



Matrimonial Causes Act 1973

1973 CHAPTER 18

PART II

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Variation, discharge and enforcement of certain orders, etc.

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

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section [^{F1}and of section 28(1A) above], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order;
 - (c) any secured periodical payments order;
 - (d) any order made by virtue of section 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments);
 - [^{F2}(dd) any deferred order made by virtue of section 23(1)(c) (lump sums) which includes provision made by virtue of—
 - (i) section 25B(4), or
 - (ii) section 25C,(provision in respect of pension rights)]
 - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the grant of a decree of judicial separation.
 - [^{F3}(f) any order made under section 24A(1) above for the sale of property]
 - [^{F4}(g) a pension sharing order under section 24B above which is made at a time before the decree has been made absolute.]

Status: Point in time view as at 03/03/2003.

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes Act 1973,
 Cross Heading: Variation, discharge and enforcement of certain orders, etc.. (See end of Document for details)*

- [^{F5}(2A) Where the court has made an order referred to in subsection (2)(a), (b) or (c) above, then, subject to the provisions of this section, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]
- [^{F6}(2B) Where the court has made an order referred to in subsection (2)(dd)(ii) above, this section shall cease to apply to the order on the death of either of the parties to the marriage]
- (3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.
- (4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above except on an application made in proceedings—
- (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
 - (b) for the dissolution of the marriage in question.
- [^{F7}(4A) In relation to an order which falls within paragraph (g) of subsection (2) above (“the subsection (2) order”)—
- (a) the powers conferred by this section may be exercised—
 - (i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and
 - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
 - (b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.
- (4B) No variation of a pension sharing order shall be made so as to take effect before the decree is made absolute.
- (4C) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.]
- (5) [^{F8}Subject to subsections (7A) to [^{F9}(7G)] below and without prejudice to any power exercisable by virtue of subsection (2)(d), (dd) [^{F10}, (e) or (g)] above or otherwise than by virtue of this section,] no property adjustment order [^{F11}or pension sharing order] shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 23 or under section 27 above).
- (6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order [^{F12}(and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments order.] or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

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[^{F13}(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient [^{F14}(in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below)] to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]

[^{F15}(7A) Subsection (7B) below applies where, after the dissolution of a marriage, the court—

- (a) discharges a periodical payments order or secured periodical payments order made in favour of a party to the marriage; or
- (b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.

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

- (a) an order for the payment of a lump sum in favour of a party to the marriage;
- (b) one or more property adjustment orders in favour of a party to the marriage;
- [one or more pension sharing orders;]

^{F16}(ba)

- (c) a direction that the party in whose favour the original order discharged or varied was made is not entitled to make any further application for—
 - (i) a periodical payments or secured periodical payments order, or
 - (ii) an extension of the period to which the original order is limited by any variation made by the court.

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

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

(7D) Subsections (7) and (8) of section 22A above apply where the court makes an order for the payment of a lump sum under subsection (7B) above as they apply where it makes such an order under section 22A above.

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

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- (7F) Sections 24A and 30 above apply where the court makes a property adjustment order under subsection (7B) above as they apply where it makes such an order under section 23A above.]
- [^{F17}(7G) Subsections (3) to (5) of section 24B above apply in relation to a pension sharing order under subsection (7B) above as they apply in relation to a pension sharing order under that section.]
- (8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (9) In considering for the purposes of subsection (6) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- [^{F18}(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]
- [^{F19}(11) Where—
- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
 - (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
 - (c) a [^{F20}maintenance calculation] (“ [^{F21}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 [^{F21}the calculation] was made, for the variation or discharge of the order, the court may, in exercise of its powers under this section to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [^{F21}the calculation] took effect or any later date.
- (12) Where—
- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a [^{F20}maintenance calculation];
 - (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and

