect for the purposes of applications under that section.
- (10) None of the powers of the court, or of the clerk to the justices, conferred by this section shall be exercisable in relation to an order under this Part of this Act for the making of periodical payments which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Courts Act 1980).

Textual Amendments

- F51** S. 20ZA inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c.17, SIF 49:3\), s. 5; S.I. 1992/455, art. 2](#)
- F52** Words in s. 20ZA(3) substituted (1.4.2001) by [1999 c. 22, s. 90, Sch. 13 para. 91](#) (with [Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provisions in [Schs. 1, 2](#))
- F53** Words in s. 20ZA(8) substituted (11.4.1994) by [S.I. 1994/731, art. 2](#)

Modifications etc. (not altering text)

- C6** S. 20ZA excluded by [1972 c. 18, s. 34A\(1\)](#) (as inserted (1.4.1992) by [1991 c. 17, Sch. 1 para. 19\(2\)](#); [S.I. 1992/455, art. 2](#))

[^{F54}20A Revival of orders for periodical payments.

- (1) Where an order made by a magistrates' court under this Part of this Act for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect—
- on the date on which the child attains the age of sixteen, or
 - at any time after that date but before or on the date on which he attains the age of eighteen,
- the child may apply to the court which made the order for an order for its revival.
- (2) If on such an application it appears to the court that—
- the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment, or

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

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(3) An order revived under this section may be varied or revoked under section 20 in the same way as it could have been varied or revoked had it continued in being.]

Textual Amendments

F54 S. 20A containing subsections (1)-(3) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 39\(1\)](#)(with Sch. 14 para. 1(1)); [S.I. 1991/828](#), [art. 3\(2\)](#)

^{F55}**21**

Textual Amendments

F55 S. 21 repealed (14.10.1991) by [Children Act 1989\(c. 41, SIF 20\)](#), s. 108(7), [Sch.15 \(with Sch. 14 paras. 1\(1\), 27\(4\)\)](#); [S.I. 1991/828](#), [art. 3\(2\)](#)

22 Variation of instalments of lump sum.

Where in the exercise of its powers under [^{F56}section 75 of the Magistrates' Courts Act 1980] a magistrates' court orders that a lump sum required to be paid under this Part of this Act shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

Textual Amendments

F56 Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 160](#)

23 Supplementary provisions with respect to variation and revocation of orders.

^{F57}(1)

(2) The powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money [^{F58}and the power of the clerk of a magistrates' court to vary such an order] under [^{F59}section 60 of the Magistrates' Courts Act 1980] and [^{F58}the power of a magistrates' court] to suspend or rescind certain other orders under [^{F59}section 63(2) of that Act] shall not apply in relation to an order made under this Part of this Act.

Textual Amendments

F57 S. 23(1) repealed (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 125(7), [Sch. 20](#); [S.I. 1991/1883](#), [art. 3](#)

F58 Words in s. 23(2) inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 11(1), [Sch. 2 para. 2\(a\)\(b\)](#); [S.I. 1992/455](#), [art.2](#).

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F59 Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), Sch. 7 para. 161(b)

F60 24

Textual Amendments

F60 S. 24 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch.20; S.I. 1991/1883, art.3, Sch.

25 Effect on certain orders of parties living together.

(1) Where—

(a) periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by an order made under section 2, [^{F61}or 6] of this Act or by an interim maintenance order made under section 19 of this Act (otherwise than on an application under section 7 of this Act), ^{F62} . . .

^{F62}(b)

the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where any of the following orders is made under this Part of this Act, that is to say—

(a) an order under section 2, [^{F63}or 6] of this Act which requires periodical payments to be made to a child of the family, [^{F64}or]

(b) an interim maintenance order under section 19 of this Act (otherwise than on an application under section 7 of this Act) which requires periodical payments to be made to a child of the family,

^{F65}(c)

^{F65}(d)

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

(3) Any order made under section 7 of this Act, and any interim maintenance order made on an application for an order under that section, shall cease to have effect if the parties to the marriage resume living with each other.

