



# Matrimonial and Family Proceedings Act 1984

## 1984 CHAPTER 42

### PART III

#### FINANCIAL RELIEF IN ENGLAND AND WALES AFTER OVERSEAS DIVORCE ETC.

##### *Applications for financial relief*

#### **12 Applications for financial relief after overseas divorce etc.**

- (1) Where—
- (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
  - (b) the divorce, annulment or legal separation is entitled to be recognised as valid in England and Wales,
- either party to the marriage may apply to the court in the manner prescribed by rules of court for an order for financial relief under this Part of this Act.
- (2) If after a marriage has been dissolved or annulled in an overseas country one of the parties to the marriage remarries that party shall not be entitled to make an application in relation to that marriage.
- (3) For the avoidance of doubt it is hereby declared that the reference in subsection (2) above to remarriage includes a reference to a marriage which is by law void or voidable.
- (4) In this Part of this Act except sections 19, 23, and 24 "order for financial relief" means an order under section 17 or 22 below of a description referred to in that section.

### **13 Leave of the court required for applications for financial relief**

- (1) No application for an order for financial relief shall be made under this Part of this Act unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.
- (2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.
- (3) Leave under this section may be granted subject to such conditions as the court thinks fit.

### **14 Interim orders for maintenance**

- (1) Where leave is granted under section 13 above for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child such periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.
- (2) If it appears to the court that the court has jurisdiction to entertain the application for an order for financial relief by reason only of paragraph (c) of section 15(1) below the court shall not make an interim order under this section.
- (3) An interim order under subsection (1) above may be made subject to such conditions as the court thinks fit.

### **15 Jurisdiction of the court**

- (1) Subject to subsection (2) below, the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—
  - (a) either of the parties to the marriage was domiciled in England and Wales on the date of the application for leave under section 13 above or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
  - (b) either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country ; or
  - (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.
- (2) Where the jurisdiction of the court to entertain proceedings under this Part of this Act would fall to be determined by reference to the jurisdictional requirements imposed

by virtue of Part I of the Civil Jurisdiction and Judgments Act 1982 (implementation of certain European conventions) then—

- (a) satisfaction of the requirements of subsection (1) above shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
- (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of subsection (1) above ;

and the court shall entertain or not entertain the proceedings accordingly.

## **16 Duty of the court to consider whether England and Wales is appropriate venue for application**

- (1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
- (2) The court shall in particular have regard to the following matters—
  - (a) the connection which the parties to the marriage have with England and Wales ;
  - (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated ;
  - (c) the connection which those parties have with any other country outside England and Wales ;
  - (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;
  - (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
  - (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission ;
  - (g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made ;
  - (h) the extent to which any order made under this Part of this Act is likely to be enforceable ;
  - (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

### *Orders for financial provision and property adjustment*

## **17 Orders for financial provision and property adjustment**

- (1) Subject to section 20 below, the court on an application by a party to a marriage for an order for financial relief under this section, may make any one or more of the orders which it could make under Part II of the 1973 Act if a decree of divorce, a decree of

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nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in England and Wales, that is to say—

- (a) any order mentioned in section 23(1) of the 1973 Act (financial provision orders);
  - (b) any order mentioned in section 24(1) of that Act (property adjustment orders).
- (2) Subject to section 20 below, where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order under subsection (1) above, then, on making that order or at any time thereafter, the court may make any order mentioned in section 24A(1) of the 1973 Act (orders for sale of property) which the court would have power to make if the order under subsection (1) above had been made under Part II of the 1973 Act.

## **18 Matters to which the court is to have regard in exercising its powers under s. 17**

- (1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.
- (2) The court shall 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.
- (3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.
- (4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in section 25(3)(a) to (e) of the 1973 Act.
- (5) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court shall also have regard to the matters mentioned in section 25(4)(a) to (c) of the 1973 Act.
- (6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

## **19 Consent orders for financial provision or property adjustment**

- (1) Notwithstanding anything in section 18 above, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.
- (2) Subsection (1) above applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this section—

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" consent order ", in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;

" order for financial relief " means an order under section 17 above; and

" prescribed " means prescribed by rules of court.

