



# Domestic Proceedings and Magistrates' Courts Act 1978

## 1978 CHAPTER 22

An Act to make fresh provision for matrimonial proceedings in magistrates' courts; to amend enactments relating to other proceedings so as to eliminate certain differences between the law relating to those proceedings and the law relating to matrimonial proceedings in magistrates' courts; to extend section 15 of the Justices of the Peace Act 1949; to amend Part II of the Magistrates' Courts Act 1952; to amend section 2 of the Administration of Justice Act 1964; to amend the Maintenance Orders (Reciprocal Enforcement) Act 1972; to amend certain enactments relating to adoption; and for purposes connected with those matters. [30th June 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 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 (in this Part of this Act referred to as "the respondent")—

- (a) has failed to provide reasonable maintenance for the applicant; or

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- (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.

## **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 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 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 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, the court, in deciding whether to exercise its powers under subsection (1)(a) or (b) of that section and, if so,
- in what manner, shall have regard to the following matters, that is to say—
- (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 ;
  - (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 made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
  - (g) any other matter which in the circumstances of the case the court may consider relevant, including, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.
- (2) Where an application is made for an order under section 2 of this Act, the court, in deciding whether to exercise its powers under subsection (1)(c) or (d) of that section and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters, that is to say
- (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 (1) above.
- (3) The court, in deciding whether to exercise its powers under section 2(1)(c) or (d) of this Act in favour of a child of the family who is not the child of the respondent and, if so, in what manner, shall in addition to the matters mentioned in subsection (2) above have regard (among the circumstances of the case)—
- (a) to whether the respondent had 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.

#### **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 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.

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- (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 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 (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 (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.

## **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 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 respondent 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 respondent 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 to the applicant,
  - (b) the payment of a lump sum to the applicant,
  - (c) the making of periodical payments to a child of the family or to the applicant for the benefit of such a child,

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- (d) the payment of a lump sum to a child of the family or to the applicant 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 respondent has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.
- (4) Where a party to a marriage has applied for an order under section 2 of this Act then, at any time before the determination of that application, he may apply for an order under this section ; and if an order is made under this section the application made for an order under the said section 2 shall be treated as if it had been withdrawn.
- (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 respondent 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 the applicant and the respondent agree, the court may order that the respondent shall make that other financial provision.
- (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.
- (7) 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 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 rules of—
- (a) the consent of the respondent to the making of the order, and
  - (b) the financial resources of the respondent.

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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 subsection (1) 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.

*Powers of court as to the custody etc. of children*

## **8 Orders for the custody of children**

- (1) Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act, then, if there is a child of the family who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise its powers under this section and, if so, in what manner.
- (2) On an application for an order under section 2, 6 or 7 of this Act the court, whether or not it makes an order under the said section 2, 6 or 7, shall have power to make such order regarding—
- (a) the legal custody of any child of the family who is under the age of eighteen, and
  - (b) access to any such child by either of the parties to the marriage or any other person who is a parent of that child,
- as the court thinks fit,
- (3) An order shall not be made under subsection (2) above giving the legal custody of a child to a person other than a party to the marriage or a parent of the child; but, where the court is of opinion that legal custody should be given to a person who is not a party to the marriage or a parent of the child, it may direct that that person shall be treated as if he had applied for a custodianship order under section 33 of the Children Act 1975.

Where a direction is given under this subsection in respect of a person who is not qualified to apply for a custodianship order under the said section 33, that person shall be treated as if he were so qualified and Part II of that Act (except section 40) shall have effect accordingly.

- (4) An order shall not be made under this section giving the legal custody of a child to more than one person ; but where the court makes an order giving the legal custody of a child to any person under this section, it may order that a party to the marriage in question who is not given the legal custody of the child shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.
- (5) An order made under subsection (2) above shall cease to have effect as respects any child when he attains the age of eighteen.
- (6) Where an order is made under subsection (2) above the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.
- (7) The court shall not have power to make—

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- (a) an order under subsection (2) above with respect to a child in respect of whose custody an order made by a court in England and Wales is for the time being in force;
  - (b) an order under subsection (2)(b) above with respect to a child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (8) In any proceedings in which the powers conferred on the court by subsection (2) above are or may be exercisable, the question whether, and if so in what manner, those powers should be exercised shall be excepted from the issues arising in the proceedings which, under the proviso to section 60(1) of the Magistrates' Courts Act 1952, must be determined by the court before the court may direct a probation officer to make to the court under that section a report on the means of the parties.

## **9 Powers of court to provide for supervision of children**

- (1) Where the court makes an order under section 8(2) of this Act regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a local authority specified by the court or under the supervision of a probation officer.
- (2) Where the court decides to make an order under this section providing for supervision by a probation officer, it shall provide for supervision by a probation officer appointed for or assigned to the petty sessions area in which, in the opinion of the court, the child is or will be resident, and the officer responsible for carrying out the order shall be selected in like manner as if the order were a probation order.
- (3) An order made under this section shall cease to have effect as respects any child when he attains the age of eighteen.
- (4) The court shall not have power to make an order under this section in respect of any child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (5) Without prejudice to section 21 of this Act, for the purposes of any order made under this section providing for a child to be under the supervision of a local authority or a probation officer, provision may be made by rules for substituting from time to time a different local authority or, as the case may be, a probation officer appointed for or assigned to a different petty sessions area, if in the opinion of the court the child is or will be resident in the area of that authority or, as the case may be, that petty sessions area.

## **10 Powers of court to commit children to care of local authority**

- (1) Where a court has power by virtue of section 8(2) of this Act to make an order regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may, if it thinks fit, make an order committing the care of the child to such local authority as may be specified in the order.



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- (2) The authority specified in an order under this section shall be the local authority for the area in which the child was, in the opinion of the court, resident immediately before the order committing the child to the care of a local authority was made.
- (3) Before making an order under this section the court shall—
  - (a) notify the local authority of their intention to make such an order, and
  - (b) hear any representations from the local authority, including any representations as to the making of an order under section 11(4) of this Act for the making of periodical payments,but the court shall not be required to give any notification to the local authority under paragraph (a) above if an officer of the authority has already made to the court under section 12(3) of this Act a report which contains a recommendation that an order should be made under this section.
- (4) On the making of an order under this section—
  - (a) Part II of the Children Act 1948 (which relates to the treatment of children in the care of a local authority) except section 17 thereof (which relates to arrangements for the emigration of such children); and
  - (b) for the purposes only of contributions by the child himself at a time when he has attained the age of sixteen and is engaged in remunerative full-time work, Part III of that Act (which relates to contributions towards the maintenance of children in the care of a local authority),shall apply as if the child had been received by the local authority into their care under section 1 of that Act.
- (5) While an order made under this section is in force with respect to a child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.
- (6) An order made under this section shall cease to have effect as respects any child when he attains the age of eighteen.
- (7) The court shall not have power to make an order under this section with respect to a child who has attained the age of seventeen.
- (8) The court shall not have power to make an order under this section with respect to a child who is already for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (9) Where the court makes an order under this section with respect to a child, the court shall not have power to make an order under section 8(2)(b) of this Act with respect to that child.
- (10) Each parent or guardian of a child for the time being in the care of a local authority by virtue of an order made under this section shall give notice to the authority of any change of address of that parent or guardian, and any person who without reasonable excuse fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding £50.
- (11) The Secretary of State may by order repeal subsection (7) above, and any such order shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**11 Provision for maintenance for children in case of certain orders under ss. 8 to 10**

