Matrimonial Causes Act 1973

1973 CHAPTER 18

PART II

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Miscellaneous and supplemental

37 Avoidance of transactions intended to prevent or reduce financial relief.

(1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 22, 23, 24, 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the applicaton of the first-mentioned person—

(a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

(c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

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and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2)(b) or (c) above setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) in a case falling within subsection (2)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or

(b) in a case falling within subsection (2)(c) above, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(7) This section does not apply to a disposition made before 1st January 1968.

38 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.

(1) Where—

(a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as "a payments order") has ceased to have effect by reason of the remarriage of that party, and

(b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

(2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period

mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a county court; and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.

(4) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.

(5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(6) The clerk of a magistrates' court to whom any payments under a payments order are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable—

(a) in the case of the clerk, for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and

(b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

(7) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates' court to whom a person makes payments in compliance with the order.

Modifications etc. (not altering text)

C1 S. 38 extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21**(*i*), 48(2)

39 Settlement, etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor.

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being **[**[F1]a transaction in respect of which an order may be made under **[**[F2]section 339 or 340 of the [M1]Insolvency Act 1986**]** (transactions at an undervalue and preferences.)**]**

Textual Amendments

F1 Words substituted by Insolvency Act 1985 (c. 65, SIF 66), ss. 235, 236, Sch. 8 para. 23, **Sch. 9 para. 11(2)**

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F2 Words substituted by virtue of Insolvency Act 1986 (c. 45, SIF 66), ss. 439(2), 440, 441, **Sch 14**

Modifications etc. (not altering text)

C2 S. 39 extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21**(*j*), 48(2)

Marginal Citations

M1 1986 c.45**(66)**.

40 Payments, etc., under order made in favour of person suffering from mental disorder.

Where the court makes an order under this Part of this Act requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the [M2]Mental Health Act 1959, of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under Part VIII of that Act, the court may order the payments to be made, or as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

Modifications etc. (not altering text)

C3 S. 40 extended by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 21**(*k*), 48(2)

Marginal Citations

M2 1959 c. 72.

VALID FROM 11/11/1999

[[F3]40A Appeals relating to pension sharing orders which have taken effect.

(1) Subsections (2) and (3) below apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

(3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of subsection (2) or (3) above whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(5) Where subsection (2) or (3) above applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(6) Section 24C above only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.

(7) In subsection (2) above, the reference to the person responsible for the pension arrangement is to be read in accordance with section 25D(4) above.**]**

Textual Amendments

F3 S. 40A inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 10**; S.I. 2000/1116, **art. 2**

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