

*Status: Point in time view as at 05/12/2005.*

*Changes to legislation: Children Act 1989, SCHEDULE 1 is up to date with all changes known to be in force on or before 21 June 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)*

## SCHEDULES

### SCHEDULE 1

Section 15(1).

#### FINANCIAL PROVISION FOR CHILDREN

##### *Orders for financial relief against parents*

- 1 (1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may—
- (a) in the case of an application to the High Court or a county court, make one or more of the orders mentioned in sub-paragraph (2);
  - (b) in the case of an application to a magistrates' court, make one or both of the orders mentioned in paragraphs (a) and (c) of that sub-paragraph.
- (2) The orders referred to in sub-paragraph (1) are—
- (a) an order requiring either or both parents of a child—
    - (i) to make to the applicant for the benefit of the child; or
    - (ii) to make to the child himself,such periodical payments, for such term, as may be specified in the order;
  - (b) an order requiring either or both parents of a child—
    - (i) to secure to the applicant for the benefit of the child; or
    - (ii) to secure to the child himself,such periodical payments, for such term, as may be so specified;
  - (c) an order requiring either or both parents of a child—
    - (i) to pay to the applicant for the benefit of the child; or
    - (ii) to pay to the child himself,such lump sum as may be so specified;
  - (d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property—
    - (i) to which either parent is entitled (either in possession or in reversion); and
    - (ii) which is specified in the order;
  - (e) an order requiring either or both parents of a child—
    - (i) to transfer to the applicant, for the benefit of the child; or
    - (ii) to transfer to the child himself,such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.
- (3) The powers conferred by this paragraph may be exercised at any time.

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- (4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (5) Where a court makes an order under this paragraph—
- (a) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child concerned if he has not reached the age of eighteen;
  - (b) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.
- (6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.
- [<sup>F1</sup>(7) Where a child is a ward of court, the court may exercise any of its powers under this Schedule even though no application has been made to it.]

#### Textual Amendments

- F1** Sch. 1 para. 1(7) inserted (14.10.1991) by *Courts and Legal Services Act 1990 (c. 41, SIF 76:1)*, s. 116, **Sch. 16 para. 10(2)**; *S.I. 1991/1883*, **art. 3**, Sch.

#### Commencement Information

- II** Sch. 1 para. 1 in force at 14.10.1991 see s. 108(2)(3) and *S.I. 1991/828*, **art. 3(2)**

#### *Orders for financial relief for persons over eighteen*

- 2 (1) If, on an application by a person who has reached the age of eighteen, it appears to the court—
- (a) that the applicant is, will be or (if an order were made under this paragraph) 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) that there are special circumstances which justify the making of an order under this paragraph,
- the court may make one or both of the orders mentioned in sub-paragraph (2).
- (2) The orders are—
- (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;
  - (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this paragraph by any person if, immediately before he reached the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

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- (5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (6) In sub-paragraph (3) “periodical payments order” means an order made under—
- (a) this Schedule;
  - <sup>F2</sup>(b) .....
  - (c) section 23 or 27 of the <sup>M1</sup>Matrimonial Causes Act 1973;
  - (d) Part I of the <sup>M2</sup>Domestic Proceedings and Magistrates’ Courts Act 1978,
  - <sup>F3</sup>(e) Part 1 or 9 of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.);
  - (f) Schedule 6 to the 2004 Act (financial relief in the magistrates’ courts etc.),]
- for the making or securing of periodical payments.
- (7) The powers conferred by this paragraph shall be exercisable at any time.
- (8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

**Textual Amendments**

- F2** Sch. 1 para. 2(6)(b) repealed (25.07.1991) by Child Support Act 1991 (c. 48, SIF 20), s. 58(2)(14) (with saving in s. 9(2))
- F3** Sch. 1 para. 2(6)(e)(f) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 78(2); S.I. 2005/3175, art. 2(1), Sch. 1

**Commencement Information**

- I2** Sch. 1 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

- M1** 1973 c. 18.
- M2** 1978 c. 22.