- (1) Where on an application under section 1 of this Act the court, although not satisfied of any ground mentioned in that section, makes an order under section 8(2) of this Act giving to the applicant the right to the actual custody of a child of the family, the court shall have the same powers to make an order in respect of that child under section 2(1) (c) and (d) of this Act as the court would have if it were so satisfied.
- (2) Where by an order made under section 8(2) of this Act the right to the actual custody of a child is given to the respondent, the court may make one or both of the following orders, that is to say—
  - (a) an order that the applicant shall make to the respondent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
  - (b) an order that the applicant shall pay to the respondent for the benefit of the child or to the child such lump sum as may be so specified.
- (3) Where by an order made under section 8(2) of this Act the legal custody of a child is given to a person who is a parent of that child but not a party to the marriage in question, the court may make one or more of the following orders, that is to say—
  - (a) an order that a party to the marriage shall make to that parent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
  - (b) an order that a party to the marriage shall make to that parent for the benefit of the child or to the child such lump sum as may be so specified.
- (4) Where an order under section 10(1) of this Act commits the care of a child to a local authority the court may make a further order requiring a party to the marriage in question to make to that authority or to the child such periodical payments, and for such term, as may be specified in the order.
- (5) The court in deciding whether to exercise its powers under subsection (2), (3) or (4) above in relation to any child 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 3(2) of this Act, and, in deciding whether to make an order against a party to the marriage who is not a parent of that child, shall also have regard (among the circumstances of the case)—
  - (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed that responsibility and to the length of time for which he discharged that responsibility ;
  - (b) to whether in assuming and discharging that responsibility that party did so knowing that the child was not his own child ;
  - (c) to the liability of any other person to maintain the child.
- (6) The provisions of section 5 of this Act (other than subsection (3)(a)) shall apply in relation to an order under subsection (2)(a), (3)(a) or (4) above as they apply in relation to an order under section 2(1)(c) of this Act.
- (7) The provisions of section 2(2) and (3) of this Act shall apply in relation to an order under subsection (2)(b) or (3)(b) above as they apply in relation to an order under section 2(1)(d) of this Act and no order shall be made under subsection (2)(b) or (3) (b) above in respect of a child who has attained the age of eighteen.

- (8) Where the court, by virtue of subsection (6) of section 8 of this Act, directs that an order made under subsection (2) of that section in respect of a child, or the provision thereof providing for the custody of the child, shall not have effect until the expiration of a specified period or the occurrence of a specified event, an order made in respect of that child under subsection (2)(a) or (3)(a) above shall only require payments to be made from the date on which the order made under section 8(2) of this Act, or that provision thereof, takes effect.

## **12 Supplementary provisions with respect to powers of court under ss. 8 to 10**

- (1) Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act the court, before exercising its powers under sections 8 to 10 of this Act in respect of any child of the family, shall give each party to the marriage and any other person who, as a parent of that child, is present or represented by counsel or solicitor at the hearing, an opportunity of making representations; and any reference in this section to a party to the proceedings shall include a reference both to a party to the marriage and to any other such person who is present or represented.
- (2) Where in the case of such an application there is a child of the family who is not the child of both parties to the marriage in question, the court shall not exercise its powers under the said sections 8 to 10 in relation to that child unless either—
- (a) any person who is a parent of that child, though not a party to the marriage, is present or represented by counsel or solicitor at the hearing ; or
  - (b) it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed by rules, that such steps have been taken as may be so prescribed with a view to giving notice to that person of the making of the application and of the time and place appointed for the hearing;
- except that notice shall not be required to be given under paragraph (b) above to any person as the father of an illegitimate child unless that person has been adjudged by a court to be the father of that child.
- (3) Where the court on such an application is of the opinion that it has not sufficient information to decide whether to exercise its powers under the said sections 8 to 10 and, if so, in what manner, the court may, at any stage of the proceedings on that application, request a local authority to arrange for an officer of the authority to make to the court a report, orally or in writing, with respect to any such matter as the court may specify (being a matter appearing to the court to be relevant to the decision) or may request a probation officer to make such a report to the court; and it shall be the duty of the local authority or probation officer to comply with the request.
- (4) Any report made in pursuance of subsection (3) above shall be made or, if in writing, furnished to the court at the hearing of the application, and, if the report is in writing—
- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during the hearing, and
  - (b) the court may, if it thinks fit, require that the report, or such part thereof as the court may specify, shall be read aloud at the hearing.
- (5) The court may, and if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor shall, require the officer by whom the report was made to give evidence on or with respect to the matters referred to in the report, and, if the officer gives such evidence, any party to the proceedings may give or call evidence

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with respect to any matter referred to either in the report or in the evidence given by the officer.

- (6) Subject to subsection (7) below, the court may take account of—
- (a) any statement contained in a report made or furnished to the court under subsection (4) above, and
  - (b) any evidence given under subsection (5) above by the officer by whom the report was made,

so far as that statement or evidence relates to any of the matters specified by the court under subsection (3) above, notwithstanding any enactment or rule of law relating to the admissibility of evidence.

- (7) A report made in pursuance of subsection (3) above shall not include anything said by either of the parties to a marriage in the course of an interview which took place with, or in the presence of, a probation officer with a view to the reconciliation of those parties, unless both parties have consented to its inclusion ; and if anything so said is included without the consent of both those parties in any such report then, unless both those parties agree otherwise, that part of the report shall, for the purposes of the giving of evidence under subsection (5) above and for the purposes of subsection (6) above, be treated as not forming part of the report.
- (8) Where for the purposes of this section the court adjourns the hearing of any application, then, subject to section 46(2) of the Magistrates' Courts Act 1952 (which requires adequate notice of the time and place of the resumption of the hearing to be given to the parties), the court may resume the hearing at the time and place appointed notwithstanding the absence of any or all of the parties.
- (9) The power of the court under subsection (3) above to request a report may, at any time before the hearing of the application, be exercised by a single justice, and, if any such request is made by a single justice, the report shall be made or furnished to the court which hears the application and the foregoing provisions of this section shall apply accordingly.

### **13 Disputes between persons holding parental rights and duties jointly**

- (1) Where two persons who have a parental right or duty jointly by virtue of an order under section 8(2) of this Act disagree on any question affecting the child's welfare, either of them may apply to a magistrates' court for its direction, and the court may make such order regarding the matters in difference as it thinks fit.
- (2) Where the court makes an order under subsection (1) above with respect to any child, the court may, on an application made by either of the persons who have a parental right or duty jointly, by order vary or revoke that order.
- (3) The power of the court under section 12(3) of this Act to request a local authority to arrange for an officer of the authority to make a report, or to request a probation officer to make a report, shall apply in relation to the exercise by the court of its powers under this section as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act, and the provisions of subsections (4) to (9) of the said section 12 shall apply accordingly.

## **14 Access to children by grandparents**

- (1) A magistrates' court, on making an order under section 8(2) of this Act regarding the legal custody of a child or at any time while such an order is in force, shall have power, on an application made by a grandparent of the child, to make such order requiring access to the child to be given to that grandparent as the court thinks fit.
- (2) Subsections (5), (6), (7)(b) and (8) of section 8 and subsection (9) of section 10 of this Act shall apply in relation to an order under this section as they apply in relation to an order under section 8(2)(b) of this Act.
- (3) Where a magistrates' court has made an order under subsection (1) above requiring access to a child to be given to a grandparent, the court shall have power to vary or revoke that order on an application made—
  - (a) by that grandparent, or
  - (b) by either party to the marriage in question, or
  - (c) if the child is not a child of both the parties to the marriage, by any person who though not a party to the marriage is a parent of that child.
- (4) Section 12 of this Act shall apply in relation to the exercise by a court of its powers under this section on an application under subsection (1) or (3) above as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act on an application under section 1 of this Act, and any reference to a party to the proceedings in subsection (4) or (5) of section 12 of this Act shall include—
  - (a) in the case of an application under subsection (1) above, a reference to the grandparent who has made an application under that subsection ; and
  - (b) in the case of an application under subsection (3) above, a reference to the grandparent who has access to the child under the order for the variation or revocation of which the application is made.
- (5) Where an order made under section 8(2)(a) of this Act in relation to a child ceases to have effect, whether by virtue of an order or direction of a magistrates' court or by virtue of any provision of this Part of this Act, any order made under this section regarding access to the child by a grandparent shall also cease to have effect.
- (6) A court shall have power to make an order under this section in favour of a grandparent of a child notwithstanding that the child is illegitimate.

