

SCHEDULES

SCHEDULE 6

FINANCIAL RELIEF IN MAGISTRATES' COURTS ETC.

PART 6

VARIATION ETC. OF ORDERS

Power to vary, revoke, suspend or revive order

- 30 (1) If a magistrates' court has made an order for the making of periodical payments under Part 1, 2 or 3, the court may, on an application made under this Part—
- (a) vary or revoke the order,
 - (b) suspend any provision of it temporarily, or
 - (c) revive any provision so suspended.
- (2) If a magistrates' court has made an interim order under Part 4, the court may, on an application made under this Part—
- (a) vary or revoke the order,
 - (b) suspend any provision of it temporarily, or
 - (c) revive any provision so suspended,
- except that it may not by virtue of this sub-paragraph extend the period for which the order is in force.

Powers to order lump sum on variation

- 31 (1) If a magistrates' court has made an order under paragraph 2(1)(a) or (c) for the making of periodical payments, the court may, on an application made under this Part, make an order for the payment of a lump sum under paragraph 2(1)(b) or (d).
- (2) If a magistrates' court has made an order under Part 2 for the making of periodical payments by a civil partner the court may, on an application made under this Part, make an order for the payment of a lump sum by that civil partner—
- (a) to the other civil partner, or
 - (b) to a child of the family or to that other civil partner for the benefit of that child.
- (3) Where the court has power by virtue of this paragraph to make an order for the payment of a lump sum—
- (a) the amount of the lump sum must not exceed the maximum amount that may at that time be required to be paid under Part 1, but
 - (b) the court may make an order for the payment of a lump sum not exceeding that amount even if the person required to pay it was required to pay a lump sum by a previous order under this Schedule.

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(4) Where—

- (a) the court has power by virtue of this paragraph to make an order for the payment of a lump sum, and
- (b) the respondent or the applicant (as the case may be) has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under Part 1,

the court may, regardless of sub-paragraph (3), make an order for the payment of a lump sum of that amount.

Power to specify when order as varied is to take effect

32 An order made under this Part which varies an order for the making of periodical payments may provide that the payments as so varied are to be made from such date as the court may specify, except that, subject to paragraph 33, the date must not be earlier than the date of the making of the application under this Part.

33 (1) If—

- (a) there is in force an order (“the order”)—
 - (i) under paragraph 2(1)(c),
 - (ii) under Part 2 making provision of a kind set out in paragraph 10(1)(c) (regardless of whether it makes provision of any other kind mentioned in paragraph 10(1)(c)),
 - (iii) under paragraph 16(1)(b), or
 - (iv) which is an interim order under Part 4 under which the payments are to be made to a child or to the applicant for the benefit of a child,
 - (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them,
 - (c) a maintenance calculation (“the calculation”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made, and
 - (d) an application is made, before the end of 6 months beginning with the date on which the calculation was made, for the variation or revocation of the order,
- the court may, in exercise of its powers under this Part to vary or revoke the order, direct that the variation or revocation is to take effect from the date on which the calculation took effect or any later date.

(2) If—

- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a maintenance calculation,
- (b) on the date on which the child order became so affected there was in force an order (“the civil partner’s order”)—
 - (i) under paragraph 2(1)(a),
 - (ii) under Part 2 making provision of a kind set out in paragraph 10(1)(a) (regardless of whether it makes provision of any other kind mentioned in paragraph 10(1)(a)),
 - (iii) under paragraph 16(1)(a), or
 - (iv) which is an interim order under Part 4 under which the payments are to be made to the applicant (otherwise than for the benefit of a child), and

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- (c) an application is made, before the end of 6 months beginning with the date on which the maintenance calculation was made, for the civil partner's order to be varied or revoked,

the court may, in exercise of its powers under this Part to vary or revoke the civil partner's order, direct that the variation or revocation is to take effect from the date on which the child order became so affected or any later date.

- (3) For the purposes of sub-paragraph (2), an order is affected if it ceases to have effect or is modified by or under section 10 of the 1991 Act.

Matters to which court is to have regard in exercising powers under this Part

- 34 (1) In exercising the powers conferred by this Part the court must, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the civil partners in relation to the application.

