



Matrimonial and Family Proceedings Act 1984

1984 CHAPTER 42

PART II

FINANCIAL RELIEF IN MATRIMONIAL PROCEEDINGS

Provisions relating to the powers of magistrates' courts

9 Orders for financial relief made by magistrates' courts in matrimonial proceedings

- (1) For section 3 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be substituted the following section—

“3 Matters to which court is to have regard in exercising its powers under s.2.

- (1) Where an application is made for an order under section 2 of this Act, it shall be the duty of the court, in deciding whether to exercise its powers under that section and, if so, in what manner, to 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.
- (2) As regards the exercise of its powers under subsection (1)(a) or (b) of section 2, the court shall in particular have regard to the following matters—
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

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- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (d) the age of each party to the marriage and the duration of the marriage ;
 - (e) any physical or mental disability of either of the parties to the marriage ;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family ;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (3) As regards the exercise of its powers under subsection (1)(c) or (d) of section 2, the court shall in particular have regard to the following matters—
- (a) the financial needs of the child ;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child ;
 - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application ;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained ;
 - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2) above.
- (4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility ;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.”
- (2) In section 5(2) of that Act (duration of periodical payments orders in favour of children), in paragraph (a), for the words " unless the court thinks it right in the circumstances of the case to specify a later date " there shall be substituted the words " unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date ".
- (3) In section 20(11) of that Act (variation and revocation of orders for periodical payments) for the words "including any change " there shall be substituted the words " 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 ".

10 Orders for payments which have been agreed by the parties

For section 6 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be substituted the following section—

“6 Orders for payments which have been agreed by the parties.

- (1) Either party to a marriage may apply to a magistrates' court for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may, if—
 - (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
 - (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.
- (2) In this section " financial provision " means the provision mentioned in any one or more of the following paragraphs, that is to say—
 - (a) the making of periodical payments by one party to the other,
 - (b) the payment of a lump sum by one party to the other,
 - (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
 - (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.
- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) A party to a marriage who has applied for an order under section 2 of this Act shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 2 of this Act, the application made for the order under section 2 shall be treated as if it had been withdrawn.
- (5) Where on an application under subsection (1) above the court decides—
 - (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

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but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
 - (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,
- then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.
- (6) Subject to subsection (8) below, the provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
 - (7) Subject to subsection (8) below, the provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.
 - (8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4) above, an application for an order under section 2 of this Act is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 2 or any later date.
 - (9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of—
 - (a) the consent of the respondent to the making of the order,
 - (b) the financial resources of the respondent, and
 - (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.”

11 Variation of consent orders by magistrates' courts

For section 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 (under which the court can vary a consent order by ordering the payment of a lump sum if the consent order provided for the payment of a lump sum) there shall be substituted the following subsection—

- “(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.”