Status: Point in time view as at 19/06/1997. This version of this provision has been superseded.
Changes to legislation: Matrimonial Causes Act 1973, Section 35 is up to date with all changes known to be in force on or before 24 July 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)

Matrimonial Causes Act 1973

1973 CHAPTER 18

PART II E+W

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Maintenance agreements

35   Alteration of agreements by court during lives of parties. E+W

(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (3) below, either party may apply to the court or to a magistrates' court for an order under this section.

(2) If the court to which the application is made is satisfied either—

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

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

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

(i)   by varying or revoking any financial arrangements contained in it, or

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

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in [**F1**section 25(4)] above; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A magistrates' court shall not entertain an application under subsection (1) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident [**F2**within the commission area (within the meaning of [**F3**the Justices of the Peace Act 1997]) for which the court is appointed;], and shall not have power to make any order on such an application except—

    (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;

    (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—

    (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made;

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

(5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 29(2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(6) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Textual Amendments

F1   Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 13**(*a*)

F2   Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 13**(*b*)

F3   Words in s. 35(3) substituted (19.6.1997) by 1997 c. 25, ss. 73(2), 74(1), **Sch. 5 para. 14** (with Sch. 4 para. 27)

Status:
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