## **15 Principle on which questions relating to custody and upbringing of children are to be decided**

For the avoidance of doubt it is hereby declared that the provisions of section 1 of the Guardianship of Minors Act 1971 (which require a court in deciding any question relating to the custody or upbringing of a minor to have regard to the welfare of the minor as the first and paramount consideration) apply in relation to the exercise by a magistrates' court of its powers under this Part of this Act.

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*Powers of the court to make orders for the protection  
of a party to a marriage or a child of the family*

**16 Powers of court to make orders for the protection of a party to a marriage or a child of the family**

- (1) Either party to a marriage may, whether or not an application is made by that party for an order under section 2 of this Act, apply to a magistrates' court for an order under this section.
- (2) Where on an application for an order under this section the court is satisfied that the respondent has used, or threatened to use, violence against the person of the applicant or a child of the family and that it is necessary for the protection of the applicant or a child of the family that an order should be made under this subsection, the court may make one or both of the following orders, that is to say—
  - (a) an order that the respondent shall not use, or threaten to use, violence against the person of the applicant;
  - (b) an order that the respondent shall not use, or threaten to use, violence against the person of a child of the family.
- (3) Where on an application for an order under this section the court is satisfied—
  - (a) that the respondent has used violence against the person of the applicant or a child of the family, or
  - (b) that the respondent has threatened to use violence against the person of the applicant or a child of the family and has used violence against some other person, or
  - (c) that the respondent has in contravention of an order made under subsection (2) above threatened to use violence against the person of the applicant or a child of the family,

and that the applicant or a child of the family is in danger of being physically injured by the respondent (or would be in such danger if the applicant or child were to enter the matrimonial home) the court may make one or both of the following orders, that is to say—

  - (i) an order requiring the respondent to leave the matrimonial home;
  - (ii) an order prohibiting the respondent from entering the matrimonial home.
- (4) Where the court makes an order under subsection (3) above, the court may, if it thinks fit, make a further order requiring the respondent to permit the applicant to enter and remain in the matrimonial home.
- (5) Where on an application for an order under this section the court considers that it is essential that the application should be heard without delay, the court may hear the application notwithstanding—
  - (a) that the court does not include both a man and a woman,
  - (b) that any member of the court is not a member of a domestic court panel, or
  - (c) that the proceedings on the application are not separated from the hearing and determination of proceedings which are not domestic proceedings.
- (6) Where on an application for an order under this section the court is satisfied that there is imminent danger of physical injury to the applicant or a child of the family, the court may make an order under subsection (2) above notwithstanding—

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- (a) that the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application, or
  - (b) that the summons requires the respondent to appear at some other time or place,
- and any order made by virtue of this subsection is in this section and in section 17 of this Act referred to as an "expedited order".
- (7) The power of the court to make, by virtue of subsection (6) above, an expedited order under subsection (2) above may be exercised by a single justice.
  - (8) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court specifies a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occurs first, that is to say—
    - (a) the date of the expiration of the period of 28 days beginning with the date of the making of the order ; or
    - (b) the date of the commencement of the hearing, in accordance with the provisions of Part II of the Magistrates' Courts Act 1952, of the application for an order under this section.
  - (9) An order under this section may be made subject to such exceptions or conditions as may be specified in the order and, subject in the case of an expedited order to subsection (8) above, may be made for such term as may be so specified.
  - (10) The court in making an order under subsection (2)(a) or (b) above may include provision that the respondent shall not incite or assist any other person to use, or threaten to use, violence against the person of the applicant or, as the case may be, the child of the family.

## **17 Supplementary provisions with respect to orders under s. 16**

- (1) A magistrates' court shall, on an application made by either party to the marriage in question, have power by order to vary or revoke any order made under section 16 of this Act.
- (2) Rules may be made for the purpose of giving effect to the provision of section 16 of this Act and any such rules may in particular, but without prejudice to the generality of this subsection, make provision for the hearing without delay of any application for an order under subsection (3) of that section.
- (3) The expiry by virtue of subsection (8) of section 16 of this Act of an expedited order shall not prejudice the making of a further expedited order under that section.
- (4) Except so far as the exercise by the respondent of a right to occupy the matrimonial home is suspended or restricted by virtue of an order made under subsection (3) of section 16 of this Act, an order made under that section shall not affect any estate or interest in the matrimonial home of the respondent or any other person.

## **18 Powers of arrest for breach of s. 16 order**

- (1) Where a magistrates' court makes an order under section 16 of this Act which provides that the respondent—

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- (a) shall not use violence against the person of the applicant, or
- (b) shall not use violence against a child of the family, or
- (c) shall not enter the matrimonial home,

the court may, if it is satisfied that the respondent has physically injured the applicant or a child of the family and considers that he is likely to do so again, attach a power of arrest to the order.

- (2) Where by virtue of subsection (1) above a power of arrest is attached to an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of any such provision of the order as is mentioned in paragraph (a), (b) or (c) of subsection (1) above by reason of that person's use of violence or, as the case may be, his entry into the matrimonial home.
- (3) Where a power of arrest is attached to an order under subsection (1) above and the respondent is arrested under sub section (2) above—
  - (a) he shall be brought before a justice of the peace within a period of 24 hours beginning at the time of his arrest, and
  - (b) the justice of the peace before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday, or any Sunday.

- (4) Where a court has made an order under section 16 of this Act but has not attached to the order a power of arrest under subsection (1) above, then, if at any time the applicant for that order considers that the other party to the marriage in question has disobeyed the order, he may apply for the issue of a warrant for the arrest of that other party to a justice of the peace for the commission area in which either party to the marriage ordinarily resides; but a justice of the peace shall not issue a warrant on such an application unless—
  - (a) the application is substantiated on oath, and
  - (b) the justice has reasonable grounds for believing that the other party to the marriage has disobeyed that order.
- (5) The magistrates' court before whom any person is brought by virtue of a warrant issued under subsection (4) above may remand him.

### *Interim orders*

## **19 Interim orders**

- (1) Where an application is made for an order under section 2, 6 or 7 of this Act—
  - (a) the magistrates' court at any time before making a final order on, or dismissing, the application or on refusing to make an order on the application by virtue of section 27 of this Act, and
  - (b) the High Court on ordering the application to be reheard by a magistrates' court (either after the refusal of an order under section 27 of this Act or on an appeal under section 29 of this Act),

shall, subject to the provisions of this Part of this Act, have the following powers, that is to say—

- (i) power to make an order (in this Part of this Act referred to as an " interim maintenance order ") which requires the respondent to make to the applicant or to any child of the family who is under the age of eighteen, or to the applicant



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- for the benefit of such a child, such periodical payments as the court thinks reasonable;
- (ii) power if the court is of the opinion that there are special circumstances which make it desirable that provision should be made for the legal custody of any child of the family who is under the age of eighteen, to make an order (in this Part of this Act referred to as an "interim custody order") which makes any such provision with respect to the legal custody of, and access to, the child as the court has power to make under section 8(2) of this Act.
- (2) The power of the court under subsection (1)(i) above to make an interim maintenance order shall, if the person with whom the child has his home is a parent of the child but not a party to the marriage, include power to require the respondent to make periodical payments to that parent for the benefit of the child.
- (3) An interim maintenance order may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application for an order under section 2, 6 or 7 of this Act; and where such an order made by the High Court on an appeal under section 29 of this Act provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by a magistrates' court shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.
- (4) Section 8(6) of this Act shall apply in relation to an interim custody order as it applies in relation to an order made under subsection (2) of that section.
- (5) Subject to subsection (6) below, an interim order made on an application for an order under section 2, 6 or 7 of this Act shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the interim order;
  - (b) the date of the expiration of the period of three months beginning with the date of the making of the interim order;
  - (c) the date on which a magistrates' court either makes a final order on or dismisses the application.
- (6) Where an interim order made under subsection (1) above would, but for this subsection, cease to have effect by virtue of subsection (5)(a) or (b) above, the magistrates' court which made the order or, in the case of an interim order made by the High Court, the magistrates' court by which the application for an order under section 2, 6 or 7 of this Act is to be reheard, shall have power by order to provide that the interim order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the order made under this subsection;
  - (b) the date of the expiration of the period of three months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, beginning with the date of the making of the first of those orders ;
  - (c) the date on which the court either makes a final order on, or dismisses, the application.

