



# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

### PART I

#### MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

##### *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.

#### **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.
- (2) Where after the making by a magistrates' court of an order under subsection (3) of section 16 of this Act in relation to a matrimonial home, one of the parties to the

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marriage in question applies for an order to be made in relation to that matrimonial home under—

- (a) section 1(2) of the [<sup>F1</sup>Matrimonial Homes Act 1983] (which enables an application to be made for an order relating to rights of occupation under that Act or relating to the exercise by either spouse of a right to occupy a dwelling house), or
- (b) [<sup>F1</sup>section 9 of the Matrimonial Homes Act 1983] (which enables an application to be made for an order relating to the exercise of the right to occupy a dwelling house where both spouses have joint rights),

the High Court or county court by which that application is heard may, if it thinks fit, direct that the order made under subsection (3) of section 16 of this Act, and any order made under subsection (4) of that section in relation to that matrimonial home, shall cease to have effect on such date as may be specified in the direction.

- (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

**F1** Words substituted by [Matrimonial Homes Act 1983 \(c. 19, SIF 49:5\)](#), ss. 12, 13(3), [Sch. 2](#)

## 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 [<sup>F2</sup>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.
- [<sup>F3</sup>(4) Where on an appeal under this section in respect of an interim custody order made by a magistrates' court the High Court varies or revokes that order, the High Court shall

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have power to vary or revoke any interim maintenance order made in connection with that order by the magistrates' court.]

- (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 [F4sections 14(3), 20 and 21][F4section 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

- F2** Words added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), **Sch. 1 para. 26**
- F3** S. 29(4) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F4** Words "section 20 " substituted (*prosp.*) for words "sections 14(3), 20 and 21 " by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 42 (with **Sch. 14 para. 1(1)**)

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