- (2) If—

- (a) there is no such agreement, or
(b) if the court decides not to give effect to the agreement,

the court must have regard to all the circumstances of the case, giving first consideration to the welfare while under 18 of any child of the family who has not reached 18.

- (3) Those circumstances include any change in any of the matters—

- (a) to which the court was required to have regard when making the order to which the application relates, or
(b) in the case of an application for the variation or revocation of an order made under Part 2 or on an appeal made by virtue of paragraph 46, to which the court would have been required to have regard if that order had been made under Part 1.

Variation of orders for periodical payments: further provisions

- 35 (1) The power of the court under paragraphs 30 to 34 to vary an order for the making of periodical payments includes power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under section 59(3) (a) to (d) of the Magistrates' Courts Act 1980 (c. 43).

- (2) Sub-paragraph (1) is subject to paragraph 37.

- 36 (1) If—

- (a) a magistrates' court has made an order under this Schedule for the making of periodical payments, and
(b) payments under the order are required to be made by any method of payment falling within section 59(6) of the 1980 Act (standing order, etc.),

an application may be made under this sub-paragraph to the court for the order to be varied as mentioned in sub-paragraph (2).

- (2) Subject to sub-paragraph (4), if an application is made under sub-paragraph (1), a justices' clerk, after—

- (a) giving written notice (by post or otherwise) of the application to the respondent, and

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- (b) allowing the respondent, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order are to be made to the designated officer for the court.
- (3) The clerk may proceed with an application under sub-paragraph (1) even if the respondent has not received written notice of the application.
- (4) If an application has been made under sub-paragraph (1), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (2), refer the matter to the court which, subject to paragraph 37, may vary the order by exercising one of its powers under section 59(3)(a) to (d) of the 1980 Act.
- 37 (1) Before varying the order by exercising one of its powers under section 59(3)(a) to (d) of the 1980 Act, the court must have regard to any representations made by the parties to the application.
- (2) If the court does not propose to exercise its power under section 59(3)(c), (cc) or (d) of the 1980 Act, the court must, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under section 59(3)(b).
- 38 (1) Section 59(4) of the 1980 Act (power of court to order that account be opened) applies for the purposes of paragraphs 35 and 36(4) as it applies for the purposes of section 59.
- (2) None of the powers of the court, or of a justices' clerk, conferred by paragraphs 35 to 37 and sub-paragraph (1) is exercisable in relation to an order under this Schedule for the making of periodical payments which is not a qualifying maintenance order (within the meaning of section 59 of the 1980 Act).

Persons who may apply under this Part

- 39 An application under paragraph 30, 31 or 36 may be made—
 - (a) if it is for the variation or revocation of an order under Part 1, 2, 3 or 4 for periodical payments, by either civil partner, and
 - (b) if it is for the variation of an order under paragraph 2(1)(c) or Part 2 or 3 for periodical payments to or in respect of a child, also by the child himself, if he has reached 16.

Revival of orders for periodical payments

- 40 (1) If an order made by a magistrates' court under this Schedule for the making of periodical payments to or in respect of a child (other than an interim order) ceases to have effect—
 - (a) on the date on which the child reaches 16, or
 - (b) at any time after that date but before or on the date on which he reaches 18, the child may apply to the court which made the order for an order for its revival.
- (2) If on such an application it appears to the court that—
 - (a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment, or

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- (b) there are special circumstances which justify the making of an order under this sub-paragraph,
the court may by order revive the order from such date as the court may specify, not being earlier than the date of the making of the application.
- (3) Any order revived under this paragraph may be varied or revoked under paragraphs 30 to 34 in the same way as it could have been varied or revoked had it continued in being.

Variation of instalments of lump sum

- 41 If in the exercise of its powers under section 75 of the 1980 Act a magistrates' court orders that a lump sum required to be paid under this Schedule is to be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, may vary that order by varying—
- (a) the number of instalments payable,
 - (b) the amount of any instalment payable, and
 - (c) the date on which any instalment becomes payable.

Supplementary provisions with respect to variation and revocation of orders

- 42 None of the following powers apply in relation to an order made under this Schedule—
- (a) the powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money and the power of a justices' clerk to vary such an order under section 60 of the 1980 Act;
 - (b) the power of a magistrates' court to suspend or rescind certain other orders under section 63(2) of the 1980 Act.