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- (7) Not more than one interim maintenance order and one interim custody order may be made with respect to any application for an order under section 2, 6 or 7 of this Act, but without prejudice to the powers of a court under this section on any further such application.
- (8) No appeal shall lie from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim maintenance order.
- (9) An interim order made by the High Court under this section on ordering that an application be reheard by a magistrates' court shall, for the purpose of its enforcement and for the purposes of section 20 or 21 of this Act, be treated as if it were an order of that magistrates' court and not of the High Court.

*Variation, revocation and cessation of orders etc.*

## **20 Variation, revival and revocation of orders for periodical payments**

- (1) Where a magistrates' court has made an order under section 2(1)(a) or (c) of this Act for the making of periodical payments the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order under section 2(1)(b) or (d) of this Act.
- (2) Where a magistrates' court has made an order under section 6 of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order so far as it relates to the making of periodical payments and, if that order also provided for the payment of a lump sum by one of the parties to the marriage in question, the court shall also have power on such an application to make an order for the payment of a further lump sum by that party either—
  - (a) to the other party to the marriage, or
  - (b) to a child of the family or to that other party for the benefit of that child.
- (3) Where a magistrates' court has made an order under section 7 of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order.
- (4) Where a magistrates' court has made an order under section 11(2)(a), (3)(a) or (4) of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order and also, in the case of an application relating to an order under section 11(2)(a) or (3)(a) of this Act, to make an order under section 11(2)(b) or 11(3)(b) of this Act, as the case may be.
- (5) Where a magistrates' court has made an interim maintenance order under section 19 of this Act, the court, on an application made under this section, shall have power to vary or revoke that order, except that the court shall not by virtue of this subsection extend the period for which the order is in force.
- (6) The power of the court under this section 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.
- (7) Where the court has power by virtue of this section to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount that may at that time be required to be paid under section 2(3) of this Act, but the

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court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the person required to pay the lump sum was required to pay a lump sum by a previous order under this Part of this Act.

- (8) Where the court has power by virtue of subsection (2) above to make an order for the payment of a lump sum and the respondent 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 section 2(3) of this Act, the court may, notwithstanding anything in subsection (7) above, make an order for the payment of a lump sum of that amount.
- (9) An order made by virtue of this section which varies an order for the making of periodical payments may, subject to the provisions of section 11(8) of this Act, 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 under this section.
- (10) Where an order made by a magistrates' court under this Part of this Act for the making of periodical payments to or in respect of a child ceases to have effect on the date on which the child 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 child 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.
- (11) In exercising the powers conferred by this section the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, 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 to which the application relates or, in the case of an application for the variation or revocation of an order made under section 6 of this Act or on an appeal under section 29 of this Act, to which the court would have been required to have regard if that order had been made under section 2 of this Act.
- (12) An application under this section for the variation or revocation of an order for periodical payments may be made by the following persons, that is to say—
  - (a) in the case of an order under section 2, 6, 7, 11(2)(a) or 19 of this Act, by either party to the marriage in question,
  - (b) in the case of an order under section 11(3)(a) of this Act for the making of periodical payments where the legal custody of a child of the family is given to a person who is a parent of that child but not a party to the marriage in question, by that parent or by the party to the marriage by whom the payments are required to be made, and
  - (c) in the case of an order under section 11(4) of this Act for the making of periodical payments where a child of the family is committed to the care of a local authority, by that local authority or by the party to the marriage by whom the payments are required to be made,and an application for the variation of an order made under section 2(1)(c), 6, 7 or 11(2), (3) or (4) of this Act for the making of periodical payments to or in respect of a child may, if the child has attained the age of sixteen, be made by the child himself.
- (13) Any reference in this section to an order made under section 2, 6, 7 or 11 of this Act for the making of periodical payments includes a reference to such an order made under

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the said section 2, 6, 7 or 11 as the case may be, and revived under subsection (10) above.

## **21 Variation and revocation of orders relating to the custody of children**

(1) Where on an application under section 1, 6 or 7 of this Act by a party to a marriage a magistrates' court has made an order in respect of a child of the family under section 8, 9 or 10 of this Act, either party to the marriage may apply to the court—

- (a) in the case of an order under section 8 of this Act, for the variation or revocation of that order,
- (b) in the case of an order under section 9 of this Act, for the variation or revocation of that order, and
- (c) in the case of an order under section 10 of this Act, for the revocation of that order,

and, on such an application, the court shall have power to make the order for which application is made and also to make such other order with respect to that child under section 8, 9 or 10 of this Act as it thinks fit.

(2) Where on an application made by a party to a marriage, a magistrates' court has made an order under section 2, 6 or 7 of this Act but has not exercised its powers under section 8, 9 or 10 of this Act with respect to a child of the family, either party to the marriage may, at any time while an order under section 2, 6 or 7 of this Act is in force, apply to the court for an order under section 8 of this Act and, on such an application, the court shall have power to make such order under section 8, 9 or 10 of this Act with respect to that child as the court thinks fit.

(3) Where a magistrates' court has made an interim custody order under section 19 of this Act, the court shall have power, on an application made under this section by either party to the marriage in question, to vary or revoke that order, except that the court shall not by virtue of this subsection extend the period for which the order is in force.

(4) On an application for an order under subsection (1) or (2) above the court shall not dismiss the application or make the order for which the application is made until it has decided whether to exercise its other powers under subsection (1) or (2) above and, if so, in what manner.

(5) Section 12 of this Act shall apply in relation to the exercise by the court of its powers under this section on an application under subsection (1) or (2) above as it applies in relation to the exercise by the court of its powers under sections 8 to 10 of this Act on an application under section 1, 6 or 7 of this Act.

(6) Any reference in section 11(2), (3) or (8) of this Act to an order made under section 8(2) of this Act includes a reference to an order made under the said section 8(2) by virtue of this section and to an order made under the said section 8(2) which is varied under this section, and any reference in section 11(4) of this Act to an order made under section 10(1) of this Act includes a reference to an order made under the said section 10(1) by virtue of this section, and where by virtue of an order under this section the right to the actual custody of a child is given to the person who made the original application for an order under section 1 or 6 of this Act, the court shall have power to make an order under section 2(1)(c) and (d) of this Act in respect of that child.

(7) An application under this section may be made in the following cases by the following persons, in addition to the parties to the marriage in question, that is to say—

- (a) where a child of the family is not a child of both the parties to the marriage, an application under subsection (1), (2) or (3) above may be made by any person who, though not one of the parties to the marriage, is a parent of that child;
- (b) where by virtue of an order under section 9 of this Act a child of the family is under the supervision of a local authority or a probation officer, an application under subsection (1)(b) above may be made by that local authority or probation officer ;
- (c) where by virtue of an order under section 10 of this Act a child of the family is in the care of a local authority, an application under subsection (1)(c) above may be made by that local authority.