*Duration of orders for financial relief*

- 3 (1) The term to be specified in an order for periodical payments made under paragraph 1(2)(a) or (b) in favour of a child may begin with the date of the making of an application for the order in question or any later date [<sup>F4</sup>or a date ascertained in accordance with sub-paragraph (5) or (6)] but—
- (a) shall not in the first instance extend beyond the child’s seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and
  - (b) shall not in any event extend beyond the child’s eighteenth birthday.
- (2) Paragraph (b) of sub-paragraph (1) shall not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be or (if an order were made without complying with that paragraph) 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

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- (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) An order for periodical payments made under paragraph 1(2)(a) or 2(2)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.
- (4) Where an order is made under paragraph 1(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if—
- (a) any parent making or securing the payments; and
  - (b) any parent to whom the payments are made or secured,
- live together for a period of more than six months.
- [<sup>F5</sup>(5) Where—
- (a) a [<sup>F6</sup>maintenance calculation]](“the [<sup>F7</sup>current calculation]”) is in force with respect to a child; and
  - (b) an application is made for an order under paragraph 1(2)(a) or (b) of this Schedule for periodical payments in favour of that child—
    - (i) in accordance with section 8 of the Child Support Act 1991 <sup>M3</sup>; and
    - (ii) before the end of the period of 6 months beginning with the making of the [<sup>F7</sup>current calculation],

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—
- (a) the date 6 months before the application is made; or
  - (b) the date on which the [<sup>F7</sup>current calculation] took effect or, where successive [<sup>F8</sup>maintenance calculations] have been continuously in force with respect to a child, on which the first of [<sup>F9</sup>those calculations] took effect.
- (7) Where—
- (a) a [<sup>F6</sup>maintenance calculation] ceases to have effect [<sup>F10</sup>or is cancelled] by or under any provision of the Child Support Act 1991, and
  - (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order for periodical payments under paragraph 1(2)(a) or (b) in favour of a child with respect to whom that [<sup>F6</sup>maintenance calculation] was in force immediately before it ceased to have effect [<sup>F11</sup>or was cancelled],
- the term to be specified in any such order, or in any interim order under paragraph 9, made on that application may begin with the date on which that [<sup>F6</sup>maintenance calculation] ceased to have effect [<sup>F12</sup>or, as the case may be, the date with effect from which it was cancelled], or any later date.
- (8) In sub-paragraph (7)(b)—
- (a) where the [<sup>F6</sup>maintenance calculation] ceased to have effect, the relevant date is the date on which it so ceased; [<sup>F13</sup>and
  - (b) where the maintenance assessment was cancelled, the relevant date is the later of—
    - (i) the date on which the person who cancelled it did so, and

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(ii) the date from which the cancellation first had effect.]

#### Textual Amendments

- F4** Words in Sch. 1 para. 3(1) inserted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 10
- F5** Sch. 1 para. 3(5)-(8) inserted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 11
- F6** Words in Sch. 1 para. 3(5)(a)(7)(8)(a) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(2)(a) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F7** Words in Sch. 1 para. 3(5)(a)(b)(ii)(6)(b) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(2)(b) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F8** Words in Sch. 1 para. 3(6)(b) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(2)(c) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F9** Words in Sch. 1 para. 3(6)(b) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(2)(d) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F10** Words in Sch. 1 para. 3(7)(a) repealed 3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 85, 86(1), Sch. 9 Pt. I (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F11** Words in Sch. 1 para. 3(7)(b) repealed (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 85, 86(1), Sch. 9 Pt. I (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F12** Words in Sch. 1 para. 3(7) repealed (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 85, 86(1), Sch. 9 Pt. I (with s. 83(6)); S.I. 2003/192, art. 3, 8, Sch.
- F13** Sch. 1 para. 3(8)(b) and the preceding "and" repealed (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 85, 86(1), Sch. 9 Pt. I (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.

#### Commencement Information

- I3** Sch. 1 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

- M3** 1991 c.48.

