



# Matrimonial Causes Act 1965

## 1965 CHAPTER 72

### PART II

#### ANCILLARY RELIEF

##### *Interim orders for alimony*

#### 15 Interim orders for alimony

On a petition for divorce, nullity of marriage, judicial separation or restitution of conjugal rights, the court may make such interim orders as it thinks just for the payment of alimony—

- (a) in any case other than a case falling within paragraph (b) of this section, to the wife; and
- (b) in the case of a petition for divorce or judicial separation presented by a wife on the ground of her husband's insanity, to the husband.

##### *Maintenance and application of property in cases of divorce*

#### 16 Maintenance orders

(1) On granting a decree of divorce or at any time thereafter (whether before or after the decree is made absolute), the court may, if it thinks fit and subject to subsection (3) of this section, make one or more of the following orders—

- (a) an order requiring the husband to secure to the wife to the satisfaction of the court, such lump or annual sum for any term not exceeding her life as the court thinks reasonable having regard to her fortune (if any), his ability and the conduct of the parties;
- (b) an order requiring the husband to pay to the wife during their joint lives such monthly or weekly sum for her maintenance as the court thinks reasonable;
- (c) an order requiring the husband to pay to the wife such lump sum as the court thinks reasonable.

- (2) Where the court decides to make an order under paragraph (a) of the foregoing subsection, it may—
- (a) direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties; and
  - (b) if it thinks fit, defer the grant of the decree until the instrument has been duly executed.
- (3) Where a petition for divorce is presented by the wife on the ground of her husband's insanity, subsection (1) of this section shall have effect with the substitution of references to the wife for references to the husband and of references to the husband for references to the wife.

## **17 Application of settled and other property**

- (1) The court may, after granting a decree of divorce—
- (a) inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree ; and
  - (b) make such orders as the court thinks fit as respects the application, for the benefit of the children of the marriage or the parties to the marriage, of the whole or any part of the property settled ;
- and the court may exercise its powers under the foregoing provisions of this section notwithstanding that there are no children of the marriage.
- (2) Where the court grants a decree of divorce by reason of the adultery, desertion or cruelty of the wife and it appears to the court that she is entitled to any property either in possession or reversion, the court may if it thinks fit order such settlement as it thinks reasonable to be made of the property, or of any part of it, for the benefit of the innocent party and of the children of the marriage or either or any of them.

## **18 Commencement of proceedings with respect to maintenance and settlements**

- (1) Where a petition for divorce has been presented, proceedings under the foregoing provisions of this Part of this Act may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but—
- (a) no order under section 16 or 17 of this Act shall be made unless a decree nisi has been granted ;
  - (b) without prejudice to the power to give directions under section 16(2)(a) of this Act, no such order and no settlement made in pursuance of such an order shall take effect unless the decree has been made absolute.
- (2) Subsection (1) of this section shall have effect notwithstanding anything in the foregoing provisions of this Part of this Act but subject to section 29 of this Act.

### *Maintenance etc. in other cases*

## **19 Nullity**

Sections 16(1) and (2) and 17(1) of this Act and, so far as it relates to those provisions, section 18 of this Act shall apply in relation to nullity of marriage as they apply in relation to divorce but as if the reference in section 16(1) to section 16(3) were omitted.

## **20 Judicial separation**

- (1) On granting a decree of judicial separation or at any time thereafter the court may make such order as it thinks just for the payment of alimony or a lump sum or both—
  - (a) in any case other than a case falling within paragraph (b) of this subsection, to the wife ; and
  - (b) in a case where the petition was presented by the wife on the ground of her husband's insanity, to the husband.
- (2) Section 17(2) of this Act shall apply in relation to judicial separation as it applies in relation to divorce.
- (3) In a case of judicial separation—
  - (a) any property which is acquired by or devolves upon the wife on or after the date of the decree whilst the separation continues; and
  - (b) where the decree is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion on the date of the decree,shall, if she dies intestate, devolve as if her husband had then been dead.
- (4) If in a case of judicial separation alimony has been" ordered to be paid under the foregoing provisions of this Part of this Act and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife.

