



Matrimonial Proceedings and Property Act 1970

1970 CHAPTER 45

PART II

MISCELLANEOUS PROVISIONS

Provisions relating to orders made by magistrates' courts in matrimonial proceedings

30 Order for maintenance of party to marriage made by magistrates' court to cease to have effect on remarriage of that party

(1) At the end of section 7 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 there shall be added the following subsections—

“(4) Where after the making by a magistrates' court of a matrimonial order consisting of or including a provision such as is mentioned in paragraph (b) or (c) of section 2(1) of this Act the marriage of the parties to the proceedings in which that order was made is dissolved or annulled but the order continues in force, then, subject to subsection (5) of this section, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.

(5) Subsection (4) of this section shall not apply where the party in whose favour such an order as is therein mentioned was made remarried before the commencement of the Matrimonial Proceedings and Property Act 1970.

(6) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.”

- (2) Subsections (4), (5) and (6) of section 7 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 shall apply in relation to an order consisting of or including a provision such as is mentioned in section 2(1)(b) or (c) of that Act made by a magistrates' court and confirmed in accordance with section 3 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (which enables a magistrates' court to make a maintenance order against a person resident in a part of Her Majesty's dominions outside the United Kingdom but provides that the order shall have no effect unless and until confirmed by a competent court in that part) as they apply in relation to such an order as is referred to in the said subsection (4), but with the modification that for the reference to the making of such an order as is referred to in that subsection there shall be substituted a reference to the confirmation in accordance with the said section 3 of the order referred to in this subsection.

31 Sums paid after cessation of order of magistrates' court by reason of remarriage may be ordered to be repaid in certain cases

After section 13 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 there shall be inserted the following section—

“13A Orders for repayment in certain cases of sum paid after cessation of order by reason of remarriage.

(1) Where—

- (a) an order to which this section applies or a provision thereof has ceased to have effect by reason of the remarriage of the person entitled to payments under the order, and
- (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of such remarriage in the mistaken belief that the order or provision was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above shall be maintainable by the person so liable or his or her personal representatives against the person so entitled or her or his personal representatives, but on an application made under this section the court may exercise the powers conferred on it by the following subsection.

This section applies to an order in relation to which subsection (4) of section 7 of this Act, as amended by the Matrimonial Proceedings and Property Act 1970, applies.

- (2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) of this section or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.
- (3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

Status: This is the original version (as it was originally enacted).

- (4) An application under this section may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, the payment of arrears under an order to which this section applies, but except as aforesaid such an application shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) The jurisdiction conferred on a county court by this section shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application under this section the jurisdiction would not but for this subsection be exercisable by a county court.
- (7) Section 13(1) and (2) of this Act shall not apply to an order under this section.
- (8) The clerk of a magistrates' court to whom any payments under an order to which this section applies are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under the first mentioned order, shall not be liable—
 - (a) in the case of that clerk, for any act done by him in pursuance of the first mentioned order after the date on which that order or a provision thereof ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
 - (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,if, but only if, the act was one which he would have been under a duty to do had the first mentioned order or a provision thereof not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first mentioned order or the personal representatives of either of those persons.
- (9) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates' court to whom a person makes payments in compliance with the order."

32 Restriction on enforcement in High Court or county court of certain orders of magistrates' courts

At the end of section 13 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 there shall be added the following subsections:—

- “(5) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order made by virtue of this Act without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

Status: This is the original version (as it was originally enacted).

- (6) The court hearing an application for the grant of leave under subsection (5) of this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or any part thereof.
- (7) An application for the grant of leave under the said subsection (5) shall be made in such manner as may be prescribed by rules of court”.

33 Minor corrections of Matrimonial Proceedings (Magistrates' Courts) Act 1960, s. 7(3)

Section 7(3) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (which provides that where after the making by a magistrates' court of a matrimonial or interim order proceedings between, and relating to the marriage of, the parties to the proceedings in which the order was made have been begun in the High Court, the High Court may direct that the order shall cease to have effect on a date specified by that court) shall be amended as follows:—

- (a) after the words " the High Court ", where first occurring, there shall be inserted the words " or a county court ";
- (b) for the words " the High Court", where next occurring, there shall be substituted the words " the court in which the proceedings or any application made therein are or is pending "; and
- (c) for the words " the High Court may specify" there shall be substituted the words " may be specified in the direction ".

