



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

#### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

*Ancillary relief in connection with divorce proceedings, etc.*

#### **22 Maintenance pending suit**

On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

#### **23 Financial provision orders in connection with divorce proceedings, etc.**

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;

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- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified ;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

- (2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) above—
  - (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree ; and
  - (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (3) Without prejudice to the generality of subsection (1)(c) or (f) above—
  - (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
  - (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
  - (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under subsection (1) or (2)(a) above to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) above, it may from time to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f) above.
- (5) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under subsection (1)(a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

## **24 Property adjustment orders in connection with divorce proceedings, etc.**

- (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

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- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion ;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them ;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage ;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

- (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
- (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

## **25 Matters to which court is to have regard in deciding how to exercise its powers under sections 23 and 24**

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(a), (b) or (c) or 24 above in relation to a party to the marriage and, if so, in what manner, to 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 which each of the parties to the marriage has or is likely to have in the foreseeable future ;
  - (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 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 made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
  - (g) in the case of proceedings for divorce or nullity of marriage, the value to either 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 ;

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and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3) below, it shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(d), (e) or (f), (2) or (4) or 24 above in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (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 breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraph (a) and (b) of subsection (1) above, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 23(1)(d), (e) or (f), (2) or (4) or 24 above against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)—

- (a) to whether that party had 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.

## **26 Commencement of proceedings for ancillary relief, etc.**

(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings for maintenance pending suit under section 22 above, for a financial provision order under section 23 above, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

(2) Rules of court may provide, in such cases as may be prescribed by the rules—

- (a) that applications for any such relief as is mentioned in subsection (1) above shall be made in the petition or answer; and
- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.