*Matters to which court is to have regard in making orders for financial relief*

- 4 (1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances including—
- the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
  - the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
  - the financial needs of the child;
  - the income, earning capacity (if any), property and other financial resources of the child;
  - any physical or mental disability of the child;
  - the manner in which the child was being, or was expected to be, educated or trained.
- (2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to—

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- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he assumed that responsibility and the length of the period during which he met that responsibility;
  - (b) whether he did so knowing that the child was not his child;
  - (c) the liability of any other person to maintain the child.
- (3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.
- (4) The persons mentioned in sub-paragraph (1) are—
- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
  - (b) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;
  - (c) the applicant for the order;
  - (d) any other person in whose favour the court proposes to make the order.

**Commencement Information**

**14** Sch. 1 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provisions relating to lump sums*

- 5 (1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses—
- (a) incurred in connection with the birth of the child or in maintaining the child; and
  - (b) reasonably incurred before the making of the order,
- to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under paragraph 1 or 2 shall not exceed £1000 or such larger amount as the [F14]Lord Chancellor] may from time to time by order fix for the purposes of this sub-paragraph.
- (3) The power of the court under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.
- (4) The amount of any lump sum which a parent may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under sub-paragraph (2), but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Act.
- (5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.

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- (6) Where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying—
- (a) the number of instalments payable;
  - (b) the amount of any instalment payable;
  - (c) the date on which any instalment becomes payable.

#### Textual Amendments

**F14** Words in [Sch. 1 para. 5\(2\)](#) substituted (1.4.1992) by [S.I. 1992/709, art. 3\(2\)](#), [Sch. 2](#) (with [art. 5\(2\)](#)).

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

**C1** [Sch. 1 para. 5\(2\)](#): functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by [S.I. 1992/709, art. 3\(1\)](#), [Sch. 2](#) (with [art. 5\(2\)](#)).

#### Commencement Information

**I5** [Sch. 1 para. 5](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

#### *Variation etc. of orders for periodical payments*

- 6
- (1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
  - (2) The power of the court under paragraph 1 or 2 to vary an order for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.
  - (3) Where on an application under paragraph 1 or 2 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, [<sup>F15</sup>except that, subject to sub-paragraph (9), the date shall not be] earlier than the date of the making of the application.
  - (4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child himself.
  - (5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child reaches the age of sixteen, or at any time after that date but before or on the date on which he reaches the age of eighteen, the child may apply to the court which made the order for an order for its revival.
  - (6) 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 sub-paragraph) 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

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(b) there are special circumstances which justify the making of an order under this paragraph,

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.

(7) Any order which is revived by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.

(8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

[<sup>F16</sup>(9) Where—

- (a) an order under paragraph 1(2)(a) or (b) for the making or securing of periodical payments in favour of more than one child (“the order”) is in force;
- (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 [<sup>F17</sup>maintenance calculation] (“ [<sup>F18</sup>the calculation]”) 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 [<sup>F18</sup>the calculation] was made, for the variation or discharge of the order,

the court may, in exercise of its powers under paragraph 1 to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [<sup>F18</sup>the calculation] took effect or any later date.

#### Textual Amendments

- F15** Words in Sch. 1 para. 6(3) substituted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 12
- F16** Sch. 1 para. 6(9) inserted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 13
- F17** Words in Sch. 1 para. 6(9)(c) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(3)(b) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.
- F18** Words in Sch. 1 para. 6(9) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(3)(a) (with s. 83(6)); S.I. 2003/192, arts. 3, 8, Sch.

#### Commencement Information

- I6** Sch. 1 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*[<sup>F19</sup>Variation of orders for periodical payments etc. made by magistrates’ courts*

#### Textual Amendments

- F19** Sch. 1 para. 6A inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 6; S.I. 1992/455, art. 2

<sup>F20</sup>6A (1) Subject to sub-paragraphs (7) and (8), the power of a magistrates’ court—

- (a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or



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(b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

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 Schedule for the making of periodical payments or for the payment of a lump sum by instalments, 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.),

any person entitled to make an application under this Schedule for the variation of the order (in this paragraph referred to as “the applicant”) may apply to [<sup>F21</sup>a magistrates' court acting in the same local justice area as the court which made the order] for the order to be varied as mentioned in sub-paragraph (3).

(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), [<sup>F22</sup>a justices' clerk] , after giving written notice (by post or otherwise) of the application to any interested party and allowing that party, 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 [<sup>F23</sup>[<sup>F24</sup>to the designated officer for the court]]].