Provisions relating to certain proceedings in county courts

34 Jurisdiction of, and appeal on question of fact from, county court

- (1) The jurisdiction conferred on a county court by section 11 or section 22 of this Act or paragraph 5 of Schedule 1 thereto shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application made under either of those sections or the said paragraph 5, as the case may be, the jurisdiction would not but for this subsection be exercisable by a county court.
- (2) At the end of subsection (2) of section 109 of the County Courts Act 1959 (appeals on questions of fact) there shall be inserted the following paragraph:—
 - “(g) any proceedings on an application for an order under section 13A of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, section 11 of the Matrimonial Proceedings and Property Act 1970, section 15 of that Act, section 22 thereof or paragraph 5 of Schedule 1 thereto.”

Amendments of the Matrimonial Causes Act 1965

35 Amendment of reference to child in 1965 c. 72, s. 2

In section 2(2) of the Matrimonial Causes Act 1965 (which provides that in determining an application to allow the presentation of a petition for divorce within three years from the date of the marriage the judge shall have regard to the interests of

any relevant child) for the words " relevant child " there shall be substituted the words " child of the family within the meaning of Part I of the Matrimonial Proceedings and Property Act 1970 ".

36 Construction of references to remarriage in 1965 c. 72, s. 26

Section 26 of the Matrimonial Causes Act 1965 (which authorises the making of orders for maintenance out of a deceased's estate for a former spouse who has not remarried and provides that maintenance by way of periodical payments out of the estate shall terminate not later than his or her death or remarriage) shall have effect, and be deemed always to have had effect, as if after subsection (5) there were inserted the following subsection:—

“(5A) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.”

Provisions relating to property of married persons

37 Contributions by spouse in money or money's worth to the improvement of property

It is hereby declared that where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings).

38 Rights of occupation under Matrimonial Homes Act 1967 of spouse with equitable interest in home, etc.

There shall be inserted in section 1 of the Matrimonial Homes Act 1967 (which protects against eviction from the home the spouse not entitled by virtue of any estate or interest, etc., to occupy it) a new subsection—

“(9) It is hereby declared that a spouse who has an equitable interest in a dwelling house or in the proceeds of sale thereof, not being a spouse in whom is vested (whether solely or as a joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling house, is to be treated for the purpose only of determining whether he or she has rights of occupation under this section as not being entitled to occupy the dwelling house by virtue of that interest”.

39 Extension of s. 17 of Married Women's Property Act 1882

An application may be made to the High Court or a county court under section 17 of the Married Women's Property Act 1882 (powers of the court in disputes between husband and wife about property) (including that section as extended by section 7 of

the Matrimonial Causes (Property and Maintenance) Act 1958) by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of three years beginning with the date on which the marriage was dissolved or annulled; and references in the said section 17 and the said section 7 to a husband or a wife shall be construed accordingly.

40 Judicially separated spouses not entitled to claim in intestacy of each other

- (1) If while a decree of judicial separation is in force and the separation is continuing either of the parties whose marriage is the subject of the decree dies after the commencement of this Act intestate as respects all or any of his or her real or personal property, the property of that party as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.
- (2) Notwithstanding anything in section 2(1) (a) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, a provision in force in an order made, or having effect as if made, under that section that a party to a marriage be no longer bound to cohabit with the other party to the marriage shall not have effect as a decree of judicial separation for the purposes of this section.
- (3) Section 20(3) of the Matrimonial Causes Act 1965 (which provides that in a case of judicial separation certain property of the wife shall, if she dies intestate, devolve as if her husband had then been dead) shall cease to have effect except in relation to a case where the death occurred before the commencement of this Act.

Abolition of wife's agency of necessity

41 Abolition of wife's agency of necessity

- (1) Any rule of law or equity conferring on a wife authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit is hereby abrogated.
- (2) Section 20(4) of the Matrimonial Causes Act 1965 (which provides that if in a case of judicial separation alimony has been ordered but has not been paid by the husband he shall be liable for necessaries supplied for the use of the wife) shall cease to have effect.