## **21 Restitution of conjugal rights**

- (1) Where a decree for restitution of conjugal rights is made on the application of the wife, the court may—
  - (a) make such order as it thinks just for the payment of alimony to the wife;
  - (b) on making the decree or at any time thereafter, order the husband to pay to the wife, if the decree is not complied with within the time specified by the court, such periodical payments as the court thinks just.
- (2) Where the court makes an order under paragraph (b) of the foregoing subsection—
  - (a) the order may be enforced in the same manner as an order for alimony ; and
  - (b) the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure the periodical payments to the wife, and may for that purpose give such a direction as is mentioned in section 16(2)(a) of this Act.
- (3) Where a decree for restitution of conjugal rights is made on the application of the husband and it appears to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may—
  - (a) order a settlement of the property or any part of it to be made to the satisfaction of the court for the benefit of the husband and of the children of the marriage or either or any of them; or
  - (b) order such part of the profits or earnings as the court thinks reasonable to be paid periodically by the wife to the husband for his own benefit, or to him or another person for the benefit of the children of the marriage or either or any of them.

## **22 Neglect to maintain**

- (1) Where—

- (a) a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or any child to whom this subsection applies ; and
- (b) the court would have jurisdiction to entertain proceedings by the wife for judicial separation,

then, without prejudice to the provisions of section 35(2) of this Act, the court may on the application of the wife order the husband to make to her such periodical payments as may be just.

- (2) The foregoing subsection applies to any infant child of the marriage in question and any infant illegitimate child of both parties to the marriage.
- (3) Where the court makes an order under subsection (1) of this section—
  - (a) the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation; and
  - (b) the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure the periodical payments to the wife and may for that purpose give such a direction as is mentioned in section 16(2)(a) of this Act.

### *Maintenance agreements*

## **23 Validity of maintenance agreements**

- (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—
  - (a) that provision shall be void ; but
  - (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to the next two following sections), be binding on the parties to the agreement.

- (2) In this and the next following section—

" maintenance agreement " means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage ; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

" financial arrangements " means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the marriage; and

" child of the marriage " includes any child of both parties to the marriage, whether legitimate or not, and any child adopted by both parties to the marriage.

## **24 Alteration of agreements by court during lives of parties**

- (1) Where a maintenance agreement (other than an agreement made more than six months after the dissolution or annulment of the marriage) is for the time being subsisting and the parties to the agreement are for the time being either both domiciled or both resident in England and on an application by either party the High Court or, subject to the next following subsection, a magistrates' court 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 or, as the case may be, financial arrangements were omitted from it, the agreement should be altered so as to make different, or as the case may be so as to contain, financial arrangements ; or
  - (b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage,
- the court to which the application is made may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it or by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to that court to be just having regard to all the circumstances or, as the case may be, as may appear to that court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.
- (2) A magistrates' court shall not entertain an application under the foregoing subsection unless both the parties to the agreement are resident in England and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which that court acts, and shall not have power to make any order on such an application except—
- (a) in a case where the agreement includes 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—
    - (i) for the maintenance of the other party, at a rate not exceeding seven pounds ten shillings a week;
    - (ii) for the maintenance of any child of the marriage, at a rate not exceeding fifty shillings a week in respect of each such child ;
  - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments at rates not exceeding those aforesaid, an order increasing to such higher rate not exceeding the appropriate rate aforesaid, or reducing the rate of, or terminating, any of those payments.
- (3) For the avoidance of doubt it is hereby declared that nothing in this or the last foregoing section affects any power of the court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

## **25 Alteration of agreements by court after death of one party**

- (1) Where a maintenance agreement within the meaning of section 23 of this Act provides for the continuation of payments under the agreement after the death of one of the

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parties and that party dies after 16th August 1957 domiciled in England, the surviving party may—

- (a) before the end of the period of six months from the date when representation in regard to the deceased's estate is first taken out; or
- (b) with the permission of the court, after the end of that period but before the administration and distribution of the estate is completed,

apply to the High Court for any order under subsection (1) of the last foregoing section for which the surviving party might have applied immediately before the death.

