



# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

### PART II

#### AMENDMENTS OF THE GUARDIANSHIP OF MINORS ACTS 1971 AND 1973

##### *Amendment of provisions relating to orders for maintenance*

#### **41 Extension of powers of court to make orders for maintenance**

- (1) The provisions of sections 9, 10 and 11 of the Guardianship of Minors Act 1971 relating to orders for maintenance shall have effect subject to the provisions of this section.
- (2) In section 9 of that Act for subsection (2) there shall be substituted the following subsection—

“(2) Where by an order under subsection (1) of this section the right to the actual custody of a minor is given to one of the parents, the court may also, subject to section 12 of this Act, make one or both of the following orders, that is to say—

- (a) an order requiring the parent excluded from having actual custody to make to the other parent for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order ;
- (b) an order requiring the parent excluded from having actual custody to pay to the other parent for the benefit of the minor, or to the minor, such lump sum as may be so specified ; ”

and in subsection (4) after the words "this section" there shall be inserted the words " (other than an order for the payment of a lump sum) " .”

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*Status: This is the original version (as it was originally enacted).*

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(3) In section 10(1) of that Act for paragraph (b) there shall be substituted the following paragraph—

“(b) may also, subject to section 12 of this Act, make one or both of the following orders, that is to say—

- (i) an order requiring the mother or father to pay to the guardian for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order;
- (ii) an order requiring the mother or father to pay to the guardian for the benefit of the minor, or to the minor, such lump sum as may be so specified;”.

and in subsection (2) of that section after the words " any order " there shall be inserted the words " (other than an order for the payment of a lump sum) " .

(4) In section 11 of that Act for paragraph (b) there shall be substituted the following paragraph—

“(b) to make, subject to section 12 of this Act, one or both of the following orders, that is to say—

- (i) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order;
- (ii) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such lump sum as may be so specified ;”.

and in paragraph (c) after the words " any order " there shall be inserted the words " (other than an order for the payment of a lump sum) " .

## 42 Duration of orders for maintenance

For section 12 of the Guardianship of Minors Act 1971 (which relates to orders for the maintenance of persons between 18 and 21) there shall be substituted the following section—

### “12 Duration of orders for maintenance.

(1) The term to be specified in an order made under section 9, 10 or 11 of this Act for the making of periodical payments in favour of a minor may begin with the date of the making of an application for the order in question or any later date but—

- (a) shall not in the first instance extend beyond the date of the birthday of the minor next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances of the case to specify a later date; and
- (b) shall not in any event, subject to subsection (2) below, extend beyond the date of the minor's eighteenth birthday.

(2) Paragraph (b) of subsection (1) above shall not apply in the case of a minor if it appears to the court that—

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- (a) the minor is, or will be, or if an order were made without complying with that paragraph 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
  - (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) Any order made under section 9, 10 or 11 of this Act requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.”.

### **43 Further provisions as to orders for maintenance**

In the Guardianship of Minors Act 1971 the following sections shall be inserted after section 12—

#### **“12A Matters to which court is to have regard in making orders for maintenance.**

In deciding whether to exercise its powers under section 9(2), 10(1)(b) or 11(b) of this Act and, if so, in what manner, the court shall 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 parent of the minor has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each parent of the minor has or is likely to have in the foreseeable future;
- (c) the financial needs of the minor;
- (d) the income, earning capacity (if any), property and other financial resources of the minor;
- (e) any physical or mental disability of the minor.

#### **12B Provisions relating to lump sums.**

- (1) Without prejudice to the generality of sections 9(2), 10(1)(b) and 11(b) of this Act, an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under section 9(2), 10(1)(b) or 11(b) of this Act shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

Any order made by the Secretary of State 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.

- (3) The power of the court under section 9, 10 or 11 of this Act to vary or discharge an order for the making of periodical payments by a parent of a minor shall

include power to make an order under the said section 9, 10 or 11, as the case may be, for the payment of a lump sum by that parent.

- (4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) above shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2) above, but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.
- (5) An order made under section 9, 10 or 11 of this Act for the payment of a lump sum may provide for the payment of that sum by instalments, and where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

#### **12C Variation etc. of orders for periodical payments.**

- (1) In exercising its powers under section 9, 10 or 11 of this Act to vary or discharge an order for the making of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
- (2) The power of the court under section 9, 10 or 11 of this Act to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.
- (3) Where on an application under section 9, 10 or 11 of this Act for the variation or discharge of an order for the making of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.
- (4) An application for the variation of an order made under section 9, 10 or 11 of this Act for the making of periodical payments to or for the benefit of a minor may, if the minor has attained the age of sixteen, be made by the minor himself.
- (5) Where an order for the making of periodical payments made under sections 9, 10 or 11 of this Act ceases to have effect on the date on which the minor attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the minor for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to vary or discharge under section 9, 10 or 11 of this Act, as the case may be, any order so revived.”.

#### **44 Maintenance for minors in care of local authorities**

- (1) In section 2 of the Guardianship Act 1973 the following subsections shall be substituted for subsection (3)—

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- “(3) Where the court makes an order under subsection (2)(b) above committing the care of a minor to a local authority, the court may make a further order requiring either parent to make to that authority or to the minor such periodical payments, and for such term, as may be specified in the order; but the order shall only require payments to be made to a local authority while it has the care of the minor.
- (3A) The court in deciding whether to exercise its power under subsection (3) above and, if so, in what manner, shall have regard to all the circumstances of the case including the matters to which the court is required to have regard under section 12A of the Guardianship of Minors Act 1971.
- (3B) The provisions of section 12 of the Guardianship of Minors Act 1971 shall apply in relation to an order made under subsection (3) above as they apply in relation to an order made under section 9(2) of that Act.”
- (2) At the end of subsection (3A) of section 4 of the Guardian-ship Act 1973 there shall be inserted—
- “and in the case of an order under section 2(3) above requiring payments to be made to or in respect of a minor an application for the variation of the order may, if the minor has attained the age of sixteen, be made by the minor himself.
- (3B) The court in exercising its powers under subsection (3A) above in relation to an order made under section 2(3) above shall have regard to all the circumstances of the case including any change in any of the matters to which the court was required to have regard when making the order.
- (3C) Where, on an application under subsection (3A) above for the variation or discharge of an order for the making of periodical payments made under section 2(3) above, the court varies the payments required to be made under the order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.
- (3D) Section 12C(5) of the Guardianship of Minors Act 1971 shall apply for the purposes of the revival of an order made under section 2(3) above as it applies for the purposes of the revival of an order made under section 9 of that Act, and subsection (3A) above (except the reference therein to the local authority to whose care the minor was committed) shall apply in relation to an order which is revived by virtue of this subsection.”.