



Matrimonial Causes Act 1973

1973 CHAPTER 18

PART II

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Miscellaneous and supplemental

38 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage [^{F1}or formation of civil partnership].

(1) Where—

- (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of [^{F2}, or formation of a civil partnership by,] that party, and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage [^{F3}or formation of the civil partnership] in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

- (2) On an application under this section the court [^{F4}to which the application is made] may order the respondent 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) above 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 in proceedings in the High Court or [^{F5}the family court] for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made

Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes Act 1973, Section 38. (See end of Document for details)

to [^{F5}the family court]; and accordingly references in this section to the court are references to the High Court or [^{F5}the family court], as the circumstances require.

^{F6}(4)

(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) [^{F7}An officer of the family court,] and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable—

(a) in the case of [^{F8}an officer of the family court,] for any act done by him [^{F9}, in pursuance of a payments order requiring payments to be made to the court or an officer of the court,] after the date on which that order ceased to have effect by reason of the remarriage of [^{F10}, or formation of a civil partnership by,] 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 payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried [^{F11}or formed a civil partnership] was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

(7) In this section “collecting officer”, in relation to an attachment of earnings order, means the officer of the High Court, [^{F12}or the officer of the family court,] to whom a person makes payments in compliance with the order.

Textual Amendments

- F1** Words in s. 38 heading inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(4\)](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F2** Words in s. 38(1)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(2\)\(a\)](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F3** Words in s. 38(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(2\)\(b\)](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F4** Words in s. 38(2) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(2\)](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F5** Words in s. 38(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(3\)](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F6** S. 38(4) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(4\)](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F7** Words in s. 38(6) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(a\)](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F8** Words in s. 38(6)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(b\)\(i\)](#); [S.I. 2014/954](#), [art. 2\(e\)](#) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

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- F9** Words in s. 38(6)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(5\)\(b\)\(ii\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F10** Words in s. 38(6)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(3\)\(a\)](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F11** Words in s. 38(6) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 45\(3\)\(b\)](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to art. 2(3)-(5))
- F12** Words in s. 38(7) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 64\(6\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

Modifications etc. (not altering text)

- C1** S. 38 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(i\)](#), 48(2)

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