



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;

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(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: —

Status: This is the original version (as it was originally enacted).

“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.”.

Amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972

54 Date of operation of orders under Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972

The provisions of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to the date of operation of orders made in a reciprocating country and registered in the United Kingdom and of orders varying or revoking orders to which that Part relates shall have effect subject to the following amendments—

- (a) in section 5(7) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the variation is to take effect";
- (b) in section 5(8) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the revocation is to take effect";

Status: This is the original version (as it was originally enacted).

- (c) in section 8(7) of that Act for the words " the date on which the order was made " there shall be substituted the words " the date on which they are required to be paid under the provisions of the order ";
- (d) in section 8(8) of that Act for the words "such date being a date later than the date on which the order was made " there shall be substituted the words " the date on which they are required to be paid under the provisions of the order or such later date ";
- (e) in section 9(8) of that Act for the words " the date on which the order was made " there shall be substituted the words " the date on which under the provisions of the order the variation is to take effect " ; and
- (f) in section 9(9) of that Act for the words " the date on which the order was made " there shall be substituted the words " the date on which under the provisions of the order the revocation is to take effect " .

55 Interpretation of Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland

In section 21 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the interpretation of Part I of that Act)—

- (a) in subsection (1)—
 - (i) the definition of " maintenance " shall cease to have effect; and
 - (ii) after the words " liable to maintain ;" in paragraph (a) of the definition of " maintenance order " there shall be inserted the following paragraph—
 - “(aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party ;” ; and
- (b) in subsection (2), after the words " subsection (1) above " there shall be inserted the words " , to the payment of a periodical allowance as mentioned in paragraph (aa) of that definition, " .

56 Magistrates' courts having jurisdiction to hear applications for affiliation orders under s. 27 of Maintenance Orders (Reciprocal Enforcement) Act 1972

In section 27(2) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the jurisdiction of a magistrates' court to hear an application by a person in a convention country for an affiliation order) after the words " magistrates' court" there shall be inserted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) or " and the words " petty sessions area or " shall be omitted.

57 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse

For section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be substituted the following section—

“28 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse.

Where the complaint is a complaint made for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, the court hearing the complaint may make any order which it has power to make under section 2 or 19(1)(i) of that Act; and Part I of that Act, except sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 27, 28(2), 32(2), 33 and 34, shall apply in relation to the complaint and to any order made on the complaint.”

58 Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse

After section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“28A Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse.

- (1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in England and Wales—
- (a) that person is a former spouse of the applicant in a convention country who is seeking to recover maintenance, and
 - (b) the marriage between the applicant and the former spouse has been dissolved by a divorce granted in a convention country which is recognised as valid by the law of England and Wales, and
 - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country,
- the application shall, notwithstanding that the marriage has been dissolved, be treated as a complaint for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, and the provisions of this section shall have effect.
- (2) On hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 2 of section 19(1)(i) of the Domestic Proceedings and Magistrates' Courts Act 1978 except that—
- (a) an order for the making of periodical payments for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child, and
 - (b) an order for the payment of a lump sum for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.

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

- (3) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 2 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
- (a) section 1 shall be omitted ;
 - (b) for the reference in section 2(1) to any ground mentioned in section 1 of that Act there shall be substituted a reference to noncompliance with any such order as is mentioned in subsection (1)(c) of this section;
 - (c) in section 3(1) for the reference to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the breakdown of the marriage;
 - (d) in section 4(2) the reference to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted;
 - (e) sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 28, 32(2), 33 and 34 shall be omitted.
- (4) A divorce obtained in a convention country shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of England and Wales, unless the contrary is proved by the defendant.
- (5) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.
- (6) In this section the expression "child of the family" has the same meaning as in section 88 of the Domestic Proceedings and Magistrates' Courts Act 1978.”.

59 Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband

After section 29 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“29A Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband.