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

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Textual Amendments

- F61** Words in s. 25(1)(a) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 41](#) (1) (with Sch. 14 para. 1(1)); S.I. 1991/828, [art. 3\(2\)](#)
- F62** S. 25(1)(b) and word repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch.15](#) (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, [art. 3\(2\)](#)
- F63** Words in s. 25(2)(a) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 41\(1\)](#)(with Sch. 14 para. 1(1)); S.I. 1991/828, [art. 3\(2\)](#)
- F64** Word in s. 25(2)(a) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 41\(2\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)
- F65** S. 25(2)(c)(d) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, [art. 3\(2\)](#)

Reconciliation

26 Reconciliation.

- (1) Where an application is made for an order under section 2 of this Act the court, before deciding whether to exercise its powers under that section, shall consider whether there is any possibility of reconciliation between the parties to the marriage in question; and if at any stage of the proceedings on that application it appears to the court that there is a reasonable possibility of such a reconciliation, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.
- (2) Where the court adjourns any proceedings under subsection (1) above, it may request [^{F66}an officer of the Service (within the meaning of the Criminal Justice and Court Services Act 2000)]or any other person to attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, [^{F67}that officer or] other person shall report in writing to the court whether the attempt has been successful or not, but shall not include in that report any other information.

Textual Amendments

- F66** Words in s. 26(2) substituted (1.4.2001) by [2000 c. 43, s. 74, Sch. 7 Pt. II para. 57\(a\)](#); S.I. 2001/919, [art. 2](#)
- F67** Words in s. 26(2) substituted (1.4.2001) by [2000 c. 43, s. 74, Sch. 7 Pt. II para. 57\(b\)](#); S.I. 2001/919, [art. 2](#)

Provisions relating to High Court and county court

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

Where on hearing an application for an order under section 2 of this Act a magistrates' court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the High Court, the magistrates' court shall refuse to make any order on the application, and no appeal shall lie from that refusal; but if in any proceedings in the High Court relating to or comprising the same subject matter as that application the High Court so orders, the application shall be reheard and determined by a magistrates' court acting for the same petty sessions area as the first mentioned court.

Status: Point in time view as at 03/03/2003.

Changes to legislation: Domestic Proceedings and Magistrates' Courts Act 1978, Part I is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

28 Powers of High Court and county court in relation to certain orders under Part I.

(1) Where after the making by a magistrates' court of an order under this Part of this Act proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the High Court or a county court, then, except in the case of an order for the payment of a lump sum, the court in which the proceedings or any application made therein are or is pending may, if it thinks fit, direct that the order made by a magistrates' court shall cease to have effect on such date as may be specified in the direction.

^{F68}(2)

(3) Nothing in this section shall be taken as prejudicing the effect of any order made by the High Court or a county court so far as it implicitly supersedes or revokes an order or part of an order made by a magistrates' court.

Textual Amendments

F68 S. 28(2) repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch. 10** (with **Sch. 9** paras. 5, 8-10); S.I. 1997/1892, **art. 3(1)(d)(ii)**

29 Appeals.

(1) Subject to section 27 of this Act, where a magistrates' court makes or refuses to make, varies or refuses to vary, revokes or refuses to revoke an order (other than an interim maintenance order) under this Part of this Act, an appeal shall lie to the High Court.

(2) On an appeal under this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court made on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court [^{F69}or, in a case where there was made to the magistrates' court an application for an order under section 2 and an application under section 6 and the term of the periodical payments was or might have been ordered to begin on the date of the making of the application for an order under section 2, the date of the making of that application].

(3) Without prejudice to the generality of subsection (2) above, where, on an appeal under this section in respect of an order of a magistrates' court requiring any person to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order as the court thinks fit and, if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.

^{F70}(4)

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- (5) Any order of the High Court made on an appeal under this section (other than an order directing that an application shall be reheard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of [F71 section 20] of this Act be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.

Textual Amendments

- F69** Words added by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 26](#)
- F70** S. 29(4) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#)
- F71** Words in s. 29(5) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 42](#) (with [Sch. 14 \(para. 1\(1\)\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

Provisions relating to procedure, jurisdiction and enforcement

30 Provisions as to jurisdiction and procedure.

- (1) A magistrates' court shall, subject to [F72 section 2 of the Family Law Act 1986 and] [F73 section 70 of the M1 Magistrates' Courts Act 1980] and any determination of [F74 a magistrates' courts committee] thereunder, have jurisdiction to hear an application for an order under this Part of this Act if at the date of the making of the application either the applicant or the respondent ordinarily resides within the commission area for which the court is appointed.

F75(2)

F75(3)

F75(4)

- (5) It is hereby declared that any jurisdiction conferred on a magistrates' court by this Part of this Act is exercisable notwithstanding that any party to the proceedings is not domiciled in England.