## **22 Variation of instalments of lump sum**

Where in the exercise of its powers under section 63 of the Magistrates' Courts Act 1952 a magistrates' court orders that a lump sum required to be paid under this Part of this Act shall 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, 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.

## **23 Supplementary provisions with respect to variation and revocation of orders**

- (1) Provision may be made by rules as to the persons who are to be made respondents on an application for the variation or revocation of an order under section 14(3), 20 or 21 of this Act; and if on an application under section 20 of this Act there are two or more respondents, the powers of the court under section 55(1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.
- (2) The powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money under section 53 of the Magistrates' Courts Act 1952 and to suspend or rescind certain other orders under section 54(2) of that Act shall not apply in relation to an order made under this Part of this Act.

## **24 Proceedings by or against a person outside England and Wales for variation or revocation of orders**

- (1) It is hereby declared that any jurisdiction conferred on a magistrates' court by virtue of section 20 or 21 of this Act is exercisable notwithstanding that the proceedings are brought by or against a person residing outside England and Wales.
- (2) Subject to subsection (3) below, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules, proceed on an application made under section 20 or 21 of this Act notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.
- (3) A magistrates' court shall not exercise its powers under section 20 of this Act so as to increase the amount of any periodical payments required to be made by any person under this Part of this Act unless the order under that section is made at a hearing at which that person appears or the requirements of section 47(3) of the Magistrates'

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Courts Act 1952 with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

## **25 Effect on certain orders of parties living together**

### (1) Where—

- (a) periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by an order made under section 2, 6 or 11(2) of this Act or by an interim maintenance order made under section 19 of this Act (otherwise than on an application under section 7 of this Act), or
- (b) the right to the actual custody of a child is given to one of the parties to a marriage by an order made under section 8(2) of this Act or by an interim custody order made under section 19 of this Act,

the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

### (2) Where any of the following orders is made under this Part of this Act, that is to say—

- (a) an order under section 2, 6 or 11(2) of this Act which requires periodical payments to be made to a child of the family,
- (b) an interim maintenance order under section 19 of this Act (otherwise than on an application under section 7 of this Act) which requires periodical payments to be made to a child of the family,
- (c) an order under section 8(2) of this Act which gives legal custody of a child to a person who is a parent of that child but not a party to the marriage in question, or
- (d) an order under section 9, 10 or 11(3) or (4) of this Act,

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

### (3) Any order made under section 7 of this Act, and any interim maintenance order made on an application for an order under that section, shall cease to have effect if the parties to the marriage resume living with each other.

### (4) Where an order made under this Part of this Act ceases to have effect by virtue of subsection (1) or (3) above or by virtue of a direction given under subsection (2) above, a magistrates' court may, on an application made by either party to the marriage, make an order declaring that the first mentioned order ceased to have effect from such date as the court may specify.

### *Reconciliation*

#### **26 Reconciliation**

- (1) Where an application is made for an order under section 2 of this Act the court, before deciding whether to exercise its powers under that section, shall consider whether there is any possibility of reconciliation between the parties to the marriage in question ; and if at any stage of the proceedings on that application it appears to the court that there is a reasonable possibility of such a reconciliation, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.
- (2) Where the court adjourns any proceedings under subsection (1) above, it may request a probation officer or any other person to attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, the probation officer or that other person shall report in writing to the court whether the attempt has been successful or not, but shall not include in that report any other information.

### *Provisions relating to High Court and county court*

#### **27 Refusal of order in case more suitable for the High Court**

Where on hearing an application for an order under section 2 of this Act a magistrates' court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the High Court, the magistrates' court shall refuse to make any order on the application, and no appeal shall lie from that refusal; but if in any proceedings in the High Court relating to or comprising the same subject matter as that application the High Court so orders, the application shall be reheard and determined by a magistrates' court acting for the same petty sessions area as the first mentioned court.

#### **28 Powers of High Court and county court in relation to certain orders under Part I**

- (1) Where after the making by a magistrates' court of an order under this Part of this Act proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the High Court or a county court, then, except in the case of an order for the payment of a lump sum, the court in which the proceedings or any application made therein are or is pending may, if it thinks fit, direct that the order made by a magistrates' court shall cease to have effect on such date as may be specified in the direction.
- (2) Where after the making by a magistrates' court of an order under subsection (3) of section 16 of this Act in relation to a matrimonial home, one of the parties to the marriage in question applies for an order to be made in relation to that matrimonial home under—
  - (a) section 1(2) of the Matrimonial Homes Act 1967 (which enables an application to be made for an order relating to rights of occupation under that Act or relating to the exercise by either spouse of a right to occupy a dwelling house), or
  - (b) section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976 (which enables an application to be made for an order relating to the exercise of the right to occupy a dwelling house where both spouses have joint rights),

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the High Court or county court by which that application is heard may, if it thinks fit, direct that the order made under subsection (3) of section 16 of this Act, and any order made under subsection (4) of that section in relation to that matrimonial home, shall cease to have effect on such date as may be specified in the direction.

- (3) Nothing in this section shall be taken as prejudicing the effect of any order made by the High Court or a county court so far as it implicitly supersedes or revokes an order or part of an order made by a magistrates' court.

## **29 Appeals**

- (1) Subject to section 27 of this Act, where a magistrates' court makes or refuses to make, varies or refuses to vary, revokes or refuses to revoke an order (other than an interim maintenance order) under this Part of this Act, an appeal shall lie to the High Court.
- (2) On an appeal under this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court made on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court.
- (3) Without prejudice to the generality of subsection (2) above, where, on an appeal under this section in respect of an order of a magistrates' court requiring any person to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order as the court thinks fit and, if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.
- (4) Where on an appeal under this section in respect of an interim custody order made by a magistrates' court the High Court varies or revokes that order, the High Court shall have power to vary or revoke any interim maintenance order made in connection with that order by the magistrates' court.
- (5) Any order of the High Court made on an appeal under this section (other than an order directing that an application shall be reheard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of sections 14(3), 20 and 21 of this Act be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.

*Provisions relating to procedure, jurisdiction and enforcement*

## **30 Provisions as to jurisdiction and procedure**

- (1) A magistrates' court shall, subject to section 11 of the Administration of Justice Act 1964 and any determination of the committee of magistrates thereunder, have jurisdiction to hear an application for an order under this Part of this Act if at the



date of the making of the application either the applicant or the respondent ordinarily resides within the commission area for which the court is appointed.

- (2) Any application for an order under this Part of this Act, including an application for the variation or revocation of such an order, shall be made by way of complaint.
- (3) In relation to an application for an order under this Part of this Act (other than an application in relation to which jurisdiction is exercisable by virtue of section 24 of this Act) the jurisdiction conferred by subsection (1) above—
  - (a) shall be exercisable notwithstanding that the respondent resides in Scotland or Northern Ireland if the applicant resides in England and Wales and the parties last ordinarily resided together as man and wife in England and Wales, and
  - (b) is hereby declared to be exercisable where the applicant resides in Scotland or Northern Ireland if the respondent resides in England and Wales.
- (4) Nothing in either subsection (3) above or subsection (1) of section 24 of this Act shall be construed as derogating from any jurisdiction exercisable by any court apart from the provisions of those subsections.
- (5) It is hereby declared that any jurisdiction conferred on a magistrates' court by this Part of this Act is exercisable notwithstanding that any party to the proceedings is not domiciled in England.

