



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Provisions relating to procedure, jurisdiction and enforcement

30 Provisions as to jurisdiction and procedure

- (1) A magistrates' court shall, subject to section 11 of the Administration of Justice Act 1964 and any determination of the committee of magistrates thereunder, have jurisdiction to hear an application for an order under this Part of this Act if at the date of the making of the application either the applicant or the respondent ordinarily resides within the commission area for which the court is appointed.
- (2) Any application for an order under this Part of this Act, including an application for the variation or revocation of such an order, shall be made by way of complaint.
- (3) In relation to an application for an order under this Part of this Act (other than an application in relation to which jurisdiction is exercisable by virtue of section 24 of this Act) the jurisdiction conferred by subsection (1) above—
 - (a) shall be exercisable notwithstanding that the respondent resides in Scotland or Northern Ireland if the applicant resides in England and Wales and the parties last ordinarily resided together as man and wife in England and Wales, and
 - (b) is hereby declared to be exercisable where the applicant resides in Scotland or Northern Ireland if the respondent resides in England and Wales.
- (4) Nothing in either subsection (3) above or subsection (1) of section 24 of this Act shall be construed as derogating from any jurisdiction exercisable by any court apart from the provisions of those subsections.

Status: This is the original version (as it was originally enacted).

- (5) It is hereby declared that any jurisdiction conferred on a magistrates' court by this Part of this Act is exercisable notwithstanding that any party to the proceedings is not domiciled in England.

31 Constitution of courts

- (1) Where the hearing of an application under section 1 of this Act is adjourned after the court has decided that it is satisfied of any ground mentioned in that section, the court which resumes the hearing of that application may include justices who were not sitting when the hearing began if—
- (a) the parties to the proceedings agree ; and
 - (b) at least one of the justices composing the court which resumes the hearing was sitting when the hearing of the application began.
- (2) Where, by virtue of subsection (1) above, among the justices composing the court which resumes the hearing of an application under section 1 of this Act there are any justices who were not sitting when the hearing of the application began, the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the hearing began to be fully acquainted with those facts and circumstances.

32 Enforcement etc. of orders for payment of money

- (1) An order for the payment of money made by a magistrates' court under this Part of this Act may be enforced in the same manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.
- (2) Without prejudice to section 52 of the Magistrates' Courts Act 1952 (which relates to the power of a magistrates' court to direct periodical payments to be made through the clerk of a magistrates' court), a magistrates' court making an order under this Part of this Act for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made under this Part of this Act, the said section 52 shall have effect as if, in subsection (2) thereof, for the words " the applicant for the order" there were substituted the words " the person to whom the payments under the order fall to be made ".
- (3) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Part of this Act shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be liable on summary conviction to a fine not exceeding £50.
- (4) 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 Part 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.
- (5) The court hearing an application for the grant of leave under subsection (4) above 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,

- (6) An application for the grant of leave under subsection (4) above shall be made in such manner as may be prescribed by rules.

33 Enforcement of orders for custody

Where at a time when any person is entitled to the actual custody of a child, or a local authority is entitled to the care of a child, by virtue of an order made under this Part of this Act another person has the actual custody of the child, a copy of the order may be served on that other person, and thereupon the order may, without prejudice to any other remedy which may be available, be enforced under section 54(3) of the Magistrates' Courts Act 1952 as if it were an order of a magistrates' court requiring that other person to give up the child to the person entitled by virtue of the order to actual custody or, as the case may be, to the local authority.

34 Restriction on removal of child from England and Wales

- (1) Where a magistrates' court makes—
- (a) an order under section 8(2) of this Act regarding the legal custody of a child, or
 - (b) an interim custody order under section 19 of this Act in respect of a child,
- the court, on making the order or at any time while the order is in force, may, if an application is made for an order under this section, by order direct that no person shall take the child out of England and Wales while the order made under this section is in force, except with the leave of the court.
- (2) A magistrates' court may by order vary or revoke any order made under this section.
- (3) An application for an order under subsection (1) above, or for the variation or revocation of such an order, may be made by either party to the marriage in question and also, in the case of an order made under section 8(2) or 19 of this Act with respect to a child of the family who is not a child of both the parties to the marriage, by any person who, though not one of the parties to the marriage, is a parent of that child.

35 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage

- (1) Where—
- (a) an order made under section 2(1)(a), 6 or 7 of this Act has, by virtue of section 4(2) of this Act, ceased to have effect by reason of the remarriage of the party in whose favour it was made, 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 that remarriage in the mistaken belief that the order 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 personal representatives against the person so entitled or his personal representatives, but on an application made under this section the court may exercise the powers conferred on it by subsection (2) below.

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

- (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) 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 by the person liable to make payments under the order made under section 2(1)(a), 6 or 7 of this Act or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.
- (4) An application under this section shall be made to a county court, except that such an application 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 made under section 2(1)(a), 6 or 7 of this Act; 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) The clerk of a magistrates' court to whom any payments under an order made under section 2(1)(a), 6 or 7 of this Act 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 the clerk, for any act done by him in pursuance of the first mentioned order after the date on which that order 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 not ceased to have effect by reason of the remarriage 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.
- (8) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the officer designated by the Lord Chancellor or the clerk of a magistrates' court to whom a person makes payments in compliance with the order.