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the <sup>M4</sup>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 sub-paragraphs (1) and (5) 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 [<sup>F25</sup>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 applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) None of the powers of the court, or of [<sup>F26</sup>a justices' clerk] , conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Courts Act 1980).

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- (10) In sub-paragraphs (3) and (4) “interested party”, in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

#### Textual Amendments

- F20** Sch. 1 para. 6A inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#) , s. 6 ; S.I. 1992/455 , [art. 2](#) .
- F21** Words in [Sch. 1 para. 6A\(2\)](#) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#) , s. 109(1), {[Sch. 8 para. 338\(2\)](#)}; S.I. 2005/910, [art. 3\(y\)](#)
- F22** Words in [Sch. 1 para. 6A\(3\)](#) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 109(1), [Sch. 8 para. 338\(3\)\(a\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F23** Words in [Sch. 1 para. 6A\(3\)](#) substituted (1.4.2001) by [1999 c. 22, s. 90, Sch. 13 para. 161](#) (with s. 107, [Sch. 14 para. 7\(2\)](#)); S.I. 2001/916, [art. 2\(a\)\(ii\)](#)
- F24** Words in [Sch. 1 para. 6A\(3\)](#) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 109(1), [Sch. 8 para. 338\(3\)\(b\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F25** Words in sub-para. (8) of para. 6A of Sch. 1 substituted (11.4.1994) by S.I. 1994/731, [art. 4](#)
- F26** Words in [Sch. 1 para. 6A\(9\)](#) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 109(1), [Sch. 8 para. 338\(4\)](#); S.I. 2005/910, [art. 3\(y\)](#)

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

- C2** Sch. 1 para. 6A 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](#) )

#### Marginal Citations

- M4** [1980 c. 43.](#)

#### *Variation of orders for secured periodical payments after death of parent*

- 7 (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent.
- (2) No application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.
- (3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.
- (4) Sub-paragraph (3) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.
- (5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) shall include the changed circumstances resulting from the death of the parent.

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- (6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (7) In this paragraph “secured periodical payments order” means an order for secured periodical payments under paragraph 1(2)(b).

**Commencement Information**

**I7** Sch. 1 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Financial relief under other enactments*

- 8 (1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order (“the financial relief order”) made under any enactment other than this Act and requiring a person to contribute to the child’s maintenance.
- (2) Where this paragraph applies, the court may, on the application of—
- (a) any person required by the financial relief order to contribute to the child’s maintenance; or
  - (b) any person in whose favour a residence order with respect to the child is in force,
- make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

**Commencement Information**

**I8** Sch. 1 para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Interim orders*

- 9 (1) Where an application is made under paragraph 1 or 2 the court may, at any time before it disposes of the application, make an interim order—
- (a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit; and
  - (b) giving any direction which the court thinks fit.
- (2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify [F27except that, subject to paragraph 3(5) and (6), the date shall not be] earlier than the date of the making of the application under paragraph 1 or 2.
- (3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified for the purposes of this paragraph in the interim order.

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- (4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

**Textual Amendments**

**F27** Words in [Sch. 1 para. 9\(2\)](#) substituted (5.4.1993) by [S.I. 1993/623, art. 2, Sch. 1 para.14](#)

**Commencement Information**

**I9** [Sch. 1 para. 9](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

*Alteration of maintenance agreements*

- 10 (1) In this paragraph and in paragraph 11 “maintenance agreement” means any agreement in writing made with respect to a child, whether before or after the commencement of this paragraph, which—
- (a) is or was made between the father and mother of the child; and
  - (b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,
- and any such provisions are in this paragraph, and paragraph 11, referred to as “financial arrangements”.
- (2) 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, either party may apply to the court for an order under this paragraph.
- (3) 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 (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
  - (b) that the agreement does not contain proper financial arrangements with respect to the child,
- then that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.
- (4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.
- (5) Where a court decides to make an order under this paragraph altering the maintenance agreement—
- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or
  - (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the 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

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increase are to be made or secured for the benefit of the child, the court shall apply the provisions of sub-paragraphs (1) and (2) of paragraph 3 as if the order were an order under paragraph 1(2)(a) or (b).