### **31 Constitution of courts**

- (1) Where the hearing of an application under section 1 of this Act is adjourned after the court has decided that it is satisfied of any ground mentioned in that section, the court which resumes the hearing of that application may include justices who were not sitting when the hearing began if—
  - (a) the parties to the proceedings agree ; and
  - (b) at least one of the justices composing the court which resumes the hearing was sitting when the hearing of the application began.
- (2) Where, by virtue of subsection (1) above, among the justices composing the court which resumes the hearing of an application under section 1 of this Act there are any justices who were not sitting when the hearing of the application began, the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the hearing began to be fully acquainted with those facts and circumstances.

### **32 Enforcement etc. of orders for payment of money**

- (1) An order for the payment of money made by a magistrates' court under this Part of this Act may be enforced in the same manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.
- (2) Without prejudice to section 52 of the Magistrates' Courts Act 1952 (which relates to the power of a magistrates' court to direct periodical payments to be made through the clerk of a magistrates' court), a magistrates' court making an order under this Part of this Act for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made under this Part of this Act, the said section 52 shall have effect as if, in subsection (2) thereof, for the words

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" the applicant for the order" there were substituted the words " the person to whom the payments under the order fall to be made ".

- (3) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Part of this Act shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be liable on summary conviction to a fine not exceeding £50.
- (4) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order made by virtue of this Part of this Act without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.
- (5) The court hearing an application for the grant of leave under subsection (4) above may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of such arrears or any part thereof,
- (6) An application for the grant of leave under subsection (4) above shall be made in such manner as may be prescribed by rules.

### **33 Enforcement of orders for custody**

Where at a time when any person is entitled to the actual custody of a child, or a local authority is entitled to the care of a child, by virtue of an order made under this Part of this Act another person has the actual custody of the child, a copy of the order may be served on that other person, and thereupon the order may, without prejudice to any other remedy which may be available, be enforced under section 54(3) of the Magistrates' Courts Act 1952 as if it were an order of a magistrates' court requiring that other person to give up the child to the person entitled by virtue of the order to actual custody or, as the case may be, to the local authority.

### **34 Restriction on removal of child from England and Wales**

- (1) Where a magistrates' court makes—
  - (a) an order under section 8(2) of this Act regarding the legal custody of a child, or
  - (b) an interim custody order under section 19 of this Act in respect of a child,the court, on making the order or at any time while the order is in force, may, if an application is made for an order under this section, by order direct that no person shall take the child out of England and Wales while the order made under this section is in force, except with the leave of the court.
- (2) A magistrates' court may by order vary or revoke any order made under this section.
- (3) An application for an order under subsection (1) above, or for the variation or revocation of such an order, may be made by either party to the marriage in question and also, in the case of an order made under section 8(2) or 19 of this Act with respect to a child of the family who is not a child of both the parties to the marriage, by any person who, though not one of the parties to the marriage, is a parent of that child.

### **35 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage**

- (1) Where—
- (a) an order made under section 2(1)(a), 6 or 7 of this Act has, by virtue of section 4(2) of this Act, ceased to have effect by reason of the remarriage of the party in whose favour it was made, and
  - (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting,
- no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above shall be maintainable by the person so liable or his personal representatives against the person so entitled or his personal representatives, but on an application made under this section the court may exercise the powers conferred on it by subsection (2) below.
- (2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.
- (3) An application under this section may be made by the person liable to make payments under the order made under section 2(1)(a), 6 or 7 of this Act or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.
- (4) An application under this section shall be made to a county court, except that such an application may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, the payment of arrears under an order made under section 2(1)(a), 6 or 7 of this Act; and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) The jurisdiction conferred on a county court by this section shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application under this section the jurisdiction would not but for this subsection be exercisable by a county court.
- (7) The clerk of a magistrates' court to whom any payments under an order made under section 2(1)(a), 6 or 7 of this Act are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under the first mentioned order, shall not be liable—
- (a) in the case of the clerk, for any act done by him in pursuance of the first mentioned order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
  - (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,
- if, but only if, the act was one which he would have been under a duty to do had the first mentioned order not ceased to have effect by reason of the remarriage and the act was

done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first mentioned order or the personal representatives of either of those persons.

- (8) In this section "collecting officer", in relation to an attachment of earnings order, means the officer of the High Court, the officer designated by the Lord Chancellor or the clerk of a magistrates' court to whom a person makes payments in compliance with the order.

## PART II

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

#### *Amendment of provisions relating to the custody of minors*

#### **36 Meaning of custody in Guardianship of Minors Acts 1971 and 1973**

- (1) In the Guardianship of Minors Act 1971—
- (a) for the word " custody " in each place (except in section 13) where that word occurs there shall be substituted the words " legal custody ";
  - (b) in section 13(1) for the words "legal custody" there shall be substituted the words " actual custody ";
  - (c) in section 20(2) after the word "Act" there shall be inserted the words " ' actual custody', as respect a child, means the actual possession of the person of the child,' legal custody ' shall be construed in accordance with Part IV of the Children Act 1975 and ".
- (2) In the Guardianship Act 1973 for the word " custody " in each place where that word occurs there shall be substituted the words " legal custody " and at the end of section 1(1) of that Act there shall be added the following paragraph—
- “In this Act ' legal custody ' shall be construed in accordance with Part IV of the Children Act 1975.”.

#### **37 Further provisions relating to orders for custody**

In the Guardianship of Minors Act 1971 the following section shall be inserted after section 11—

##### **“11A Further provisions relating to orders for custody.**

- (1) An order shall not be made under section 9(1), 10(1)(a) or 11(a) of this Act, giving the legal custody of a child to more than one person ; but where the court makes an order under one of those sections giving the legal custody of a minor to any person, it may order that a parent of the minor who is not given the legal custody of the minor shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the minor) and shall have those rights and duties jointly with the person who is given the legal custody of the minor.
- (2) Where the court makes an order under section 9(1), 10(1)(a) or 11(a) of this Act the court may direct that the order, or such provision thereof as the court may

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specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.

- (3) Any order made in respect of a minor under section 9(1), 10(1)(a) or 11(a) of this Act shall cease to have effect when the minor attains the age of eighteen.”.

### **38 Amendment of provisions relating to age limits on orders for custody etc.**

- (1) Section 15(2)(a) of the Guardianship of Minors Act 1971 (which provides that a magistrates' court shall not entertain an application relating to a minor over sixteen unless the minor is physically or mentally incapable of self-support) shall cease to have effect.
- (2) In section 2(2) of the Guardianship Act 1973 (which provides that supervision orders and orders committing the care of a minor to a local authority shall only be made in relation to a minor who is under sixteen) for the words "where an application made under section 9 of the Guardianship of Minors Act 1971 relates to the custody of a minor under the age of sixteen " there shall be substituted the words " where an application is made under section 9 of the Guardianship of Minors Act 1971 for an order regarding the custody of a minor ".
- (3) In section 3(2) of the Guardianship Act 1973 (which provides that a supervision order shall cease to have effect when a minor becomes sixteen) for the words " age of sixteen " there shall be substituted the words " age of eighteen ".
- (4) In section 4 of the Guardianship Act 1973 (which relates to orders committing the care of a minor to a local authority) after subsection (2) there shall be inserted the following subsection—
- “(2A) The court shall not make an order committing a minor to the care of a local authority under section 2(2)(b) above after he has attained the age of seventeen.”.

### **39 Restriction on removal of minor from England and Wales**

In the Guardianship of Minors Act 1971 the following section shall be inserted after section 13—

#### **“13A Restriction on removal of minor from England and Wales.**

- (1) Where the court makes—
- (a) an order under section 9(1), 10(1)(a) or 11(a) of this Act regarding the legal custody of a minor, or
  - (b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a minor,
- the court, on making the order or at any time while the order is in force, may, if an application is made under this section, by order direct that no person shall take the minor out of England and Wales while the order made under this section is in force, except with the leave of the court.

- (2) An order made under subsection (1) above may be varied or discharged by a subsequent order.
- (3) An application for an order under subsection (1) above, or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order mentioned in paragraph (a) or (b) of that subsection was made.”.