- (2) If a maintenance agreement is altered by the court on an application made in pursuance of the foregoing subsection, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (3) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section after that period; but this subsection 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 section.
- (4) In considering for the purposes of subsection (1) of this section 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) For the purposes of section 162(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (which relates to the discretion of the court as to the persons to whom administration is to be granted) a person by whom an application is proposed to be made by virtue of this section shall be deemed to be a person interested in the deceased's estate.

*Maintenance from estate of deceased former spouse*

## **26 Orders for maintenance from deceased's estate**

- (1) Where after 31st December 1958 a person dies domiciled in England and is survived by a former spouse of his or hers (hereafter in this section referred to as "the survivor") who has not remarried, the survivor may—
  - (a) before the end of the period of six months beginning with the date on which representation in regard to the estate of the deceased is first taken out; or
  - (b) with the permission of the court, after the end of that period but before the administration and distribution of the estate is completed,
 apply to the court for an order under this section on the ground that the deceased has not made reasonable provision for the survivor's maintenance after the deceased's death.
- (2) If on an application under this section the court is satisfied—
  - (a) that it would have been reasonable for the deceased to make provision for the survivor's maintenance; and

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- (b) that the deceased has made no provision, or has not made reasonable provision, for the survivor's maintenance,  
the court may order that such reasonable provision for the survivor's maintenance as the court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the court may impose.
- (3) Where the court makes an order under this section requiring provision to be made for the maintenance of the survivor, the order shall require that provision to be made by way of periodical payments terminating not later than the survivor's death and, if the survivor remarries, not later than the remarriage, so however that if the value of the net estate of the deceased does not exceed five thousand pounds the order may require that provision to be made wholly or in part by way of a lump sum payment.
- (4) On an application under this section the court shall have regard—
- (a) to the past, present or future capital of the survivor and to any income of the survivor from any source;
  - (b) to the survivor's conduct in relation to the deceased and otherwise;
  - (c) to any application made or deemed to be made by the survivor during the lifetime of the deceased—
    - (i) where the survivor is a former wife of the deceased, for such an order as is mentioned in section 16(1) of this Act or that subsection as applied by section 19 of this Act;
    - (ii) where the survivor is a former husband of the deceased, for such an order as could be made either under the said section 16(1) as applied by subsection (3) of that section or under section 17(2) of this Act,and to the order (if any) made on any such application, or (if no such application was made by the survivor, or such an application was made by the survivor and no order was made on the application) to the circumstances appearing to the court to be the reasons why no such application was made, or no such order was made, as the case may be; and
  - (d) to any other matter or thing which, in the circumstances of the case, the court may consider relevant or material in relation to the survivor, to persons interested in the estate of the deceased, or otherwise.
- (5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the court shall have regard to the nature of the property representing the net estate of the deceased and shall not order any such provision to be made as would necessitate a realisation that would be imprudent having regard to the interests of the dependants of the deceased, of the survivor, and of the persons who apart from the order would be entitled to that property.
- (6) In this and the next following section—
- " former spouse ", in relation to a deceased person, means a person whose marriage with the deceased was during the deceased's lifetime dissolved or annulled by a decree made or deemed to be made under this Act, and " former wife " and " former husband " shall be construed accordingly;
  - " net estate " and " dependant " have the same meanings as in the Inheritance (Family Provision) Act 1938; and
  - " property " means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not.

**27 Discharge and variation of orders under s. 26**

- (1) Subject to the following provisions of this section, where an order (in this section referred to as "the original order") has been made under the last foregoing section, the court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.
- (2) An application under this section may be made by any of the following persons, that is to say,—
  - (a) the former spouse on whose application the original order was made;
  - (b) any other former spouse of the deceased ;
  - (c) any dependant of the deceased;
  - (d) the trustees of any relevant property ;
  - (e) any person who, under the will or codicil of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.
- (3) An order under this section varying the original order, or reviving any suspended provision of it, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.
- (4) In exercising the powers conferred by this section, the court shall have regard to all the circumstances of the case, including any change in the circumstances to which the court was required to have regard in determining the application for the original order.
- (5) In this section " relevant property " means property the income of which, in accordance with the original order or any consequential directions given by the court in connection with it, is applicable wholly or in part for the maintenance of the former spouse on whose application the original order was made.