## **20 Restriction of powers of court where jurisdiction depends on matrimonial home in England or Wales**

- (1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in England or Wales of a dwelling-house which was a matrimonial home of the parties, the court may make under section 17 above any one or more of the following orders (but no other)—
  - (a) an order that either party to the marriage shall pay to the other such lump sum as may be specified in the order;
  - (b) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified;
  - (c) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be so specified for the benefit of such a child, the interest of the first-mentioned party in the dwelling-house, or such part of that interest as may be so specified;
  - (d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest as may be so specified, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them ;
  - (e) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage so far as that settlement relates to an interest in the dwelling-house;
  - (f) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement so far as that interest is an interest in the dwelling-house ;
  - (g) an order for the sale of the interest of a party to the marriage in the dwelling-house.
- (2) Where, in the circumstances mentioned in subsection (1) above, the court makes an order for the payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount, that is to say—
  - (a) if the interest of that party in the dwelling-house is sold in pursuance of an order made under subsection (1)(g) above, the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof ;
  - (b) if the interest of that party is not so sold, the amount which in the opinion of the court represents the value of that interest.
- (3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons—

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- (a) the reference in subsection (1)(g) above to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
- (b) the reference in subsection (2)(a) above to the amount of the proceeds of a sale ordered under subsection (1)(g) above shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.

## **21 Application to orders under ss. 14 and 17 of certain provisions of Part II of Matrimonial Causes Act 1973**

The following provisions of Part II of the 1973 Act (financial relief for parties to marriage and children of family) shall apply in relation to an order made under section 14 or 17 above as they apply in relation to a like order made under that Part of that Act, that is to say—

- (a) section 23(3) (provisions as to lump sums);
- (b) section 24A(2), (4), (5) and (6) (provisions as to orders for sale);
- (c) section 28(1) and (2) (duration of continuing financial provision orders in favour of party to marriage);
- (d) section 29 (duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour);
- (e) section 30 (direction for settlement of instrument for securing payments or effecting property adjustment), except paragraph (b);
- (f) section 31 (variation, discharge etc. of certain orders for financial relief), except subsection (2)(e) and subsection (4);
- (g) section 32 (payment of certain arrears unenforceable without the leave of the court);
- (h) section 33 (orders for repayment of sums paid under certain orders);
- (i) section 38 (orders for repayment of sums paid after cessation of order by reason of remarriage);
- (j) section 39 (settlements etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor); and
- (k) section 40 (payments etc. under order made in favour of person suffering from mental disorder).

### *Orders for transfer of tenancies*

## **22 Powers of the court in relation to certain tenancies of dwelling-houses**

Where an application is made by a party to a marriage for an order for financial relief then, if—

- (a) one of the parties to the marriage is entitled, either in his or her own right or jointly with the other party, to occupy a dwelling-house situated in England or Wales by virtue of such a tenancy as is mentioned in paragraph 1(1) of Schedule 1 to the Matrimonial Homes Act 1983 (certain statutory tenancies), and
- (b) the dwelling-house has at some time during the marriage been a matrimonial home of the parties to the marriage,

the court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in England and Wales ; and the provisions of paragraphs 5 and 8(1) in Part III of that Schedule shall apply in relation to any order made under this section as they apply in relation to an order made under Part II of that Schedule.

*Avoidance of transactions intended to prevent or reduce financial relief*

**23 Avoidance of transactions intended to defeat applications for financial relief**

- (1) For the purposes of this section " financial relief " means relief under section 14 or 17 above and any reference to defeating a claim by a party to a marriage for financial relief is a reference to preventing financial relief from being granted or reducing the amount of relief which might be granted, or frustrating or impeding the enforcement of any order which might be or has been made under either of those provisions at the instance of that party.
- (2) Where leave is granted under section 13 above for the making by a party to a marriage of an application for an order for financial relief under section 17 above, the court may, on an application by that party—
  - (a) if it is satisfied that the other party to the marriage 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.
- (3) Where an order for financial relief under section 14 or 17 above has been made by the court at the instance of a party to a marriage, then, on an application made by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a reviewable disposition, make an order setting aside the disposition.
- (4) Where the court has jurisdiction to entertain the application for an order for financial relief by reason only of paragraph (c) of section 15(1) above, it shall not make any order under subsection (2) or (3) above in respect of any property other than the dwelling-house concerned.
- (5) Where the court makes an order under subsection (2)(b) or (3) 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).
- (6) Any disposition made by the other party to the marriage (whether before or after the commencement of the application) is a reviewable disposition for the purposes of subsections (2)(b) and (3) 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.

- (7) Where an application is made under subsection (2) or (3) above 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 (3) above, that the disposition has had the consequence,
- of defeating a claim by the applicant 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.
- (8) 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.
- (9) The preceding provisions of this section are without prejudice to any power of the High Court to grant injunctions under section 37 of the Supreme Court Act 1981.

