



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Powers of court to make orders for financial provision for parties to a marriage and children of the family

1 Grounds of application for financial provision.

Either party to a marriage may apply to a magistrates' court for an order under section 2 of this Act on the ground that the other party to the marriage . . . ^{F1}—

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

Textual Amendments

- F1** Words repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 21](#)

2 Powers of court to make orders for financial provision.

- (1) Where on an application for an order under this section the applicant satisfies the court of any ground mentioned in section 1 of this Act, the court may, subject to the

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provisions of this Part of this Act, make any one or more of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
 - (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
 - (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.
- (2) Without prejudice to the generality of subsection (1)(b) or (d) above, an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.
- (3) The amount of any lump sum required to be paid by an order under this section shall not exceed £500 or such larger amount as the [^{F2}Lord Chancellor] may from time to time by order fix for the purposes of this subsection.

Any order made by the [^{F2}Lord Chancellor] under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F2 S. 2(3): words substituted (1. 4. 1992) by 1992/709, art.3(2), Sch. 2

Modifications etc. (not altering text)

C1 S. 2 extended by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18, SIF 49:3\)](#), s. 28A(1) as substituted by [Matrimonial and Family Proceedings Act 1984 \(c.42, SIF 49:3\)](#), ss. 26(2), 48(2)

C2 S. 2(3): functions of the Secretary of State transferred (1.4.1992) to the Lord Chancellor by [S.I. 1992/709, art. 3\(1\), Sch.2](#)

[^{F3}3] **Matters to which court is to have regard in exercising its powers under s. 2.**

- (1) Where an application is made for an order under section 2 of this Act, it shall be the duty of the court, in deciding whether to exercise its powers under that section and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of its powers under subsection (1)(a) or (b) of section 2, the court shall in particular have regard to the following matters—
 - (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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

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- (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 parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (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 which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (3) As regards the exercise of its powers under subsection (1)(c) or (d) of section 2, the court shall in particular have regard to the following matters—
- (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 occurrence of the conduct which is alleged as the ground of the application;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
 - (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2) above.
- (4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.]

Textual Amendments

F3 S. 3 substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 9(1), 48(2)**

4 Duration of orders for financial provision for a party to a marriage.

- (1) The term to be specified in any order made under section 2(1)(a) of this Act shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.
- (2) Where an order is made under the said section 2(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the

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remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

5 Age limit on making orders for financial provision for children and duration of such orders.

- (1) Subject to subsection (3) below, no order shall be made under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in an order made under section 2(1)(c) of this Act in favour of a child may begin with the date of the making of an application for the order in question or any later date [^{F4}or a date ascertained in accordance with subsection (5) or (6) below] but—
 - (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age [^{F5}(construed in accordance with section 8 of the Education Act 1996)] [^{F6}unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and
 - (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) The court—
 - (a) may make an order under section 2(1)(c) or (d) of this Act in favour of a child who has attained the age of eighteen, and
 - (b) may include in an order made under section 2(1)(c) of this Act in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,
 if it appears to the court—
 - (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (ii) that there are special circumstances which justify the making of the order or provision.
- (4) Any order made under section 2(1)(c) of this Act in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

[^{F7}(5) Where—

- (a) a [^{F8}maintenance calculation] (“the [^{F9}current calculation]”) is in force with respect to a child; and
- (b) an application is made for an order under section 2(1)(c) of this Act—
 - (i) in accordance with section 8 of the Child Support Act 1991 ^{F10}; and
 - (ii) before the end of the period of 6 months beginning with the making of the [^{F11}current calculation],
 the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—

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- (a) the date 6 months before the application is made; or
 - (b) the date on which the [F12current calculation] took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of [F13those calculations] took effect.
- (7) Where—
- (a) a [F14maintenance calculation] ceases to have effect [F15or is cancelled] by or under any provision of the Child Support Act 1991; and
 - (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order under section 2(1)(c) of this Act in relation to a child with respect to whom that [F14maintenance calculation] was in force immediately before it ceased to have effect [F15or was cancelled],
- the term to be specified in any such order, or in any interim order under section 19 of this Act, made on that application, may begin with the date on which that [F14maintenance calculation] ceased to have effect [F15or, as the case may be, the date with effect from which it was cancelled], or any later date.
- (8) In subsection (7)(b) above—
- (a) where the [F16maintenance calculation] ceased to have effect, the relevant date is the date on which it so ceased; [F17and
 - (b) where the maintenance assessment was cancelled, the relevant date is the later of—
 - (i) the date on which the person who cancelled it did so, and
 - (ii) the date from which the cancellation first had effect.]]

