



Matrimonial Causes Act 1965

1965 CHAPTER 72

PART II

ANCILLARY RELIEF

Maintenance agreements

23 Validity of maintenance agreements

- (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—
- (a) that provision shall be void ; but
 - (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to the next two following sections), be binding on the parties to the agreement.

- (2) In this and the next following section—

" maintenance agreement " means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage ; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

" financial arrangements " means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the marriage; and

Status: This is the original version (as it was originally enacted).

" child of the marriage " includes any child of both parties to the marriage, whether legitimate or not, and any child adopted by both parties to the marriage.

24 Alteration of agreements by court during lives of parties

- (1) Where a maintenance agreement (other than an agreement made more than six months after the dissolution or annulment of the marriage) is for the time being subsisting and the parties to the agreement are for the time being either both domiciled or both resident in England and on an application by either party the High Court or, subject to the next following subsection, a magistrates' court is satisfied either—
- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it, the agreement should be altered so as to make different, or as the case may be so as to contain, financial arrangements ; or
 - (b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage,
- the court to which the application is made may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it or by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to that court to be just having regard to all the circumstances or, as the case may be, as may appear to that court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.
- (2) A magistrates' court shall not entertain an application under the foregoing subsection unless both the parties to the agreement are resident in England and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which that court acts, and shall not have power to make any order on such an application except—
- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments—
 - (i) for the maintenance of the other party, at a rate not exceeding seven pounds ten shillings a week;
 - (ii) for the maintenance of any child of the marriage, at a rate not exceeding fifty shillings a week in respect of each such child ;
 - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments at rates not exceeding those aforesaid, an order increasing to such higher rate not exceeding the appropriate rate aforesaid, or reducing the rate of, or terminating, any of those payments.
- (3) For the avoidance of doubt it is hereby declared that nothing in this or the last foregoing section affects any power of the court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

25 Alteration of agreements by court after death of one party

- (1) Where a maintenance agreement within the meaning of section 23 of this Act provides for the continuation of payments under the agreement after the death of one of the parties and that party dies after 16th August 1957 domiciled in England, the surviving party may—
 - (a) before the end of the period of six months from the date when representation in regard to the deceased's estate is first taken out; or
 - (b) with the permission of the court, after the end of that period but before the administration and distribution of the estate is completed,apply to the High Court for any order under subsection (1) of the last foregoing section for which the surviving party might have applied immediately before the death.
- (2) If a maintenance agreement is altered by the court on an application made in pursuance of the foregoing subsection, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (3) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (5) For the purposes of section 162(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (which relates to the discretion of the court as to the persons to whom administration is to be granted) a person by whom an application is proposed to be made by virtue of this section shall be deemed to be a person interested in the deceased's estate.