- (6) A magistrates' court shall not entertain an application under sub-paragraph (2) unless both the parties to the agreement are resident in England and Wales and [<sup>F28</sup>the court acts in, or is authorised by the Lord Chancellor to act for, a local justice area in which at least one of the parties is resident] , and shall not have power to make any order on such an application except—
- (a) in a case where the agreement contains 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 child;
  - (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.
- (7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

#### Textual Amendments

**F28** Words in [Sch. 1 para. 10\(6\)](#) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 109\(1\), Sch. 8 para. 339; S.I. 2005/910, art. 3\(y\)](#)

#### Commencement Information

**I10** [Sch. 1 para 10](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

- 11 (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may apply to the High Court or a county court for an order under paragraph 10.
- (2) If a maintenance agreement is altered by a court on an application under this paragraph, the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.
- (3) An application under this paragraph shall not, except with leave of the High Court or a county court, be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.
- (4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (5) A county court shall not entertain an application under this paragraph, or an application for leave to make an application under this paragraph, unless it would have jurisdiction to hear and determine proceedings for an order under section 2

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of the <sup>M5</sup>Inheritance (Provision for Family and Dependants) Act 1975 in relation to the deceased's estate by virtue of section 25 of the <sup>M6</sup>County Courts Act 1984 (jurisdiction under the Act of 1975).

- (6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by the surviving party after that period.
- (7) Sub-paragraph (6) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this paragraph.

#### Commencement Information

**I11** Sch. 1 para 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M5** 1975 c. 63.

**M6** 1984 c. 28.

#### *Enforcement of orders for maintenance*

- 12 (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order.
- (2) Any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) An order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the <sup>M7</sup>Magistrates' Courts Act 1980.

#### Commencement Information

**I12** Sch. 1 para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M7** 1980 c. 43.

#### *Direction for settlement of instrument by conveyancing counsel*

- 13 Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court to settle a proper instrument to be executed by all necessary parties.

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#### Commencement Information

**I13** Sch. 1 para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Financial provision for child resident in country outside England and Wales*

- 14 (1) Where one parent of a child lives in England and Wales and the child lives outside England and Wales with—
- (a) another parent of his;
  - (b) a guardian of his; or
  - (c) a person in whose favour a residence order is in force with respect to the child,
- the court shall have power, on an application made by any of the persons mentioned in paragraphs (a) to (c), to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in England and Wales.
- (2) Any reference in this Act to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or (as the case may be) to an order made by virtue of sub-paragraph (1).

#### Commencement Information

**I14** Sch. 1 para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Local authority contribution to child's maintenance*

- 15 (1) Where a child lives, or is to live, with a person as the result of a residence order, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child.
- (2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife [F29 or civil partner] of a parent of the child.

#### Textual Amendments

**F29** Words in Sch. 1 para. 15(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 78(3); S.I. 2005/3175, art. 2(1), Sch. 1

#### Commencement Information

**I15** Sch. 1 para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Interpretation*

- 16 (1) In this Schedule “child” includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has reached the age of eighteen, that person.

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- [<sup>F30</sup>(2) In this Schedule, except paragraphs 2 and 15, “parent” includes—
- (a) any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family, and
  - (b) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family;
- and for this purpose any reference to either parent or both parents shall be read as a reference to any parent of his and to all of his parents.]
- [<sup>F31</sup>(3) In this Schedule, “ [<sup>F32</sup>maintenance calculation]” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.

#### Textual Amendments

- F30** Sch. 1 para. 16(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [s. 78\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F31** Sch. 1 para. 16(3) inserted (5.4.1993) by S.I. 1993/623, [art. 2](#), [Sch. 1 para. 15](#)
- F32** Words in Sch. 1 para. 16(3) substituted (3.3.2003 for specified purposes and otherwise prosp.) by 2000 c. 19, ss. 26, 86(1), Sch. 3 para. 10(4) (with s. 83(6)); S.I. 2003/192, [arts. 3, 8](#), Sch.

#### Commencement Information

- I16** Sch. 1 para. 16 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and S.I. 1991/828, [art. 3\(2\)](#)



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