#### **24 Prevention of transactions intended to defeat prospective applications for financial relief**

- (1) Where, on an application by a party to a marriage, it appears to the court—
- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in an overseas country; and
  - (b) that the applicant intends to apply for leave to make an application for an order for financial relief under section 17 above as soon as he or she has been habitually resident in England and Wales for a period of one year; and
  - (c) that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property,
- the court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in paragraph (c) above.
- (2) For the purposes of an application under subsection (1) above—
- (a) the reference to defeating a claim for financial relief shall be construed in accordance with subsection (1) of section 23 above (omitting the reference to any order which has been made); and
  - (b) subsections (7) and (8) of section 23 above shall apply as they apply for the purposes of an application under that section.
- (3) The preceding provisions of this section are without prejudice to any power of the High Court to grant injunctions under section 37 of the Supreme Court Act 1981.



*Financial provision out of estate of deceased party to marriage*

**25 Extension of powers under Inheritance (Provision for Family and Dependants) Act 1975 in respect of former spouses**

- (1) The Inheritance (Provision for Family and Dependants) Act 1975 shall have effect with the following amendments, being amendments designed to give to persons whose marriages are dissolved or annulled overseas the same rights to apply for provision under that Act (as amended by section 8 of this Act) as persons whose marriages are dissolved or annulled under the 1973 Act.
- (2) In section 25(1), for the definition of " former wife " and " former husband " there shall be substituted the following definition—
  - “former wife' or ' former husband' means a person whose marriage with the deceased was during the lifetime of the deceased either—
    - (a) dissolved or annulled by a decree of divorce or a decree of nullity of marriage granted under the law of any part of the British Islands, or
    - (b) dissolved or annulled in any country or territory outside the British Islands by a divorce or annulment which is entitled to be recognised as valid by the law of England and Wales;”.
- (3) After section 15 (restriction in divorce proceedings etc. of applications under the Act) there shall be inserted the following section—

**“15A Restriction imposed in proceedings under Matrimonial and Family Proceedings Act 1984 on application under this Act.**

- (1) On making an order under section 17 of the Matrimonial and Family Proceedings Act 1984 (orders for financial provision and property adjustment following overseas divorces, etc.) the court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.

In this subsection 'the court' means the High Court or, where a county court has jurisdiction by virtue of Part V of the Matrimonial and Family Proceedings Act 1984, a county court.
- (2) Where an order under subsection (1) above has been made with respect to a party to a marriage which has been dissolved or annulled, then, on the death of the other party to that marriage, the court shall not entertain an application under section 2 of this Act made by the first-mentioned party.
- (3) Where an order under subsection (1) above has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court shall not entertain an application under section 2 of this Act made by the first-mentioned party.”

*Recovery of maintenance in magistrates' courts after overseas divorce etc.*

**26 Extension of s. 28A of Maintenance Orders (Reciprocal Enforcement) Act 1972**

(1) Section 28A of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse) shall have effect with the following amendments.

(2) For subsection (1) there shall be substituted the following subsection—

“(1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in England and Wales—

- (a) that person is a former spouse of the applicant in a convention country who is seeking to recover maintenance, and
- (b) the marriage between the applicant and the former spouse has been dissolved or annulled in a country or territory outside the United Kingdom by a divorce or annulment which is recognised as valid by the law of England and Wales, and
- (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country, and
- (d) in a case where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained, either the applicant or his or her former spouse was resident in the convention country whose court made the maintenance order at the time the application for that order was made,

the application shall, notwithstanding that the marriage has been dissolved or annulled, be treated as a complaint for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, and the provisions of this section shall have effect.”

(3) For subsection (4) there shall be substituted the following subsection—

“(4) A divorce or annulment obtained in a country or territory outside the United Kingdom shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of England and Wales, unless the contrary is proved by the defendant.”

(4) Subsection (5) shall be omitted.

*Interpretation*

**27 Interpretation of Part III**

In this Part of this Act—

" the 1973 Act" means the Matrimonial Causes Act 1973 ;

" child of the family " has the same meaning as in section 52(1) of the 1973 Act;

" the court" means the High Court or, where a county court has jurisdiction by virtue of Part V of this Act, a county court;

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"dwelling-house" includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;

"order for financial relief" has the meaning given by section 12(4) above;

"overseas country" means a country or territory outside the British Islands;

"possession" includes receipt of, or the right to receive, rents and profits;

"property adjustment order" means such an order as is specified in section 24(1)(a), (b), (c) or (d) of the 1973 Act;

"rent" does not include mortgage interest;

"secured periodical payments order" means such an order as is specified in section 23(1)(b) or (e) of the 1973 Act.