- (1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in Northern Ireland—
- (a) that person is a former husband of the applicant in a convention country who is seeking to recover maintenance, and
 - (b) the marriage between the applicant and the former husband has been dissolved by a divorce granted in a convention country which is recognised as valid by the law of Northern Ireland, and
 - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the marriage has, by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country,

the application shall, notwithstanding that the marriage has been dissolved, be treated as a complaint for an order under section 3 of the Summary Jurisdiction

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

(Separation and Maintenance) Act (Northern Ireland) 1945, and the provisions of this section shall have effect.

- (2) Subject to subsection (3) below, on hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 3(1)(c) or (d) (payment of weekly sum for benefit of wife, or of a child committed to her custody) or section 4 (interim payments) of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, treating, for the purposes of the said section 3(1)(d), a child whose legal custody has not been committed to any person as a child committed to the custody of the applicant.
- (3) An order shall not be made by virtue of subsection (2) above for the payment of a weekly sum for the benefit of the applicant unless the order made in the convention country provides for the making of periodical payments for her benefit; nor shall an order be made by virtue of that subsection for the payment of a weekly sum for the benefit of a child of the marriage unless the order made in the convention country provides for the making of periodical payments for the benefit of that child.
- (4) The Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 3 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
 - (a) references to the husband or the wife shall be construed as references to, respectively, the former husband or the former wife, and references to the parties to the marriage shall be construed accordingly ;
 - (b) sections 1 and 2 shall be omitted ;
 - (c) for the reference in section 3(1) to an application under the foregoing provisions of that Act there shall be substituted a reference to an application such as is mentioned in subsection (1) above;
 - (d) in section 3, subsection (1)(a) and (b) and subsections (2) to (4) shall be omitted;
 - (e) payments made under section 3(1)(c) or (d) or section 4 shall be made in the prescribed manner to the prescribed person, instead of to such a person as is mentioned in those provisions (and accordingly subsection (9) of section 27 of this Act shall have effect as if those provisions were included among the enactments mentioned in that subsection);
 - (f) section 5(2) to (5) shall be omitted ;
 - (g) section 8 shall be omitted ;
 - (h) proviso (b) to section 13(1) shall be omitted.
- (5) A divorce obtained in a convention country shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of Northern Ireland, unless the contrary is proved by the defendant.
- (6) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.

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

- (7) In this section the expression " child of the marriage" shall be construed in accordance with section 8 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.”.

60 Further amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland

- (1) In section 31 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to applications for the recovery of maintenance in Scotland)—

- (a) after subsection (1) there shall be inserted the following subsection—

“(1A) In any proceedings arising out of such an application as aforesaid the sheriff may subject to subsection (4) below make, with respect to an application under subsection (1) above, such order as he thinks fit having regard to the respective means of the applicant and the person from whom recovery of maintenance is sought and to all the circumstances of the case.”;

- (b) in subsection (2)—

(i) after the word " sheriff" where it first occurs there shall be inserted the words " , or (on appeal or remit) the Court of Session, "; and

(ii) for the words " the sheriff clerk or sheriff clerk depute shall register the order in the prescribed manner in the court" there shall be substituted the words " the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly ";

- (c) after subsection (2) there shall be inserted the following subsection—

“(2A) In subsection (2) above " the appropriate sheriff court" means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.”; and

- (d) after subsection (3) there shall be inserted the following subsections—

“(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—

(i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been granted in a convention country and which is recognised as valid by the law of Scotland ;

(ii) an order for the payment of maintenance for the benefit of the applicant has, in or by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country ; and

(iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.

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

- (5) Without prejudice to any existing power of variation or revocation but subject to section 34(1) of this Act, subsections (4) and (5) of section 5 of the Divorce (Scotland) Act 1976 shall, where an order with respect to an application under subsection (1) above requires the payment of maintenance by a person to a former spouse of that person, apply to that order as they apply to an order under section 5 of the said Act of 1976.
- (6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.”.
- (2) In section 34 of the said Act of 1972 (which provides for the variation and revocation of orders), in subsection (5) after the word " Scotland " there shall be inserted the words—
- “—
- (a) the words " and no court other than the registering court shall have power to vary or revoke a registered order " in subsection (1) above are subject to any power of the Court of Session on appeal; and
- (b)”.
- (3) In section 36 of the said Act of 1972 (which provides for the admissibility of written evidence), in subsection (1) after the words " magistrates' court or " there shall be inserted the words " in, or remitted from, a ".
- (4) In section 39 of the said Act of 1972 (which relates to the interpretation of Part II of that Act), in the definition of " maintenance " for the words " means aliment" there shall be substituted the words " includes aliment and any sums which are payable, following divorce, as a periodical allowance ".

