



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

#### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

##### *Variation, discharge and enforcement of certain orders, etc.*

### **31 Variation, discharge, etc., of certain orders for financial relief.**

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section [<sup>F1</sup>and of section 28(1A) above], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) This section applies to the following orders, that is to say—
  - (a) any order for maintenance pending suit and any interim order for maintenance;
  - (b) any periodical payments order;
  - (c) any secured periodical payments order;
  - (d) any order made by virtue of section 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments);
  - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the grant of a decree of judicial separation.
  - [<sup>F2</sup>(f) any order made under section 24A(1) above for the sale of property]

[<sup>F3</sup>(2A) Where the court has made an order referred to in subsection (2)(a), (b) or (c) above, then, subject to the provisions of this section, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]

- (3) 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.

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** *There are currently no known outstanding effects for the Matrimonial Causes Act 1973.*  
*Cross Heading: Variation, discharge and enforcement of certain orders, etc.. (See end of Document for details)*

- (4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above except on an application made in proceedings—
    - (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
    - (b) for the dissolution of the marriage in question.
  - (5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 23 or under section 27 above).
  - (6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order [<sup>F4</sup>(and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments order.] or by the personal representatives of the deceased person, but no such application 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 person is first taken out.
- [<sup>F5</sup>(7) In exercising the powers conferred by this section the court shall 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, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—
  - (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
  - (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]
- (8) 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 expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; 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.
- (9) In considering for the purposes of subsection (6) above 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

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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.

[<sup>F6</sup>(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

#### Textual Amendments

- F1** Words inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 6(2)**, 48(2)
- F2** S. 31(2)(f) inserted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), **s. 8(2)(a)**
- F3** S. 31(2A) inserted by Administration of Justice Act 1982 (c. 53, SIF 37), ss, 51, 77(1)
- F4** Words substituted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), **s. 8(2)(b)**
- F5** S. 31(7) substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 6(3)**, 48(2)
- F6** S. 31(10) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 6(4)**, 48(2)

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

- C1** S. 31(1) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)
- C2** S. 31(2)(a)–(d) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)
- C3** S. 31(2)(f) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)
- C4** S. 31(3)(5) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)
- C5** S. 31(6) amended by Forfeiture Act 1982 (c. 34, SIF 116:1, 2), **ss. 3(2)(b)**, 7(3)
- C6** S. 31(6) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)
- C7** S. 31(6) amended by Inheritance (Provisions for Family and Dependents) Act 1975 (c. 63), **s. 18**
- C8** S. 31(7)–(10) extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(f)**, 48(2)

## 32 Payment of certain arrears unenforceable without the leave of the court.

- (1) 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 for maintenance pending suit, an interim order for maintenance or any financial provision order 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.
- (2) The court hearing an application for the grant of leave under 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 the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

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

- C9** S. 32 extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21(g)**, 48(2)

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### **33 Orders for repayment in certain cases of sums paid under certain orders.**

- (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—
  - (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
  - (b) the changed circumstances resulting from the death of the person so liable, the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.
- (2) This section applies to the following orders, that is to say—
  - (a) any order for maintenance pending suit and any interim order for maintenance;
  - (b) any periodical payments order; and
  - (c) any secured periodical payments order.
- (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.
- (4) An application under this section may be made in proceedings in the High Court or a county court for—
  - (a) the variation or discharge of the order to which this section applies, or
  - (b) leave to enforce, or the enforcement of, the payment of arrears under that order;but when not made in such proceedings 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) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (6) 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.

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

**C10** S. 33 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(h)**, 48(2)

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