#### **40 Access to minors by grandparents**

In the Guardianship of Minors Act 1971 the following heading and section shall be inserted after section 14—

*“Access to minors by grandparents*

**14A Access to minors by grandparents.**

- (1) The court, on making an order under section 9(1) of this Act or at any time while such an order is in force, may on the application of a grandparent of the minor make such order requiring access to the minor to be given to the grandparent as the court thinks fit.
- (2) Where one parent of a minor is dead, or both parents are dead, the court may, on an application made by a parent of a deceased parent of the minor, make such order requiring access to the minor to be given to the applicant as the court thinks fit.
- (3) Section 11A(2) of this Act shall apply in relation to an order made under this section as it applies in relation to an order made under section 9(1), 10(1)(a), or 11(a) of this Act.
- (4) The court shall not make an order under this section with respect to a minor who is for the purposes of Part II of the Children Act 1948 in the care of a local authority.
- (5) Where the court has made an order under subsection (1) above requiring access to a minor to be given to a grandparent, the court may vary or discharge that order on an application made—
  - (a) by that grandparent, or
  - (b) by either parent of the minor, or
  - (c) if the court has made an order under section 9(1)(a) of this Act giving the legal custody of the minor to a person other than one of the parents, by that person.
- (6) Where the court has made an order under subsection (2) above requiring access to a minor to be given to a grandparent, the court may vary or discharge that order on an application made—
  - (a) by that grandparent, or
  - (b) by any surviving parent of the minor, or
  - (c) by any guardian of the minor.
- (7) Section 6 of the Guardianship Act 1973 shall apply in relation to an application under this section as it applies in relation to an application under section 5 or

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9 of this Act, and any reference to a party to the proceedings in subsection (2) or (3) of the said section 6 shall include—

- (a) in the case of an application under subsection (1) or (2) above, a reference to the grandparent who has made an application under either of those subsections,
- (b) in the case of an application under subsection (5) or (6) above, a reference to the grandparent who has access to the minor under the order for the variation or discharge of which the application is made.

(8) Where, at any time after an order with respect to a minor has been made under subsection (1) above, no order is in force under section 9 of this Act with respect to that minor, the order made under subsection (1) above shall cease to have effect.

(9) A court may make an order under this section in favour of a grandparent of a minor notwithstanding that the minor is illegitimate.”.

*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) " .”

(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;”.

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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—

(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

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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)—
  - “(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.”

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- (2) At the end of subsection (3A) of section 4 of the Guardianship 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.”.

#### *General provisions*

### **45 Interim orders**

- (1) The provisions of section 2 of the Guardianship Act 1973 relating to interim orders shall have effect subject to the provisions of this section.

- (2) For subsection (4) of the said section 2 there shall be substituted the following subsection—

“(4) Subject to subsection (5C) below, where an application is made under section 9 of the Guardianship of Minors Act 1971 the court may, at any time before it makes a final order or dismisses the application, make an interim order containing—

- (a) provision requiring either parent to make to the other or to the minor such periodical payments towards the maintenance of the minor as the court thinks reasonable, and
- (b) where by reason of special circumstances the court thinks it proper, any such provision regarding the legal custody of and right of access to the minor as the court has power to make under the said section 9.”.

- (3) In subsection (5) of the said section 2 the words from " but an interim order " to the end of the subsection shall be omitted.

- (4) At the end of subsection (5) of the said section 2 there shall be inserted the following subsections—

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- “(5A) Section 11A(2) of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this section which contains provision regarding the custody of a minor as it applies in relation to an order made under section 9(1) of that Act.
- (5B) An interim order made under this section which requires the making of payments for the maintenance of a minor may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application for an order under section 9 of the Guardianship of Minors Act 1971.
- (5C) An interim order made under this section shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the order,
  - (b) the date of the expiration of the period of three months beginning with the date of the making of the order,
  - (c) the date on which the court either makes a final order on, or dismisses, the application.
- (5D) Where an interim order made under this section would, but for this subsection, cease to have effect by virtue of subsection (5C)(a) or (b) above, the court which made the order may by order provide that the interim order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first, that is to say—
- (a) the date, if any, specified for the purpose in the order made under this subsection ;
  - (b) the date of the expiration of the period of three months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, the date of the making of the first of those orders;
  - (c) the date on which the court either makes a final order on, or dismisses, the application.
- (5E) On an application under section 9 of the Guardianship of Minors Act 1971 the court shall not have power to make more than one order under subsection (4) or (5) above with respect to that application, but without prejudice to the powers of the court under this section on any further such application.”.

#### **46 Effect on certain orders of parents living together**

After section 5 of the Guardianship Act 1973 there shall be inserted the following section—

##### **“5A Effect on certain orders of parents living together.**

- (1) Where—
- (a) the right to the actual custody of a minor is given to one of the parents of the minor by an order made under section 9(1) of the Guardianship of Minors Act 1971 or by a provision of an interim order made under section 2(4) or (5) above, or

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- (b) periodical payments are required to be made to a parent of a minor by an order made under section 9(2) of that Act or by a provision of an interim order made under section 2(4) or (5) above,

the order made under the said section 9 or, as the case may be, that provision of the interim order shall be enforceable notwithstanding that the parents of the minor are living with each other at the date of the making of the order under the said section 9 or the interim order or that, although they are not living with each other at that date, they subsequently resume living with each other ; but that order or provision shall cease to have effect if after that date the parents of the minor continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

- (2) Where any of the following orders is made, that is to say—
- (a) an order under section 9(2) of the Guardianship of Minors Act 1971 which requires periodical payments to be made to a minor,
  - (b) an order under section 2(2)(a), (2)(b) or (3) above,
  - (c) an interim order under section 2(4) or (5) above containing a provision requiring periodical payments to be made to a minor,

then, unless the court otherwise directs, the order or, in the case of an interim order, that provision thereof shall be enforceable notwithstanding that the parents of the minor are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

- (3) References in this section to the parents of a minor living with each other shall be construed as references to their living with each other in the same household.”.

#### **47 Provisions as to jurisdiction and powers of magistrates' courts**

- (1) In section 15 of the Guardianship of Minors Act 1971 (which relates to the courts which have jurisdiction under that Act) in subsections (1) and (4) for the words " magistrates' court having jurisdiction in the place " there shall be substituted the words " magistrates' court appointed for the commission area (within the meaning of the Administration of Justice Act 1973) ".
- (2) The powers of a magistrates' court to revoke, revive or vary under section 53 of the Magistrates' Courts Act 1952 an order for the periodical payment of money and to suspend or rescind under section 54(2) of that Act certain other orders shall not apply in relation to an order made under the Guardianship of Minors Act 1971 or under the Guardianship Act 1973.

#### **48 Orders made on appeal from a magistrates' court**

At the end of section 16 of the Guardianship of Minors Act 1971 (which relates to appeals) there shall be added the following subsections—

- “(6) On an appeal under subsection (3) of this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court made on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order

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that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court.

- (7) Without prejudice to the generality of subsection (6) above, where, on an appeal under subsection (3) of this section in respect of an order of a magistrates' court requiring a parent of a minor to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to that parent such sum in respect of payments already made by the parent in compliance with the order as the High Court thinks fit and, if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.
- (8) Any order of the High Court made on an appeal under subsection (3) of this section (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of any power to vary, revive or discharge orders conferred by section 9(4), 10(2), 11(c), 12B(5) or 12C(5) of this Act or section 3(3) or 4(3A) or (3D) of the Guardianship Act 1973 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.”.

