



Matrimonial and Family Proceedings Act 1984

1984 CHAPTER 42

PART II

FINANCIAL RELIEF IN MATRIMONIAL PROCEEDINGS

Provisions relating to powers of the High Court and county courts

3 Orders for financial relief after divorce etc.

For section 25 of the Matrimonial Causes Act 1973 (in this Part referred to as "the 1973 Act") there shall be substituted the following sections—

“25 Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A.

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 or 24A above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 or 24A above in relation to a party to the marriage, the court shall in particular have regard to the following matters—
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire ;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

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- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage ;
 - (e) any physical or mental disability of either of the parties to the marriage ;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family ;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 - (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
- (3) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters—
- (a) the financial needs of the child ;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained ;
 - (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.
- (4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard
- (a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility ;
 - (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
 - (c) to the liability of any other person to maintain the child.

25A Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.

- (1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or 24A above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.
- (2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments

to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

- (3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 23 (1)(a) or (b) above.”

4 Orders for financial relief in case of neglect to maintain

In section 27 of the 1973 Act (financial provision in case of neglect to maintain) for subsection (3) there shall be substituted the following subsection—

- “(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(2) above, and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while a minor.”

5 Duration of orders for periodical payments and effect of remarriage

- (1) In section 28(1) of the 1973 Act (duration of continuing financial provision orders in favour of party to a marriage), for the words from the beginning to " the following limits " there shall be substituted the words " Subject in the case of an order made on or after the grant of a decree of divorce or nullity of marriage to the provisions of sections 25A(2) above and 31(7) below, the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits " .
- (2) After subsection (1) of the said section 28 there shall be inserted the following subsection—
- “(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the grant of a decree of divorce or nullity of marriage, the court may direct that that party shall not be entitled to apply under section 31 below for the extension of the term specified in the order”.
- (3) In subsection (3) of the said section 28 (effect of remarriage on financial provision orders), after the word " remarries " there shall be inserted the words " whether at any time before or after the commencement of this Act " .

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- (4) In section 29(2) of the 1973 Act (duration of continuing financial provision orders in favour of children), in paragraph (a), for the words " unless the court thinks it right in the circumstances of the case to specify a later date " there shall be substituted the words " unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date ".

6 Variation and discharge of orders for periodical payments

- (1) Section 31 of the 1973 Act (variation and discharge of orders) shall be amended as follows.
- (2) In subsection (1) after the words " subject to the provisions of this section " there shall be inserted the words " and of section 28(1A) above ".
- (3) For subsection (7) there shall be substituted the following subsection—

“(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.”

- (4) After subsection (9) there shall be inserted the following subsection—

“(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.”

7 Consent orders for financial provision or property adjustment

The following section shall be inserted after section 33 of the 1973 Act—

“Consent orders

33A Consent orders for financial provision or property adjustment.

- (1) Notwithstanding anything in the preceding provisions of this Part of this Act, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.
- (2) Subsection (1) above applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this section—
 - ' consent order ', in relation to an application for an order, means an order in the terms applied for to which the respondent agrees ;
 - ' order for financial relief ' means an order under any of sections 23, 24, 24A or 27 above; and
 - ' prescribed ' means prescribed by rules of court.”

8 Restrictions imposed in divorce proceedings etc., on applications under Inheritance (Provision for Family and Dependants) Act 1975

- (1) For subsection (1) of section 15 of the Inheritance (Provision for Family and Dependants) Act 1975 (under which the court on the grant of a decree of divorce, nullity or judicial separation has power, if the parties to the marriage agree, to order that one party shall not on the death of the other party be entitled to apply for an order under section 2 of that Act) there shall be substituted the following subsection—
 - “(1) On the grant of a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter the court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.

In this subsection " the court " means the High Court or, where a county court has jurisdiction by virtue of Part V of the Matrimonial and Family Proceedings Act 1984, a county court.”
- (2) In section 25(1) of that Act (interpretation), in the definition of " the court " after the word " means " there shall be inserted the words " unless the context otherwise requires ".

Provisions relating to the powers of magistrates' courts

9 Orders for financial relief made by magistrates' courts in matrimonial proceedings

- (1) For section 3 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be substituted the following section—

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

“3 Matters to which court is to have regard in exercising its powers under s.2.

- (1) Where an application is made for an order under section 2 of this Act, it shall be the duty of the court, in deciding whether to exercise its powers under that section and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of its powers under subsection (1)(a) or (b) of section 2, the court shall in particular have regard to the following matters—
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (d) the age of each party to the marriage and the duration of the marriage ;
 - (e) any physical or mental disability of either of the parties to the marriage ;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family ;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (3) As regards the exercise of its powers under subsection (1)(c) or (d) of section 2, the court shall in particular have regard to the following matters—
 - (a) the financial needs of the child ;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child ;
 - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application ;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained ;
 - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2) above.
- (4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
 - (a) to whether the respondent has 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 ;

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- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.”
- (2) In section 5(2) of that Act (duration of periodical payments orders in favour of children), in paragraph (a), for the words " unless the court thinks it right in the circumstances of the case to specify a later date " there shall be substituted the words " unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date ".
- (3) In section 20(11) of that Act (variation and revocation of orders for periodical payments) for the words "including any change " there shall be substituted the words " first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change ".

10 Orders for payments which have been agreed by the parties

For section 6 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be substituted the following section—

“6 Orders for payments which have been agreed by the parties.

- (1) Either party to a marriage may apply to a magistrates' court for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may, if—
- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
 - (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,
- order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.
- (2) In this section " financial provision " means the provision mentioned in any one or more of the following paragraphs, that is to say—
- (a) the making of periodical payments by one party to the other,
 - (b) the payment of a lump sum by one party to the other,
 - (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
 - (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

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- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) A party to a marriage who has applied for an order under section 2 of this Act shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 2 of this Act, the application made for the order under section 2 shall be treated as if it had been withdrawn.
- (5) Where on an application under subsection (1) above the court decides—
- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,
- but is of the opinion—
- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
 - (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,
- then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.
- (6) Subject to subsection (8) below, the provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) Subject to subsection (8) below, the provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.
- (8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4) above, an application for an order under section 2 of this Act is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 2 or any later date.
- (9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of—
- (a) the consent of the respondent to the making of the order,

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- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.”

11 Variation of consent orders by magistrates' courts

For section 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 (under which the court can vary a consent order by ordering the payment of a lump sum if the consent order provided for the payment of a lump sum) there shall be substituted the following subsection—

- “(2) Where a magistrates' court has made an order under section 6 of this Act for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—
- (a) to the other party to the marriage, or
 - (b) to a child of the family or to that other party for the benefit of that child.”