



Matrimonial Causes Act 1965

1965 CHAPTER 72

PART II

ANCILLARY RELIEF

Maintenance from estate of deceased former spouse

26 Orders for maintenance from deceased's estate.

- (1) Where after 31st December 1958 a person dies domiciled in England and is survived by a former spouse of his or hers (hereafter in this section referred to as "the survivor") who has not remarried, the survivor may—
- (a) F1
 - (b) F1

apply to the court for an order under this section on the ground that the deceased has not made reasonable provision for the survivor's maintenance after the deceased's death.

[^{F2}An application under this section shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.]

- (2) If on an application under this section the court is satisfied—
- (a) that it would have been reasonable for the deceased to make provision for the survivor's maintenance; and
 - (b) that the deceased has made no provision, or has not made reasonable provision, for the survivor's maintenance,

the court may order that such reasonable provision for the survivor's maintenance as the court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the court may impose.

- (3) Where the court makes an order under this section requiring provision to be made for the maintenance of the survivor, the order shall require that provision to be made by way of periodical payments terminating not later than the survivor's death and, if the

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survivor remarries, not later than the remarriage, so however that [^{F3}if the court sees fit] the order may require that provision to be made wholly or in part by way of a lump sum payment.

- (4) On an application under this section the court shall have regard—
- (a) to the past, present or future capital of the survivor and to any income of the survivor from any source;
 - (b) to the survivor’s conduct in relation to the deceased and otherwise;
 - (c) to any application made or deemed to be made by the survivor during the lifetime of the deceased—
 - (i) where the survivor is a former wife of the deceased, for such an order as is mentioned in section 16(1) of this Act or that subsection as applied by section 19 of this Act;
 - (ii) where the survivor is a former husband of the deceased, for such an order as could be made either under the said section 16(1) as applied by subsection (3) of that section or under section 17(2) of this Act,
 - [^{F4}(iii) where the survivor is a former wife or a former husband of the deceased, for an order under section 2 or 4 of the ^{M1}Matrimonial Proceedings and Property Act 1970 or under section 23(1)(a), (b) or (c) or 24 of the ^{M2}Matrimonial Causes Act 1973]

and to the order (if any) made on any such application, or (if no such application was made by the survivor, or such an application was made by the survivor and no order was made on the application) to the circumstances appearing to the court to be the reasons why no such application was made, or no such order was made, as the case may be; and

- (d) to any other matter or thing which, in the circumstances of the case, the court may consider relevant or material in relation to the survivor, to persons interested in the estate of the deceased, or otherwise.
- (5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the court shall have regard to the nature of the property representing the net estate of the deceased and shall not order any such provision to be made as would necessitate a realisation that would be imprudent having regard to the interests of the dependants of the deceased, of the survivor, and of the persons who apart from the order would be entitled to that property.

[^{F5}(5A) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.]

- (6) In this and [^{F6}the three next following sections]—
- [^{F7}“Court” [^{F8}means the High Court and] includes a county court in relation to cases of which a county court has jurisdiction]
 - “former spouse”, in relation to a deceased person, means a person whose marriage with the deceased was during the deceased’s lifetime dissolved or annulled by a decree made or deemed to be made under [^{F9}the Matrimonial Causes Act 1973], and “former wife” and “former husband” shall be construed accordingly;
 - “net estate” and “dependant” have the same meanings as in the ^{M3}Inheritance (Family Provision) Act 1938 [^{F10}as amended by the ^{M4}Family Provision Act 1966][^{F11}the ^{M5}Family Law Reform Act 1969 and the ^{M6}Law Reform (Miscellaneous Provisions) Act 1970]; and

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“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not.