61 Eligibility for Legal Aid in Scotland for proceedings under Maintenance Orders (Reciprocal Enforcement) Act 1972

After section 43 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“43A Eligibility for Legal Aid in Scotland

- (1) In connection with proceedings under Part I of this Act in relation to a maintenance order made by a court in a reciprocating country, where there is produced a certificate from the responsible authority in that country to the effect that the payee would, in that country, be financially eligible for complete or partial—
- (i) legal aid ; or
- (ii) exemption from costs or expenses,
- in proceedings there in relation to that maintenance order, sections 2(1) and (6) (c), 3 and 4 of the Legal Aid (Scotland) Act 1967 shall not apply in respect of the payee and, subject to the other provisions of that Act, legal aid shall under that Act be available to the payee without inquiry into the payee's resources.
- (2) In connection with proceedings under Part II of this Act—

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

- (a) arising out of an application received from a convention country for the recovery of maintenance; or
 - (b) relating to an order made in respect of such an application,
- where there is produced a certificate from the appropriate authority in that county to the effect that the applicant would, in that country, be financially eligible for complete or partial—
- (i) legal aid; or
 - (ii) exemption from costs or expenses,
- in proceedings there for the recovery of maintenance, sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967 shall not apply in respect of the applicant and, subject to the other provisions of that Act, legal aid shall under that Act be available to the applicant without inquiry into the applicant's resources.
- (3) Where, in connection with proceedings under Part I or II of this Act, a person has received legal aid by virtue of subsection (1) or (2) above, legal advice and assistance under the Legal Advice and Assistance Act 1972 shall, notwithstanding—
- (i) any financial conditions imposed by, or by virtue of, sections 1 and 4(2), (3) and (4); and
 - (ii) in relation to the effect of subsections (1) to (4) and (7) of section 4 of the said Act of 1967, the provisions of section 6(1)(b),
- of the said Act of 1972 (but subject otherwise to the provisions of the said Act of 1972), be available in Scotland for that person, without inquiry into his resources, in connection with any matter incidental to, or arising out of, those proceedings.
- (4) In subsection (1) above " maintenance order ", "reciprocating country", "responsible authority" and " payee " have the same meanings respectively as in Part I of this Act; and in subsection (2) above " convention country " means a country or territory specified in an Order in Council under section 25(1) of this Act, " maintenance " has the same meaning as in Part II of this Act, and " appropriate authority " means the authority from which the Secretary of State received the application.”.

Amendments of the Matrimonial Causes Act 1973

62 Amendment of s. 4 of Matrimonial Causes Act 1973

In section 4 of the Matrimonial Causes Act 1973 (which relates to petitions for divorce presented after the granting of a decree of judicial separation or an order in matrimonial proceedings in a magistrates' court)—

- (a) in subsection (3) after the words " judicial separation or " there shall be inserted the words " (subject to subsection (5) below) ";
- (b) at the end of the section there shall be added the following subsections—
 - “(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say—
 - (a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home ;

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- (b) any period during which there is in force an order made by the High Court or a county court under—
 - (i) section 1 of the Matrimonial Homes Act 1967, or
 - (ii) section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976,

which prohibits the exercise by the respondent of the right to occupy a dwelling-house in which the applicant and the respondent have or at any time have had a matrimonial home;

- (c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

(5) Where—

- (a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and
- (b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date,

then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.”

63 Amendment of s. 27 of Matrimonial Causes Act 1973

- (1) For subsection (1) of section 27 of the Matrimonial Causes Act 1973 there shall be substituted the following subsection—

“(1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section 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.”