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- (c) an application is made, before the end of the period of 6 months beginning with the date on which the [^{F20}maintenance calculation] was made, for the spousal order to be varied or discharged,
- the court may, in exercise of its powers under this section to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.
- (13) For the purposes of subsection (12) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.
- (14) Subsections (11) and (12) above are without prejudice to any other power of the court to direct that the variation or discharge of an order under this section shall take effect from a date earlier than that on which the order for variation or discharge was made.]
- [^{F22}(15) The power to make regulations under subsection (4C) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F1** Words inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 6(2), 48(2)
- F2** S. 31(2)(dd) inserted (1.8.1996) by 1995 c. 26, s. 166(3)(a); S.I. 1996/1675, art. 3(b)
- F3** S. 31(2)(f) inserted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), s. 8(2)(a)
- F4** S. 31(2)(g) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(2); S.I. 2000/1116, art. 2
- F5** S. 31(2A) inserted by Administration of Justice Act 1982 (c. 53, SIF 37), ss. 51, 77(1)
- F6** S. 31(2B) inserted (1.8.1996) by 1995 c. 26, s. 166(3)(b); S.I. 1996/1675, art. 3(b)
- F7** S. 31(4A)-(4C) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(3); S.I. 2000/1116, art. 2
- F8** Words in s. 31(5) inserted (1.11.1998) by 1996 c. 27, s. 66(1), Sch. 8 Pt. I para. 16(5)(a) (with Sch. 9 para. 5); S.I. 1998/2572, art. 3
- F9** Words in s. 31(5) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(4)(a); S.I. 2000/1116, art. 2
- F10** Words in s. 31(5) substituted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(4)(b); S.I. 2000/1116, art. 2
- F11** Words in s. 31(5) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(4)(c); S.I. 2000/1116, art. 2
- F12** Words substituted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), s. 8(2)(b)
- F13** S. 31(7) substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 6(3), 48(2)
- F14** Words in s. 31(7)(a) inserted (1.11.1998) by 1996 c. 27, s. 66(1), Sch. 8 Pt. I para. 16(6)(b) (with Sch. 9 para. 5); S.I. 1998/2572, art. 3
- F15** S. 31(7A)-(7F) inserted (1.11.1998) by 1996 c. 27, s. 66(1), Sch. 8 Pt. I para. 16(7) (with Sch. 9 para. 5); S.I. 1998/2572, art. 3 (subject to temporary modifications in art. 4 of that S.I.)
- F16** S. 31(7B)(ba) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(5); S.I. 2000/1116, art. 2
- F17** S. 31(7G) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 7(1)(6)
- F18** S. 31(10) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 6(4), 48(2)
- F19** S. 31(11)-(14) inserted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 3
- F20** Words in s. 31(11)(c)(12)(a)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(2), Sch. 3 para. 3(3)(a) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F21** Words in s. 31(11) substituted (3.3.2003 for certain purposes, otherwise prosp.) by virtue of 2000 c. 19, ss. 26, 86(2), Sch. 3 para. 3(3)(b) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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F22 S. 31(15) inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 7(1)(7)**; S.I. 2000/1116, **art. 2**

Modifications etc. (not altering text)

- C1** S. 31(1) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C2** S. 31(2)(a)–(d) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C3** S. 31(2)(f) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C4** S. 31(3)(5) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C5** S. 31(6) amended by [Forfeiture Act 1982 \(c. 34, SIF 116:1, 2\)](#), **ss. 3(2)(b)**, 7(3)
- C6** S. 31(6) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C7** S. 31(6) amended by [Inheritance \(Provisions for Family and Dependants\) Act 1975 \(c. 63\)](#), **s. 18**
- C8** S. 31(7)–(10) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)

32 Payment of certain arrears unenforceable without the leave of the court.

- (1) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.
- (2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

Modifications etc. (not altering text)

- C9** S. 32 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(g)**, 48(2)

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

- (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—
 - (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
 - (b) the changed circumstances resulting from the death of the person so liable,
 the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

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

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- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order; and
 - (c) any secured periodical payments order.
- (3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.
- (4) An application under this section may be made in proceedings in the High Court or a county court for—
 - (a) the variation or discharge of the order to which this section applies, or
 - (b) leave to enforce, or the enforcement of, the payment of arrears under that order;but when not made in such proceedings shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (5) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (6) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Modifications etc. (not altering text)

C10 S. 33 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(h)**, 48(2)

Status:

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Changes to legislation:

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