**28 Additional provisions as to orders under ss. 26 and 27**

- (1) The provisions of the last two foregoing sections shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period mentioned in subsection (1) of section 26 of this Act on the ground that they ought to have taken into account the possibility that the court might permit an application under that section after the end of that period, or that an order under that section might be varied under section 27 of this Act; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order under section 26 or section 27 of this Act.
- (2) Section 25(4) of this Act shall apply for the purposes of section 26(1) of this Act as it applies for the purposes of subsection (1) of the said section 25; and section 25(5) of this Act shall apply in relation to an application under section 26 or section 27 of this Act as it applies in relation to an application in pursuance of the said section 25.
- (3) Section 3 of the Inheritance (Family Provision) Act 1938 (which relates to the effect and form of orders under that Act) shall have effect in relation to orders under sections 26 and 27 of this Act as it has effect in relation to orders under that Act.



### *Supplemental*

#### **29 Applications for ancillary relief**

- (1) Rules of court may provide, in such cases as may be prescribed by the rules,—
  - (a) that all applications for ancillary relief shall be made in the petition or answer;  
or
  - (b) that applications for ancillary relief which are not so made shall be made only with the leave of the court.
- (2) In the foregoing subsection " ancillary relief" means relief under any of the following provisions of this Act, that is to say, section 15, section 16(1), that subsection as applied by section 16(3) and by section 19, section 20(1), and section 21(1) and (2).

#### **30 Payment of alimony or maintenance to trustees etc.**

- (1) Where the court makes an order for alimony, it may—
  - (a) direct the alimony to be paid either to the wife or husband, as the case may be, or to a trustee approved by the court on her or his behalf; and
  - (b) impose such terms or restrictions as the court thinks expedient; and
  - (c) from time to time appoint a new trustee if for any reason it appears to the court expedient to do so.
- (2) Where—
  - (a) a petition for divorce or judicial separation is presented by a wife on the ground of her husband's insanity ; or
  - (b) a petition for divorce, nullity or judicial separation is presented by a husband on the ground of his wife's insanity or mental deficiency or disorder,and the court orders payments, other than a lump sum payment, in favour of the respondent under section 15, section 16(1), that subsection as applied by section 16(3) or by section 19, or under section 20(1) of this Act, the court may order the payments to be made to such persons having charge of the respondent as the court may direct.

#### **31 Variation and discharge of certain orders for relief**

- (1) Where the court has made an order under section 21(3) or section 22 or any of the provisions mentioned in section 29(2) of this Act (other than an order for the payment of a lump sum), the court shall have power to discharge or vary the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.
- (3) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage.

#### **32 Avoidance of transactions intended to prevent relief**

- (1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as " financial relief ") are brought by a person against his or

her spouse or former spouse (hereafter in this section referred to as " the other party "), the court may, on an application by that person—

- (a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);
- (c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in the last foregoing paragraph;

and an application for the purposes of paragraph (b) of this subsection shall be made in the proceedings for the financial relief in question.

- (2) Paragraphs (b) and (c) of the foregoing subsection apply respectively to a disposition made by the other party (whether before or after the commencement of the proceedings for financial relief) within the period of three years ending with the date of the application made for the purposes of the paragraph in question, not being a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as aforesaid on the part of the other party.
- (3) Where an application is made under this section with respect to a disposition or other transaction and the court is satisfied—
  - (a) in a case falling within subsection (1)(a) or (b) of this section, that the disposition or other transaction would (apart from this section) have the consequence, or
  - (b) in a case falling within subsection (1)(c) of this section, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention aforesaid.

- (4) In this section—

" disposition " does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise ;

" property " has the same meaning as in section 26 of this Act; and

" the relevant provisions of this Act " means any of the provisions of the following enactments, that is to say, sections 16, 17(2), 20(1), 21 and 22 of this Act and section 16(1) as applied by section 19 and section 17(2) as applied by section 20(2) of this Act; and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount of any financial relief

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which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.