Textual Amendments

- F72** Words inserted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(5), [Sch. 1 para. 24](#)
- F73** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 163](#)
- F74** Words in s. 30(1) substituted (1.4.1995) by 1994 c. 29, s. 91, [Sch. 8 Pt. II para. 29](#); S.I. 1995/685, [arts. 1\(2\), 4\(1\), 7\(2\)\(e\)](#)
- F75** S. 30(2)–(4) repealed (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 125(7), [Sch. 20](#); S.I. 1991/1883, [art. 3, Sch.](#)

Marginal Citations

- M1** 1980 c.43 (82).

Status: Point in time view as at 03/03/2003.

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31 Constitution of courts.

- (1) Where the hearing of an application under section 1 of this Act is adjourned after the court has decided that it is satisfied of any ground mentioned in that section, the court which resumes the hearing of that application may include justices who were not sitting when the hearing began if—
 - (a) the parties to the proceedings agree; and
 - (b) at least one of the justices composing the court which resumes the hearing was sitting when the hearing of the application began.
- (2) Where, by virtue of subsection (1) above, among the justices composing the court which resumes the hearing of an application under section 1 of this Act there are any justices who were not sitting when the hearing of the application began, the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the hearing began to be fully acquainted with those facts and circumstances.

32 Enforcement etc. of orders for payment of money.

- ^[F76](1) An order for the payment of money made by a magistrates' court under this Part of this Act shall be enforceable as a magistrates' court maintenance order.]
- (2) Without prejudice to ^[F77]section 59 of the Magistrates' Courts Act 1980] (which relates to the power of a magistrates' court to direct periodical payments to be made through ^[F78]a justices' chief executive]), a magistrates' court making an order under this Part of this Act for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made under this Part of this Act, ^[F77]the said section 59] shall have effect as if, in ^[F79]subsection (7)] thereof, for the words ^[F79]“the person who applied for the maintenance order ”] there were substituted the words “the person to whom the payments under the order fall to be made ”.
- (3) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Part of this Act shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be liable on summary conviction to a fine not exceeding ^[F80]level 2 on the standard scale].
- (4) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order made by virtue of this Part of this Act without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.
- (5) The court hearing an application for the grant of leave under subsection (4) above may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or any part thereof.
- (6) An application for the grant of leave under subsection (4) above shall be made in such manner as may be prescribed by rules.

Status: Point in time view as at 03/03/2003.

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Textual Amendments

- F76** S. 32(1) substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), **Sch. 2 para. 70**
- F77** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, **Sch. 7 para. 164**
- F78** Words in s. 32(2) substituted (1.4.2001) by 1999 c. 22, s. 92, **Sch. 13 para. 92** (with [Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provisions in [Schs. 1, 2](#))
- F79** Words in s. 32(2) substituted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 11(1), [Sch. 2 para. 3](#); [S.I. 1992/455, art. 2](#).
- F80** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**

^{F81}**33**

Textual Amendments

- F81** S. 33 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, **Sch.15** (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); [S.I. 1991/828, art. 3\(2\)](#)

^{F82}**34**

Textual Amendments

- F82** S. 34 repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, **Sch. 15** (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); [S.I. 1991/828, art. 3\(2\)](#)

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

- (1) Where—
 - (a) an order made under section 2(1)(a), 6 or 7 of this Act has, by virtue of section 4(2) of this Act, ceased to have effect by reason of the remarriage of the party in whose favour it was made, and
 - (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting,

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

- (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 subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.
- (3) An application under this section may be made by the person liable to make payments under the order made under section 2(1)(a), 6 or 7 of this Act or his personal

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

- (4) An application under this section shall be made to a county court, except that such an application may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, the payment of arrears under an order made under section 2(1)(a), 6 or 7 of this Act; and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) The jurisdiction conferred on a county court by this section shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application under this section the jurisdiction would not but for this subsection be exercisable by a county court.
- (7) [^{F83}A justices' chief executive] to whom any payments under an order made under section 2(1)(a), 6 or 7 of this Act are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under the first mentioned order, shall not be liable—
 - (a) in the case of [^{F83}the justices' chief executive], for any act done by him in pursuance of the first mentioned order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
 - (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the first mentioned order not ceased to have effect by reason of the remarriage 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 first mentioned order or the personal representatives of either of those persons.

- (8) In this section “collecting officer”, in relation to an attachment of earnings order, means the officer of the High Court, the officer designated by the Lord Chancellor or the [^{F83}justices' chief executive] to whom a person makes payments in compliance with the order.

Textual Amendments

F83 Words in s. 35(7)(8) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 93** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with transitional provisions in Schs. 1, 2)

Status:

Point in time view as at 03/03/2003.

Changes to legislation:

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