



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART III

AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

Amendments of the Children Act 1975

64 Extension of powers of court to make orders for maintenance and access under s. 34 of Children Act 1975

For section 34 of the Children Act 1975 there shall be substituted the following section—

“34 Access and maintenance.

- (1) An authorised court may, on making a custodianship order or while a custodianship order is in force, by order—
 - (a) on the application of the mother, the father or a grandparent of the child, make such provision as it thinks fit requiring access to the child to be given to the applicant;
 - (b) on the application of the custodian, require the child's mother or father (or both) to make to the applicant for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order ;
 - (c) on the application of the custodian, require the child's mother or father (or both) to pay to the applicant for the benefit of the child or to the child such lump sum as may be so specified;
 - (d) on the application of the child's mother or father, revoke an order requiring the applicant to contribute to the child's maintenance made (otherwise than under this section) by any court;

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- (e) on the application of the child's mother or father or the custodian, vary an order made (otherwise than under this section) by any court requiring the mother or father to contribute towards the child's maintenance—
 - (i) by altering the amount of the contributions ;
 - (ii) by substituting the custodian for the person to whom the contributions were ordered to be made.
- (2) References in subsection (1) to the child's mother or father include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973).
- (3) No order shall be made under subsection(1)(b) or (c) requiring the father of an illegitimate child to make any payments to the child's custodian or to the child.
- (4) An authorised court shall have power to make an order under subsection (1) (a) in favour of a grandparent of a child notwithstanding that the child is illegitimate.
- (5) Subsections (2), (3), (3A), (3B), (4), (5A), (5B), (5C), (5D), (5E) and (6) (orders as to the supervision, local authority care, maintenance etc. of children) of section 2 of the Guardianship Act 1973 and sections 3 and 4 of that Act (supplementary provisions) shall apply to an application for a custodianship order as they apply to an application under section 9 of the Guardianship of Minors Act 1971 subject to the following modifications, that is to say—
 - (a) in section 2(2)(b) and (4)(a) of the Guardianship Act 1973 any reference to a parent of a minor to whom the order relates shall be construed as including a reference to any other individual;
 - (b) section 3(3) of that Act shall have effect as if the words " or the custodian " were inserted after the words "application of either parent
 - (c) in section 4(2) of that Act the reference to section 6 of that Act shall be construed as including a reference to section 39 and 40 of this Act.
- (6) A local authority may make contributions to a custodian towards the cost of the accommodation and maintenance of the child, except where the custodian is the husband or wife of a parent of the child.”.

65 Further provisions as to maintenance of child subject to custodianship order

After section 34 of the Children Act 1975 there shall be inserted the following sections—

“34A Matters to which court is required to have regard in exercising powers as to maintenance.

- (1) The court, in deciding whether to exercise its powers under section 34(1)(b) or (c) 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 income, earning capacity, property and other financial resources of each parent and of the custodian;
 - (b) the financial needs, obligations and responsibilities of each parent and of the custodian ;
 - (c) the financial needs of the child ;

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- (d) the income, earning capacity (if any), property and other financial resources of the child;
 - (e) any physical or mental disability of the child.
- (2) The court in deciding whether to exercise its powers under section 34(1)(b) or (c) against a person who is not the child's mother or father and, if so, in what manner, shall, in addition to the matters mentioned in subsection (1), have regard (among the circumstances of the case)—
- (a) to whether that person 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 he did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.
- (3) In subsection (1)—
- (a) references to a parent of a child include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973);
 - (b) the reference in paragraph (a) to income, earning capacity, and other financial resources includes the income, earning capacity, property and other financial resources which the person concerned is likely to have in the foreseeable future; and
 - (c) the reference in paragraph (b) to financial needs, obligations and responsibilities includes the financial needs, obligations and responsibilities which the person concerned is likely to have in the foreseeable future.

34B Duration of orders for maintenance.

- (1) The term to be specified in an order made under section 34(1)(b) 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 (2) below, extend beyond the date of the child's eighteenth birthday.
- (2) Paragraph (b) of subsection (1) 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.

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- (3) Any order made under section 34(1)(b) 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.”.

