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# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

### PART I

#### MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

*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.
- [<sup>F1</sup>(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.
  - [<sup>F2</sup>(4) Where a magistrates' court has made an order under section 11(2)(a), (3)(a) or (4) 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, in the case of an application relating to an order under section 11(2)(a) or (3)(a) of this Act, to make an order under section 11(2)(b) or 11(3)(b) of this Act, as the case may be.]

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- (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 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 [<sup>F3</sup>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, [<sup>F4</sup>subject to the provisions of section 11(8) of this Act], provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application under this section.
- (10) ..... <sup>F5</sup>
- (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, [<sup>F6</sup>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 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.
- [<sup>X1</sup>(12) An application under this section for the variation or revocation of an order for periodical payments may be made by the following persons, that is to say—
  - (a) in the case of an order under section 2, 6, 7, 11(2)(a) or 19 of this Act, by either party to the marriage in question,
  - (b) in the case of an order under section 11(3)(a) of this Act for the making of periodical payments where the legal custody of a child of the family is given to a person who is a parent of that child but not a party to the marriage in question, by that parent or by the party to the marriage by whom the payments are required to be made, and

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(c) in the case of an order under section 11(4) of this Act for the making of periodical payments where a child of the family is committed to the care of a local authority, by that local authority or by the party to the marriage by whom the payments are required to be made,

and an application for the variation of an order made under section 2(1)(c), 6, 7 or 11(2), (3) or (4) of this Act for the making of periodical payments to or in respect of a child may, if the child has attained the age of sixteen, be made by the child himself.]

[<sup>F7</sup>(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.]

(13) ..... <sup>F8</sup>

#### Editorial Information

**X1** S. 20(12) commencing “An application under this section may be made ” substituted (*prosp.*) for s. 20(12) commencing “An application under this section for the variation ” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 38](#) (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

**F1** S. 20(2) substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 11](#), 48(2)

**F2** S. 20(4) repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#))

**F3** Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 46\(1\), 48\(3\)](#), [Sch. 1 para. 25](#)

**F4** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), [S. 108](#), [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#))

**F5** S. 20(10) repealed (in force 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](#)

**F6** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 9\(3\)](#), 48(2)

**F7** S. 20(12) commencing “An application under this section may be made ” substituted (*prosp.*) for s. 20(12) commencing “An application under this section for the variation ” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 38](#) (with [Sch. 14 para. 1\(1\)](#))

**F8** S. 20(13) repealed (in force 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](#)

VALID FROM 01/04/1992

#### [<sup>F9</sup>20ZA Variation 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.

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- (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 to the clerk.
  - (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 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 under paragraph (c) 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

**F9** S. 20ZA inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c.17, SIF 49:3\)](#), s.5; S.I. 1992/455, art.2

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#### **Modifications etc. (not altering text)**

- C1** 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**)

### **[<sup>F10</sup>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 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to the High Court or a county court for an order for the revival of the order of the magistrates' court, and if, on such an application, it appears to the High Court or county 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 he also is, will be or would be in gainful employment; or
  - there are special circumstances which justify the making of an order under this subsection,
- the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.
- (2) Where an order made by a magistrates' court is revived by an order of the High Court or a county court under subsection (1) above, then—
- for the purposes of the variation and discharge of the revived order, that order shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order, and
  - for the purposes of the enforcement of the revived order, that order shall be treated as an order of the magistrates' court by which the order was originally made]

#### **Textual Amendments**

- F10** S. 20A inserted (E.W.) (1.4.1989 subject to a saving in S.I. 1989/382, **art. 2, Sch. 2 para. 3**) by Family Law Reform Act (c. 42, SIF 49:7), s. 33(1), Sch. 2 para. 69

### **[<sup>F11</sup>21 Variation and revocation of orders relating to the custody of children.**

- (1) Where on an application under section 1, 6 or 7 of this Act by a party to a marriage a magistrates' court has made an order in respect of a child of the family under section 8, 9 or 10 of this Act, either party to the marriage may apply to the court—
- in the case of an order under section 8 of this Act, for the variation or revocation of that order,
  - in the case of an order under section 9 of this Act, for the variation or revocation of that order, and
  - in the case of an order under section 10 of this Act, for the revocation of that order,

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and, on such an application, the court shall have power to make the order for which application is made and also to make such other order with respect to that child under section 8, 9 or 10 of this Act as it thinks fit.

