



# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

### PART III

#### AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

##### *Amendments of the Matrimonial Causes Act 1973*

#### **62 Amendment of s. 4 of Matrimonial Causes Act 1973.**<sup>X1</sup>

In section 4 of the <sup>M1</sup>Matrimonial Causes Act 1973 (which relates to petitions for divorce presented after the granting of a decree of judicial separation or an order in matrimonial proceedings in a magistrates' court)—

- (a) in subsection (3) after the words “judicial separation or” there shall be inserted the words “(subject to subsection (5) below)” ;
- (b) at the end of the section there shall be added the following subsections—

“(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say—

- (a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home ;
- (b) any period during which there is in force an order made by the High Court or a county court under—
  - (i) section 1 of the Matrimonial Homes Act 1967, or
  - (ii) section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976.

which prohibits the exercise by the respondent of the right to occupy a dwelling-house in which the applicant and the respondent have or at any time have had a matrimonial home ;

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**Changes to legislation:** *Domestic Proceedings and Magistrates' Courts Act 1978, Section 62 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

(5) Where—

- (a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and
- (b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date,

then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.”

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**Editorial Information**

**X1** The text of ss. 54-74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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**Marginal Citations**

**M1** 1973 c. 18.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(c)(d) repealed (prosp.) by [1996 c. 27 s. 18\(1\)66\(3\)Sch. 10](#)