



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Powers of court to make orders for financial provision for parties to a marriage and children of the family

1 Grounds of application for financial provision

Either party to a marriage may apply to a magistrates' court for an order under section 2 of this Act on the ground that the other party to the marriage (in this Part of this Act referred to as "the respondent")—

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

2 Powers of court to make orders for financial provision

(1) Where on an application for an order under this section the applicant satisfies the court of any ground mentioned in section 1 of this Act, the court may, subject to the provisions of this Part of this Act, make any one or more of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order ;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified ;

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- (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified ;
 - (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.
- (2) Without prejudice to the generality of subsection (1)(b) or (d) above, an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.
- (3) The amount of any lump sum required to be paid by an order under this section shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3 Matters to which court is to have regard in exercising its powers under s. 2

- (1) Where an application is made for an order under section 2 of this Act, the court, in deciding whether to exercise its powers under subsection (1)(a) or (b) of that section and, if so, in what manner, shall have regard to the following matters, that is to say—
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future ;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future ;
 - (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application ;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) any other matter which in the circumstances of the case the court may consider relevant, including, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.
- (2) Where an application is made for an order under section 2 of this Act, the court, in deciding whether to exercise its powers under subsection (1)(c) or (d) of that section and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters, that is to say
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child ;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application ;

- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
 - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) above.
- (3) The court, in deciding whether to exercise its powers under section 2(1)(c) or (d) of this Act in favour of a child of the family who is not the child of the respondent and, if so, in what manner, shall in addition to the matters mentioned in subsection (2) above have regard (among the circumstances of the case)—
- (a) to whether the respondent had assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which he assumed that responsibility and to the length of time during which he discharged that responsibility;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child ;
 - (c) to the liability of any other person to maintain the child.

4 Duration of orders for financial provision for a party to a marriage

- (1) The term to be specified in any order made under section 2(1)(a) of this Act shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.
- (2) Where an order is made under the said section 2(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

5 Age limit on making orders for financial provision for children and duration of such orders

- (1) Subject to subsection (3) below, no order shall be made under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in an order made under section 2(1)(c) of this Act 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 but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances of the case to specify a later date ; and
 - (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) The court—
- (a) may make an order under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen, and

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- (b) may include in an order made under section 2(1)(c) of this Act in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

- (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (ii) that there are special circumstances which justify the making of the order or provision.
- (4) Any order made under section 2(1)(c) of this Act in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

6 Orders for payments which have been agreed by the parties

- (1) Either party to a marriage may apply to a magistrates' court for an order under this section on the ground that the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may if—

- (a) it is satisfied that the respondent has agreed to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the respondent shall make the financial provision specified in the application.

- (2) In this section " financial provision " means the provision mentioned in any one or more of the following paragraphs, that is to say—

- (a) the making of periodical payments to the applicant,
- (b) the payment of a lump sum to the applicant,
- (c) the making of periodical payments to a child of the family or to the applicant for the benefit of such a child,
- (d) the payment of a lump sum to a child of the family or to the applicant for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the respondent has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) Where a party to a marriage has applied for an order under section 2 of this Act then, at any time before the determination of that application, he may apply for an order

under this section ; and if an order is made under this section the application made for an order under the said section 2 shall be treated as if it had been withdrawn.

- (5) Where on an application under subsection (1) above the court decides—
- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the respondent has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if the applicant and the respondent agree, the court may order that the respondent shall make that other financial provision.

- (6) The provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) The provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.
- (8) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of—
- (a) the consent of the respondent to the making of the order, and
 - (b) the financial resources of the respondent.

7 Powers of court where parties are living apart by agreement

- (1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to a magistrates' court for an order under this section, and any application made under this subsection shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.
- (2) Where on an application for an order under this section the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Part of this Act, make one or both of the following orders, that is to say—
- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order ;
 - (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.

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- (3) The court in the exercise of its powers under this section—
- (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application ;
 - (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under section 1 of this Act;
 - (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under section 1 of this Act.
- (4) Where on an application under this section the court considers that the orders which it has the power to make under this section—
- (a) would not provide reasonable maintenance for the applicant, or
 - (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards reasonable maintenance for that child,
- the court shall refuse to make an order under this section, but the court may treat the application as if it were an application for an order under section 2 of this Act.
- (5) The provisions of section 3 of this Act shall apply in relation to an application for an order under this section as they apply in relation to an application for an order under section 2 of this Act subject to the modification that for the reference in subsection (1) of the said section 3 to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.
- (6) The provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) The provisions of section 5 of this Act shall apply in relation to an order under this section for the making of periodical payments in respect of a child of the family as they apply in relation to an order under section 2(1)(c) of this Act.