Textual Amendments

- F4** Words in s. 5(2) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch. 1 para. 4** (the second paragraph so numbered).
- F5** Words in s. 5(2)(a) substituted (1.9.1997) by 1996 c. 56, s. 582(1)(4), **Sch. 37 Pt. II para. 138** (with ss. 1(4), 561, 562, Schs. 39, 40 para. 1); S.I. 1997/1623, **art. 2(2)**
- F6** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), **ss. 9(2), 47, 48(2)**
- F7** S. 5(5)-(8) inserted (5.4.1993) by S.I. 1993/623, art. 2, **Sch.1 para. 5**.
- F8** Words in s. 5(5)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F9** Words in s. 5(5)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F10** 1991 c.48.
- F11** Words in s. 5(5)(b)(ii) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F12** Words in s. 5(6)(b) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F13** Words in s. 5(6)(b) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(c)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F14** Words in s. 5(7) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 4(2)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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- F15** Words in s. 5(7) repealed (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(e\)\(2\), Sch. 9 Pt. I](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F16** Words in s. 5(8)(a) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(a\)\(2\), Sch. 3 para. 4\(2\)\(a\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F17** S. 5(8)(b) and preceding word repealed (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(e\)\(2\), Sch. 9 Pt. I](#) (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

[^{F18}6 Orders for payments which have been agreed by the parties.

- (1) Either party to a marriage may apply to a magistrates' court for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3) below, the court on such an application may, if—
- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision, and
 - (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

- (2) In this section “financial provision ” means the provision mentioned in any one or more of the following paragraphs, that is to say—
- (a) the making of periodical payments by one party to the other,
 - (b) the payment of a lump sum by one party to the other,
 - (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
 - (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) above or specified by the court under subsection (5) below is a reference to the type of provision specified in the application or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

- (3) Where the financial provision specified in an application under subsection (1) above includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) A party to a marriage who has applied for an order under section 2 of this Act shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 2 of this Act, the application made for the order under section 2 shall be treated as if it had been withdrawn.

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- (5) Where on an application under subsection (1) above the court decides—
- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,
- but is of the opinion—
- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
 - (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,
- then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.
- (6) Subject to subsection (8) below, the provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.
- (7) Subject to subsection (8) below, the provisions of section 5 of this Act shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 2(1)(c) or (d) of this Act.
- (8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4) above, an application for an order under section 2 of this Act is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 2 or any later date.
- (9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under subsection (1) above, the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by [^{F19}rules of court] of—
- (a) the consent of the respondent to the making of the order,
 - (b) the financial resources of the respondent, and
 - (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.]

Textual Amendments

F18 S. 6 substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 10, 47, 48(2)**

F19 Words in s. 6(9) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\)](#), **Sch. 8 para. 191**; S.I. 2005/910, art. 3(y)

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7 Powers of court where parties are living apart by agreement.

- (1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to a magistrates' court for an order under this section, and any application made under this subsection shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.
- (2) Where on an application for an order under this section the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Part of this Act, make one or both of the following orders, that is to say—
 - (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
 - (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.
- (3) The court in the exercise of its powers under this section—
 - (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
 - (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under section 1 of this Act;
 - (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under section 1 of this Act.
- (4) Where on an application under this section the court considers that the orders which it has the power to make under this section—
 - (a) would not provide reasonable maintenance for the applicant, or
 - (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards reasonable maintenance for that child,
 the court shall refuse to make an order under this section, but the court may treat the application as if it were an application for an order under section 2 of this Act.
- (5) The provisions of section 3 of this Act shall apply in relation to an application for an order under this section as they apply in relation to an application for an order under section 2 of this Act subject to the modification that for the reference in [F20 subsection (2)(c)] of the said section 3 to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.
- (6) The provisions of section 4 of this Act shall apply in relation to an order under this section which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under section 2(1)(a) of this Act.

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- (7) The provisions of section 5 of this Act shall apply in relation to an order under this section for the making of periodical payments in respect of a child of the family as they apply in relation to an order under section 2(1)(c) of this Act.

Textual Amendments

F20 Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 47, 48(3), [Sch. 1 para. 22](#)

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