- (2) Where on an application made by a party to a marriage, a magistrates' court has made an order under section 2, 6 or 7 of this Act but has not exercised its powers under section 8, 9 or 10 of this Act with respect to a child of the family, either party to the marriage may, at any time while an order under section 2, 6 or 7 of this Act is in force, apply to the court for an order under section 8 of this Act and, on such an application, the court shall have power to make such order under section 8, 9 or 10 of this Act with respect to that child as the court thinks fit.
- (3) Where a magistrates' court has made an interim custody order under section 19 of this Act, the court shall have power, on an application made under this section by either party to the marriage in question, 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.
- (4) On an application for an order under subsection (1) or (2) above the court shall not dismiss the application or make the order for which the application is made until it has decided whether to exercise its other powers under subsection (1) or (2) above and, if so, in what manner.
- (5) Section 12 of this Act shall apply in relation to the exercise by the court of its powers under this section on an application under subsection (1) or (2) above as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act on an application under section 1, 6 or 7 of this Act.
- (6) Any reference in section 11(2), (3) or (8) of this Act to an order made under section 8(2) of this Act includes a reference to an order made under the said section 8(2) by virtue of this section and to an order made under the said section 8(2) which is varied under this section, and any reference in section 11(4) of this Act to an order made under section 10(1) of this Act includes a reference to an order made under the said section 10(1) by virtue of this section, and where by virtue of an order under this section the right to the actual custody of a child is given to the person who made the original application for an order under section 1 or 6 of this Act, the court shall have power to make an order under section 2(1)(c) and (d) of this Act in respect of that child.
- (7) An application under this section may be made in the following cases by the following persons, in addition to the parties to the marriage in question, that is to say—
  - (a) where a child of the family is not a child of both the parties to the marriage, an application under subsection (1), (2) or (3) above may be made by any person who, though not one of the parties to the marriage, is a parent of that child;
  - (b) where by virtue of an order under section 9 of this Act a child of the family is under the supervision of a local authority or a probation officer, an application under subsection (1)(b) above may be made by that local authority or probation officer;
  - (c) where by virtue of an order under section 10 of this Act a child of the family is in the care of a local authority, an application under subsection (1)(c) above may be made by that local authority.]

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#### Textual Amendments

- F11** S. 21 repealed (prosp.) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#))

## 22 Variation of instalments of lump sum.

Where in the exercise of its powers under <sup>F12</sup>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

- F12** 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.

<sup>F13</sup>(1) Provision may be made by rules as to the persons who are to be made respondents on an application for the variation or revocation of an order under section 14(3), 20 or 21 of this Act; and if on an application under section 20 of this Act there are two or more respondents, the powers of the court under <sup>F14</sup>section 64(1) of the Magistrates' Courts Act 1980] shall be deemed to include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.]

(2) The powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money under <sup>F15</sup>section 60 of the Magistrates' Courts Act 1980] and to suspend or rescind certain other orders under <sup>F15</sup>section 63(2) of that Act] shall not apply in relation to an order made under this Part of this Act.

#### Textual Amendments

- F13** S. 23(1) repealed (*prosp.*) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 124(3), 125(7), [Sch. 20](#)
- F14** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 161\(a\)](#)
- F15** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 161\(b\)](#)

## <sup>F16</sup>24 Proceedings by or against a person outside England and Wales for variation or revocation of orders.

(1) It is hereby declared that any jurisdiction conferred on a magistrates' court by virtue of section 20 [<sup>F17</sup>or 21]] of this Act is exercisable notwithstanding that the proceedings are brought by or against a person residing outside England and Wales.

(2) Subject to subsection (3) below, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules, proceed on an application made under section 20 [<sup>F17</sup>or 21]] of this



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Act notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.

- (3) A magistrates' court shall not exercise its powers under section 20 of this Act so as to increase the amount of any periodical payments required to be made by any person under this Part of this Act unless the order under that section is made at a hearing at which that person appears or the requirements of [F18 section 55(3) of the Magistrates' Courts Act 1980] with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

#### Textual Amendments

- F16** S. 24 repealed (prosp.) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 124(3), 125(7), Sch. 20
- F17** Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108(7), Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F18** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), Sch. 7 para. 162

## 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, [F19 6 or 11(2)] [F19 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), [F20 or]
- [F20(b) the right to the actual custody of a child is given to one of the parties to a marriage by an order made under section 8(2) of this Act or by an interim custody order made under section 19 of this Act,]

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, [F21 6 or 11(2)] [F21 or 6] of this Act which requires periodical payments to be made to a child of the family, [F22 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,
- [F23(c) an order under section 8(2) of this Act which gives legal custody of a child to a person who is a parent of that child but not a party to the marriage in question, or
- (d) an order under section 9, 10 or 11(3) or (4) of this Act,]

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.



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- (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

- F19** Words “or 6 ” substituted (*prosp.*) for words “6 or 11(2) ” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 41(1) (with **Sch. 14 para. 1(1)**)
- F20** S. 25(1)(b) and word repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)
- F21** Words “or 6 ” substituted (*prosp.*) for words “6 or 11(2) ” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 41(2)(a) (with **Sch. 14 para. 1(1)**)
- F22** Word inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 13 para. 41(2)(b) (with **Sch. 14 para. 1(1)**)
- F23** S. 25(2)(c)(d) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)

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