Textual Amendments

- F1** S. 26(1)(a)
(b) repealed by Family Provision Act 1966 (c. 35), ss. 5, 10(2), **Sch. 2**
- F2** Words added by Family Provision Act 1966 (c. 35), **s. 5(3)**
- F3** Words substituted by Family Provision Act 1966 (c. 35), **s. 4(1)**
- F4** S. 26(4)(c)(iii) substituted by Matrimonial Causes Act 1973 (c. 18), s. 54, **Sch. 2 para. 5(a)**
- F5** S. 26(5A) added retrospectively by Matrimonial Proceedings and Property Act 1970 (c. 45), **s. 36**
- F6** Words substituted by Family Provision Act 1966 (c. 35), **s. 6(2)**
- F7** Definition added by Family Provision Act 1966 (c. 35), **s. 7(4)**
- F8** Words inserted by Divorce Reform Act 1969 (c. 55), s. 9(1), **Sch. 1 para. 8** and Matrimonial Causes Act 1973 (c. 18), s. 54, **Sch. 2 para. 5(b)**
- F9** Words substituted by Matrimonial Causes Act 1973 (c. 18), s. 54, **Sch. 2 para. 5(c)**
- F10** Words inserted by Family Provision Act 1966 (c. 35), **s. 8(2)**
- F11** Words substituted by Law Reform (Miscellaneous Provisions) Act 1970 (c. 33), **s. 6(5)**

Marginal Citations

- M1** 1970 c. 45.
M2 1973 c. 18.
M3 1938 c. 45.
M4 1966 c. 35.
M5 1969 c. 46.
M6 1970 c. 33.

27 Discharge and variation of orders under s. 26.

- (1) Subject to the following provisions of this section, where an order (in this section referred to as “the original order”) has been made under the last foregoing section, the court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.
- (2) An application under this section may be made by any of the following persons, that is to say,—
- the former spouse on whose application the original order was made;
 - any other former spouse of the deceased;
 - any dependant of the deceased;
 - the trustees of any relevant property;
 - any person who, under the will or codicil of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.
- (3) An order under this section varying the original order, or reviving any suspended provision of it, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.
- (4) In exercising the powers conferred by this section, the court shall have regard to all the circumstances of the case, including any change in the circumstances to which the court was required to have regard in determining the application for the original order.

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- (5) In this section “relevant property” means property the income of which, in accordance with the original order or any consequential directions given by the court in connection with it, is applicable wholly or in part for the maintenance of the former spouse on whose application the original order was made.

28 Additional provisions as to orders under ss. 26 and 27.

- (1) The provisions of the last two foregoing sections shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period mentioned in subsection (1) of section 26 of this Act on the ground that they ought to have taken into account the possibility that the court might permit an application under that section after the end of that period, or that an order under that section might be varied under section 27 of this Act; 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 under section 26 or section 27 of this Act.
- (2) Section 25(4) of this Act shall apply for the purposes of section 26(1) of this Act as it applies for the purposes of subsection (1) of the said section 25; and section 25(5) of this Act shall apply in relation to an application under section 26 or section 27 of this Act as it applies in relation to an application in pursuance of the said section 25.
- (3) Section 3 of the ^{M7}Inheritance (Family Provision) Act 1938 [^{F12}as amended by the ^{M8}Family Provision Act 1966] (which relates to the effect and form of orders under that Act) shall have effect in relation to orders under sections 26 and 27 of this Act as it has effect in relation to orders under that Act.

Textual Amendments

F12 Words inserted by [Family Provision Act 1966 \(c. 35\), s. 3\(2\)](#)

Marginal Citations

M7 1938 c. 45.

M8 1966 c. 35.

- ^{F13}**28A**
- (1) Where on an application for maintenance under section 26 of this Act it appears to the court—
- that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made on the application for the provision of maintenance for the applicant; and
 - that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;
- the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to or for the benefit of the applicant out of the deceased’s net estate such sum or sums and (if more than one) at such intervals as the court thinks reasonable.
- (2) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision

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of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.

- (3) Subject to subsection (2) above, section 3 of the ^{M9}Inheritance (Family Provision) Act 1938 as applied by section 28 of this Act, shall apply in relation to an order under this section as it applies in relation to an order providing for maintenance.
- (4) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient]

Textual Amendments

F13 S. 28A added by Family Provision Act 1966 (c. 35), s. 6(2), Sch. 1

Marginal Citations

M9 1938 c. 45.

29— ^{F14}
32.

Textual Amendments

F14 Ss. 29–37, 39–41, 43(2)(3), 44, 45, 46(2)(3), Schs. 1, 2 repealed by Matrimonial Causes Act 1973 (c. 18), s. 54(1), Sch. 3

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