



# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

### PART I

#### MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

##### *Powers of the court to make orders for the protection of a party to a marriage or a child of the family*

- 16 Powers of court to make orders for the protection of a party to a marriage or a child of the family**
- (1) Either party to a marriage may, whether or not an application is made by that party for an order under section 2 of this Act, apply to a magistrates' court for an order under this section.
  - (2) Where on an application for an order under this section the court is satisfied that the respondent has used, or threatened to use, violence against the person of the applicant or a child of the family and that it is necessary for the protection of the applicant or a child of the family that an order should be made under this subsection, the court may make one or both of the following orders, that is to say—
    - (a) an order that the respondent shall not use, or threaten to use, violence against the person of the applicant;
    - (b) an order that the respondent shall not use, or threaten to use, violence against the person of a child of the family.
  - (3) Where on an application for an order under this section the court is satisfied—
    - (a) that the respondent has used violence against the person of the applicant or a child of the family, or
    - (b) that the respondent has threatened to use violence against the person of the applicant or a child of the family and has used violence against some other person, or

- (c) that the respondent has in contravention of an order made under subsection (2) above threatened to use violence against the person of the applicant or a child of the family,

and that the applicant or a child of the family is in danger of being physically injured by the respondent (or would be in such danger if the applicant or child were to enter the matrimonial home) the court may make one or both of the following orders, that is to say—

- (i) an order requiring the respondent to leave the matrimonial home;
- (ii) an order prohibiting the respondent from entering the matrimonial home.

- (4) Where the court makes an order under subsection (3) above, the court may, if it thinks fit, make a further order requiring the respondent to permit the applicant to enter and remain in the matrimonial home.
- (5) Where on an application for an order under this section the court considers that it is essential that the application should be heard without delay, the court may hear the application notwithstanding—
  - (a) that the court does not include both a man and a woman,
  - (b) that any member of the court is not a member of a domestic court panel, or
  - (c) that the proceedings on the application are not separated from the hearing and determination of proceedings which are not domestic proceedings.
- (6) Where on an application for an order under this section the court is satisfied that there is imminent danger of physical injury to the applicant or a child of the family, the court may make an order under subsection (2) above notwithstanding—
  - (a) that the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application, or
  - (b) that the summons requires the respondent to appear at some other time or place,

and any order made by virtue of this subsection is in this section and in section 17 of this Act referred to as an "expedited order".
- (7) The power of the court to make, by virtue of subsection (6) above, an expedited order under subsection (2) above may be exercised by a single justice.
- (8) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court specifies a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occurs first, that is to say—
  - (a) the date of the expiration of the period of 28 days beginning with the date of the making of the order ; or
  - (b) the date of the commencement of the hearing, in accordance with the provisions of Part II of the Magistrates' Courts Act 1952, of the application for an order under this section.
- (9) An order under this section may be made subject to such exceptions or conditions as may be specified in the order and, subject in the case of an expedited order to subsection (8) above, may be made for such term as may be so specified.
- (10) The court in making an order under subsection (2)(a) or (b) above may include provision that the respondent shall not incite or assist any other person to use, or

threaten to use, violence against the person of the applicant or, as the case may be, the child of the family.

## **17 Supplementary provisions with respect to orders under s. 16**

- (1) A magistrates' court shall, on an application made by either party to the marriage in question, have power by order to vary or revoke any order made under section 16 of this Act.
- (2) Rules may be made for the purpose of giving effect to the provision of section 16 of this Act and any such rules may in particular, but without prejudice to the generality of this subsection, make provision for the hearing without delay of any application for an order under subsection (3) of that section.
- (3) The expiry by virtue of subsection (8) of section 16 of this Act of an expedited order shall not prejudice the making of a further expedited order under that section.
- (4) Except so far as the exercise by the respondent of a right to occupy the matrimonial home is suspended or restricted by virtue of an order made under subsection (3) of section 16 of this Act, an order made under that section shall not affect any estate or interest in the matrimonial home of the respondent or any other person.

## **18 Powers of arrest for breach of s. 16 order**

- (1) Where a magistrates' court makes an order under section 16 of this Act which provides that the respondent—
  - (a) shall not use violence against the person of the applicant, or
  - (b) shall not use violence against a child of the family, or
  - (c) shall not enter the matrimonial home,the court may, if it is satisfied that the respondent has physically injured the applicant or a child of the family and considers that he is likely to do so again, attach a power of arrest to the order.
- (2) Where by virtue of subsection (1) above a power of arrest is attached to an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of any such provision of the order as is mentioned in paragraph (a), (b) or (c) of subsection (1) above by reason of that person's use of violence or, as the case may be, his entry into the matrimonial home.
- (3) Where a power of arrest is attached to an order under subsection (1) above and the respondent is arrested under subsection (2) above—
  - (a) he shall be brought before a justice of the peace within a period of 24 hours beginning at the time of his arrest, and
  - (b) the justice of the peace before whom he is brought may remand him.In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday, or any Sunday.
- (4) Where a court has made an order under section 16 of this Act but has not attached to the order a power of arrest under subsection (1) above, then, if at any time the applicant for that order considers that the other party to the marriage in question has disobeyed the order, he may apply for the issue of a warrant for the arrest of that other party to a justice of the peace for the commission area in which either party to the

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

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marriage ordinarily resides; but a justice of the peace shall not issue a warrant on such an application unless—

- (a) the application is substantiated on oath, and
  - (b) the justice has reasonable grounds for believing that the other party to the marriage has disobeyed that order.
- (5) The magistrates' court before whom any person is brought by virtue of a warrant issued under subsection (4) above may remand him.