



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

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

##### *Maintenance agreements*

#### **36 Alteration of agreements by court after death of one party**

- (1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 35 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county 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.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of section 7 of the Family Provision Act 1966 (which confers jurisdiction on county courts in proceedings under the Inheritance (Family Provision) Act 1938 or section 26 of the Matrimonial Causes Act 1965 if the value of the deceased's net estate does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under section 26 of the Matrimonial Causes Act 1965 (application for maintenance out of deceased's estate by former spouse) in relation to the deceased's estate.
- (4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, 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.

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*Status: This is the original version (as it was originally enacted).*

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- (5) 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 period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party 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.
- (6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.
- (7) Subsection (3) of section 7 of the Family Provision Act 1966 (transfer to county court of proceedings commenced in the High Court) and paragraphs (a) and (b) of subsection (5) of that section (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to any such proceedings as are referred to in subsection (1) of that section.