66 Revocation and variation of orders for periodical payments

- (1) Section 35 of the Children Act 1975 (which relates to the revocation and variation of orders) shall have effect subject to the provisions of this section.
- (2) In subsection (3) of the said section 35 after the words " section 34 " there shall be inserted the words " (other than an order under subsection (1)(c)) ".
- (3) In subsection (4) of the said section 35 for the words " such an order " there shall be substituted the words " an order made under that section (other than an order under subsection (1)(c)) ".
- (4) After subsection (4) of the said section 35 there shall be inserted the following subsection—
- “(4A) An application for the variation of an order made under section 34(1)(b) may, if the child has attained the age of sixteen, be made by the child himself”.
- (5) In subsection (5) of the said section 35 for the words " section 34" there shall be substituted the words " section 34(1)(a), (b) or (e) ".
- (6) In subsection (6) of the said section 35 for the words " section 34" there shall be substituted the words " section 34(1)(a) ".
- (7) At the end of the said section 35 there shall be added the following subsections—
- “(7) On an application under this section for the revocation or variation of an order made under section 34(1)(b), the court shall have power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.
- (8) In exercising its power under this section to revoke or vary an order made under section 34(1)(b), 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.
- (9) Where on an application under this section the court varies any payments required to be made under section 34(1)(b), the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.
- (10) Where an order made under section 34(1)(b) ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the child to an authorised court for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to vary or revoke under this section any order so revived.
- (11) The powers of a magistrates' court to revoke revive or vary under section 53 of the Magistrates' Courts Act 1952 an order for the periodical payment of

money and to suspend or rescind under section 54(2) of that Act certain other orders shall not apply in relation to a custodianship order or an order made under section 34.”.

67 Provisions relating to lump sums

After section 35 of the Children Act 1975 there shall be inserted the following section—

“35A Provisions relating to lump sums.

- (1) Without prejudice to the generality of section 34(1)(c), an order under that section for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the child before the making of the order to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under section 34(1)(c) 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) The power of the court under section 35 to vary or revoke an order made under section 34(1)(b) shall include power to make an order under section 34(1)(c) for the payment of a lump sum by the child's mother or father (or both).
- (4) The amount of any lump sum which the mother or father of the child may be required to pay by virtue of subsection (3) shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2), but a magistrates' court may make an order for the payment of a sum not exceeding that amount notwithstanding that the child's mother or father was required to pay a lump sum by a previous order under this Part of this Act.
- (5) An order made under section 34(1)(c) for the payment of a lump sum may provide for the payment of that sum by instalments, and where such an order makes provision for the payment of a lump sum by instalments, an authorised 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.
- (6) References in this section to the mother or father of a child include any person in relation to whom the child was treated as a child of the family (as denned in section 52(1) of the Matrimonial Causes Act 1973).”.

68 Amendment of s. 36 of Children Act 1975

In section 36 of the Children Act 1975 (which gives the court power on the revocation of a custodianship order to commit the care of the child to a local authority) the following subsections shall be substituted for subsection (5)—

- “(5) Where the court makes an order under subsection (3)(a) the order may require either parent to make to the local authority or to the child such periodical payments, and for such term, as may be specified in the order; but the order shall only require payments to be made to the local authority while it has the care of the child.
- (5A) An order made under subsection (3)(a) with reference to an illegitimate child shall not require the father of that child to make any payments to the local authority or to the child.
- (5B) The court in deciding whether to exercise its powers under subsection (5) and, if so, in what manner, shall have regard to all the circumstances of the case including the matters to which the court is required to have regard under section 34A.
- (5C) Section 34B shall apply in relation to an order under subsection (5) as it applies in relation to an order under section 34(1)(b).”.

69 Custodianship order made on application under Part I of this Act or under Guardianship of Minors Act 1971

In section 37 of the Children Act 1975 after subsection (4) (which enables a custodianship order to be made on an application under section 9 of the Guardianship of Minors Act 1971) there shall be inserted the following subsection—

- “(4A) Where a custodianship order is made by virtue of a direction under subsection (3) or a direction under section 8(3) of the Domestic Proceedings and Magistrates' Courts Act 1978, the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the custodianship order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.”.

70 Restriction on removal of child from England and Wales

After section 43 of the Children Act 1975 there shall be inserted the following section—

“43A Restriction on removal of child from England and Wales.

- (1) Where an authorised court makes—
- (a) a custodianship order in respect of a child, or
 - (b) an interim order under section 34(4) containing provision regarding the legal custody of a child,
- the court, on making that order or at any time while that order is in force, may, if an application is made 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.

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- (2) An authorised court may by order vary or revoke any order made under this section.
- (3) An application for an order under subsection (1), or for the variation or revocation of such an order, may be made by the mother or father of the child or by the custodian.”.

71 Orders made on appeal from a magistrates' court

At the end of section 101 of the Children Act 1975 (which relates to appeals) there shall be added the following subsection—

- “(4) Any order made on an appeal under subsection (2) from a decision of a magistrates' court on an application under Part II (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of sections 35, 35A and 36 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.”.