



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.
- [^{F1}(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.
 - [^{F2}(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.

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- (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 [^{F3}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, ^{F4}. . . , provide that the payments as so varied shall be made from such date as the court may specify, [^{F5}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.

[^{F6}(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 maintenance assessment (“the assessment ”) 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 the assessment 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 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 maintenance assessment;
- (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,

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- (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
- (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 maintenance assessment 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.]

(10) F7

- (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, [^{F8}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.

[^{F9}(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) F10

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 (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\(2\)](#)
- 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 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\(2\)](#)
- F5** Words in s. 20(9) substituted (5.4.1993) by [S.I. 1993/623](#), [art. 2](#), [Sch. 1 para.7.](#)
- F6** S. 20(9A)-(9C) added (5.4.1993) by [S.I. 1993/623](#), [art. 2](#), [Sch. 1 para.8.](#)

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- F7** 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**
- F8** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 9(3), 48(2)**
- F9** 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)**)
- F10** 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)

- C1** 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)**

[^{F11}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 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.

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- (8) If the court does not propose to exercise its power [^{F12}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

F11 S. 20ZA inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c.17, SIF 49:3), s. 5; S.I. 1992/455, art. 2

F12 Words in s. 20ZA(8) substituted (11.4.1994) by S.I. 1994/731, art. 2

Modifications etc. (not altering text)

C2 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)

[^{F13}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—
 - (a) on the date on which the child attains the age of sixteen, or
 - (b) 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—
 - (a) 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
 - (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.]

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Textual Amendments

F13 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\(2\)](#)

F14²¹

Textual Amendments

F14 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 [^{F15}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

F15 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.

^{F16}(1)

(2) The powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money [^{F17}and the power of the clerk of a magistrates' court to vary such an order] under [^{F18}section 60 of the Magistrates' Courts Act 1980] and [^{F17}the power of a magistrates' court] to suspend or rescind certain other orders under [^{F18}section 63(2) of that Act] shall not apply in relation to an order made under this Part of this Act.

Textual Amendments

F16 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](#)

F17 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](#).

F18 Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 161\(b\)](#)

F19²⁴

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Textual Amendments

F19 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, [^{F20}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), ^{F21} . . .

^{F21}(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, [^{F22}or 6] of this Act which requires periodical payments to be made to a child of the family, [^{F23}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,

^{F24}(c)

^{F24}(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.

Textual Amendments

F20 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\(2\)](#)

F21 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\(2\)](#)

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- F22** 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)**
- F23** 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)**
- F24** 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)**

Status:

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