



# 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) before the end of the period of six months beginning with the date on which representation in regard to the estate of the deceased 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 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.
- (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 survivor remarries, not later than the remarriage, so however that if the value of the

---

*Status: This is the original version (as it was originally enacted).*

---

net estate of the deceased does not exceed five thousand pounds 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,
 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.
- (6) In this and the next following section—
- " 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 this Act, and " former wife " and " former husband " shall be construed accordingly;
  - " net estate " and " dependant " have the same meanings as in the Inheritance (Family Provision) Act 1938; and
  - " 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.

## 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,—
  - (a) the former spouse on whose application the original order was made;
  - (b) any other former spouse of the deceased ;
  - (c) any dependant of the deceased;
  - (d) the trustees of any relevant property ;
  - (e) 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.
- (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 Inheritance (Family Provision) Act 1938 (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.