



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART III

AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

Amendments of Affiliation Proceedings Act 1957

49 Jurisdiction of magistrates' courts

In section 3 of the Affiliation Proceedings Act 1957 (which relates to the magistrates' courts which have jurisdiction under that Act)—

- (a) in subsection (1) for the words "acting for the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) " there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) " and for the words " for the said petty sessions area " there shall be substituted the words " appointed for the said area " , and
- (b) in subsection (3) for the words " acting for the same petty sessions area " there shall be substituted the words " appointed for the same commission area " .

50 Provisions which may be contained in affiliation orders

- (1) In section 4(2) of the Affiliation Proceedings Act 1957 (which relates to the provisions which may be contained in an affiliation order) for the words from " for the payment by him of " to the end of the subsection there shall be substituted the following words—

“containing one or both of the following provisions—

- (a) provision for the making by him of such periodical payments for the maintenance and education of the child, and for such term, as may be specified in the order;

Status: This is the original version (as it was originally enacted).

- (b) provision for the payment by him of such lump sum as may be so specified.”.

(2) For section 4(3) of the said Act there shall be substituted the following subsections—

“(3) In deciding whether to exercise its powers under subsection (2) of this section and, if so, in what manner, the court shall, among the circumstances of the case, have regard to the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which the mother of the child and the person adjudged to be the putative father of the child have or are likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which the mother and that person have or are likely to have in the foreseeable future;
- (c) the financial needs of the child ;
- (d) the income, earning capacity (if any), property and other financial resources of the child ;
- (e) any physical or mental disability of the child.

(4) Without prejudice to the generality of subsection (2)(b) of this section, an affiliation order may provide for the payment of a lump sum to be made for the purpose of enabling liabilities or expenses reasonably incurred before the making of the order to be met, being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child or, if the child has died before the making of the order, being the child's funeral expenses.

(5) The amount of any lump sum required to be paid by an affiliation order 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.”.

51 Persons entitled to payments under affiliation orders

- (1) In section 5(1) of the Affiliation Proceedings Act 1957 (which relates to the persons entitled to payments under an affiliation order) after the words " child's mother" there shall be inserted the words " for the benefit of the child or the child himself ".
- (2) In section 5(3) of the said Act (which enables payments under an affiliation order to be made to the person who for the time being has the custody of the child) for the words " entitle that person to any payments to be made under the order" there shall be substituted the words " provide that the person entitled to payments under the order shall be that person for the benefit of the child or the child himself ".
- (3) In section 5(4) of the said Act (which provides that a person appointed as guardian under that subsection shall be entitled to payments under an affiliation order) for the words from " a person appointed" to the words " affiliation order and " there shall be substituted the words " where the court has appointed a person as guardian under this subsection the court may provide that the person entitled to any payments to be made under the affiliation order shall be that guardian for the benefit of the child or the child himself and the guardian. ".

52 Age limit on making of affiliation orders and duration of orders

- (1) For section 6 of the Affiliation Proceedings Act 1957 (which relates to the duration of affiliation orders) there shall be substituted the following section—

“6 Age limit on making of orders and duration of orders.

- (1) No affiliation order shall be made in respect of a child who has attained the age of eighteen.
- (2) The term to be specified in an affiliation order which requires the making of periodical payments in favour of a child may begin with the date of the making of an application for the summons under this Act 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 (4) of this section, extend beyond the date of the child's eighteenth birthday.
- (3) Where a complaint under section 1 of this Act is made before or within two months after the birth of the child, the term to be specified in an affiliation order which requires the making of periodical payments may, if the court thinks fit, begin with the date of the birth.
- (4) Paragraph (b) of subsection (2) of this section shall not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be, or if an order were made without complying with that paragraph 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
- (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (5) An affiliation order requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.”.
- (2) Subsections (1) to (3) of section 7 of the Affiliation Proceedings Act 1957 shall cease to have effect, and in subsection (4) of that section for the words "the foregoing provisions of this section or in any order made by virtue of this section" there shall be substituted the words " section 6 of this Act " and in paragraph (b) of that subsection after the words " child's mother" there shall be inserted the words " or the child himself ".

53 Variation and revocation of affiliation orders

After section 6 of the Affiliation Proceedings Act 1957 there shall be inserted the following section: —

“6A Variation and revocation of orders.

- (1) The power of the court under section 53 of the Magistrates' Courts Act 1952 to vary an affiliation order which provides for the making of periodical payments shall include power to vary the order so that it makes provision for the payment of a lump sum (whether or not when the affiliation order was first made, or on an earlier variation, provision was made for the payment of a lump sum).
- (2) In exercising its powers under the said section 53 to revoke, vary or revive an affiliation order the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
- (3) An application for the variation or revival of an affiliation order so as to require periodical payments to be made thereunder after the date mentioned in section 6(2)(a) of this Act may be made by the child's mother or by any person who for the time being has the custody of the child either legally or by an arrangement approved by the court, but not including a local authority in whose care the child is under section 1 of the Children Act 1948 or by virtue of a care order (other than an interim order) within the meaning of the Children and Young Persons Act 1969; and, if the child has attained the age of sixteen, an application for the variation or revival of an affiliation order may be made by the child himself.
- (4) Where on an application for the variation of an affiliation order the court decides to make provision for the payment of a lump sum, the court may provide for the payment of a sum not exceeding the maximum amount that may at that time be required to be paid under section 4(5) of this Act.
- (5) Where in the exercise of its powers under section 63 of the Magistrates' Courts Act 1952 the court orders that a lump sum required to be paid under an affiliation order shall be paid by instalments, the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.”.