- (2) For subsections (3) and (4) of the said section 27 there shall be substituted the following subsections—

“(3) Where an application under this section is made on the ground mentioned in subsection (1)(a) above then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
- (b) what order, if any, to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(1)(a) to (f) above and, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.

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

- (3A) Where an application under this section is made on the ground mentioned in subsection (1)(b) above then, in deciding—
- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
 - (b) what order, if any, to make under this section in favour of the child, the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(1)(a) and (b) and (2)(a) to (e) above, and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 25(3) above.
- (3B) In relation to an application under this section on the ground mentioned in subsection (1)(a) above, section 25(1)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) above, section 25(2)(d) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.”.
- (3) In subsection (6) of the said section 27 for the words such one or more of the following orders as it thinks just" there shall be substituted the words " any one or more of the following orders ".
- (4) After subsection (6) of the said section 27 there shall be inserted the following subsections—
- “(6A) An application for the variation under section 31 of this Act of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.
- (6B) Where a periodical payments order made in favour of a child under this section 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 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 exercise its powers under section 31 of this Act in relation to any order so revived.”.
- (5) Subsection (8) of the said section 27 shall cease to have effect.

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—

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

“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;
 - (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 ;
 - (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.
- (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—

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

- “(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 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).

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

- (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.
- (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.”.

Amendments of enactments relating to adoption

72 Alteration in age limits for certain orders made on refusal of adoption order

- (1) In section 17(1) of the Children Act 1975 (which enables the court, on the refusal of an adoption order, to make a supervision order or commit the child to the care of a local authority) the words " under the age of 16 " shall be omitted.

- (2) In section 26(1) of the Adoption Act 1976 (which enables the court, on the refusal of an adoption order, to make a supervision order or commit the child to the care of a local authority) the words " under the age of 16 years " shall be omitted.

73 Hearing in private of adoption proceedings

- (1) In section 21 of the Children Act 1975 (which relates to the hearing in private of proceedings under Part I of that Act)—
- (a) in subsection (1) for the word " proceedings" there shall be substituted the words " adoption proceedings " and the words " under this Part " shall be omitted ;
 - (b) in subsection (2) for the words " all proceedings " there shall be substituted the words " adoption proceedings " and the words " under this Part" shall be omitted;
 - (c) after subsection (2) there shall be inserted the following subsection—

“(2A) In this section " adoption proceedings " means proceedings under this Part or under the Adoption Act 1958, the Adoption Act 1960 or the Adoption Act 1968.”.
- (2) In section 64 of the Adoption Act 1976 (which relates to the hearing in private of certain proceedings under that Act) for the words " Part II, section 29 or section 55 " there shall be substituted the words " this Act ".

74 Provisions relating to Convention adoption orders

- (1) In section 24 of the Children Act 1975 (which relates to Convention adoption orders) after subsection (8) there shall be inserted the following subsection—
- “(8A) Section 6(1) of the Adoption Act 1968 (which relates to the annulment of convention adoptions) shall apply in relation to an adoption effected by a Convention adoption order as it applies in relation to a convention adoption except that an adoption effected by a Convention adoption order may be annulled only by the court which made that order; and section 7(1), (2) and (4) of that Act shall apply accordingly.”.
- (2) In section 53(1) of the Adoption Act 1976 (which relates to the annulment of regulated adoptions) after the words " regulated adoption " there shall be inserted the words " or an adoption effected by a Convention adoption order ".
- (3) In Schedule 3 to the Children Act 1975 paragraph 26 (which excludes Convention adoption orders from the provisions of the Adoption Act 1958 relating to notification of the revocation of an adoption order) shall be omitted.
- (4) In Schedule 1 to the Adoption Act 1976 in paragraph 6 (which relates to the notification to the Registrar General of the revocation of an adoption order) the words " other than a Convention adoption order " shall be omitted.
- (5) In section 6(1) of the Adoption (Hague Convention) Act (Northern Ireland) 1969 after the word " annul" there shall be inserted the words " an adoption effected by a convention adoption order or " ; and in section 7(2) of that Act the words " in respect of a foreign convention adoption " shall be omitted.