### PART III

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

##### *Amendments of Affiliation Proceedings Act 1957*

#### **49 Jurisdiction of magistrates' courts**

In section 3 of the Affiliation Proceedings Act 1957 (which relates to the magistrates' courts which have jurisdiction under that Act)—

- (a) in subsection (1) for the words "acting for the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) " there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) " and for the words " for the said petty sessions area " there shall be substituted the words " appointed for the said area " , and
- (b) in subsection (3) for the words " acting for the same petty sessions area " there shall be substituted the words " appointed for the same commission area " .

#### **50 Provisions which may be contained in affiliation orders**

- (1) In section 4(2) of the Affiliation Proceedings Act 1957 (which relates to the provisions which may be contained in an affiliation order) for the words from " for the payment by him of " to the end of the subsection there shall be substituted the following words—

“containing one or both of the following provisions—

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- (a) provision for the making by him of such periodical payments for the maintenance and education of the child, and for such term, as may be specified in the order;
  - (b) provision for the payment by him of such lump sum as may be so specified.”.
- (2) For section 4(3) of the said Act there shall be substituted the following subsections—
- “(3) In deciding whether to exercise its powers under subsection (2) of this section and, if so, in what manner, the court shall, among the circumstances of the case, have regard to the following matters, that is to say—
- (a) the income, earning capacity, property and other financial resources which the mother of the child and the person adjudged to be the putative father of the child have or are likely to have in the foreseeable future;
  - (b) the financial needs, obligations and responsibilities which the mother and that person have or are likely to have in the foreseeable future;
  - (c) the financial needs of the child ;
  - (d) the income, earning capacity (if any), property and other financial resources of the child ;
  - (e) any physical or mental disability of the child.
- (4) Without prejudice to the generality of subsection (2)(b) of this section, an affiliation order may provide for the payment of a lump sum to be made for the purpose of enabling liabilities or expenses reasonably incurred before the making of the order to be met, being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child or, if the child has died before the making of the order, being the child's funeral expenses.
- (5) The amount of any lump sum required to be paid by an affiliation order 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.”.

## **51 Persons entitled to payments under affiliation orders**

- (1) In section 5(1) of the Affiliation Proceedings Act 1957 (which relates to the persons entitled to payments under an affiliation order) after the words " child's mother" there shall be inserted the words " for the benefit of the child or the child himself ".
- (2) In section 5(3) of the said Act (which enables payments under an affiliation order to be made to the person who for the time being has the custody of the child) for the words " entitle that person to any payments to be made under the order" there shall be substituted the words " provide that the person entitled to payments under the order shall be that person for the benefit of the child or the child himself ".
- (3) In section 5(4) of the said Act (which provides that a person appointed as guardian under that subsection shall be entitled to payments under an affiliation order) for the words from " a person appointed" to the words " affiliation order and " there shall be substituted the words " where the court has appointed a person as guardian under this subsection the court may provide that the person entitled to any payments to be made

under the affiliation order shall be that guardian for the benefit of the child or the child himself and the guardian. ”.

## 52 Age limit on making of affiliation orders and duration of orders

- (1) For section 6 of the Affiliation Proceedings Act 1957 (which relates to the duration of affiliation orders) there shall be substituted the following section—

### “6 Age limit on making of orders and duration of orders.

- (1) No affiliation order shall be made in respect of a child who has attained the age of eighteen.
  - (2) The term to be specified in an affiliation order which requires the making of periodical payments in favour of a child may begin with the date of the making of an application for the summons under this Act or any later date, 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 (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 (4) of this section, extend beyond the date of the child's eighteenth birthday.
  - (3) Where a complaint under section 1 of this Act is made before or within two months after the birth of the child, the term to be specified in an affiliation order which requires the making of periodical payments may, if the court thinks fit, begin with the date of the birth.
  - (4) Paragraph (b) of subsection (2) of this section shall not apply in the case of a child if it appears to the court that—
    - (a) the child 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.
  - (5) An affiliation order 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.”.
- (2) Subsections (1) to (3) of section 7 of the Affiliation Proceedings Act 1957 shall cease to have effect, and in subsection (4) of that section for the words "the foregoing provisions of this section or in any order made by virtue of this section" there shall be substituted the words " section 6 of this Act " and in paragraph (b) of that subsection after the words " child's mother" there shall be inserted the words " or the child himself ".



### **53 Variation and revocation of affiliation orders**

After section 6 of the Affiliation Proceedings Act 1957 there shall be inserted the following section: —

#### **“6A Variation and revocation of orders.**

- (1) The power of the court under section 53 of the Magistrates' Courts Act 1952 to vary an affiliation order which provides for the making of periodical payments shall include power to vary the order so that it makes provision for the payment of a lump sum (whether or not when the affiliation order was first made, or on an earlier variation, provision was made for the payment of a lump sum).
- (2) In exercising its powers under the said section 53 to revoke, vary or revive an affiliation order 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.
- (3) An application for the variation or revival of an affiliation order so as to require periodical payments to be made thereunder after the date mentioned in section 6(2)(a) of this Act may be made by the child's mother or by any person who for the time being has the custody of the child either legally or by an arrangement approved by the court, but not including a local authority in whose care the child is under section 1 of the Children Act 1948 or by virtue of a care order (other than an interim order) within the meaning of the Children and Young Persons Act 1969; and, if the child has attained the age of sixteen, an application for the variation or revival of an affiliation order may be made by the child himself.
- (4) Where on an application for the variation of an affiliation order the court decides to make provision for the payment of a lump sum, the court may provide for the payment of a sum not exceeding the maximum amount that may at that time be required to be paid under section 4(5) of this Act.
- (5) Where in the exercise of its powers under section 63 of the Magistrates' Courts Act 1952 the court orders that a lump sum required to be paid under an affiliation order shall be paid 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.”.

#### *Amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972*

### **54 Date of operation of orders under Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972**

The provisions of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to the date of operation of orders made in a reciprocating country and registered in the United Kingdom and of orders varying or revoking orders to which that Part relates shall have effect subject to the following amendments—

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- (a) in section 5(7) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the variation is to take effect";
- (b) in section 5(8) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the revocation is to take effect";
- (c) in section 8(7) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which they are required to be paid under the provisions of the order";
- (d) in section 8(8) of that Act for the words "such date being a date later than the date on which the order was made" there shall be substituted the words "the date on which they are required to be paid under the provisions of the order or such later date";
- (e) in section 9(8) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the variation is to take effect"; and
- (f) in section 9(9) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the revocation is to take effect".

#### **55 Interpretation of Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland**

In section 21 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the interpretation of Part I of that Act)—

- (a) in subsection (1)—
  - (i) the definition of "maintenance" shall cease to have effect; and
  - (ii) after the words "liable to maintain;" in paragraph (a) of the definition of "maintenance order" there shall be inserted the following paragraph—
    - “(aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party;”;
- (b) in subsection (2), after the words "subsection (1) above" there shall be inserted the words ", to the payment of a periodical allowance as mentioned in paragraph (aa) of that definition, ".

#### **56 Magistrates' courts having jurisdiction to hear applications for affiliation orders under s. 27 of Maintenance Orders (Reciprocal Enforcement) Act 1972**

In section 27(2) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the jurisdiction of a magistrates' court to hear an application by a person in a convention country for an affiliation order) after the words "magistrates' court" there shall be inserted the words "appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) or " and the words "petty sessions area or " shall be omitted.

**57 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse**

For section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be substituted the following section—

**“28 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse.**

Where the complaint is a complaint made for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, the court hearing the complaint may make any order which it has power to make under section 2 or 19(1)(i) of that Act; and Part I of that Act, except sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 27, 28(2), 32(2), 33 and 34, shall apply in relation to the complaint and to any order made on the complaint.”

**58 Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse**

After section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

**“28A Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse.**

- (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 by a divorce granted in a convention country 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 proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country,

the application shall, notwithstanding that the marriage has been dissolved, 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.

- (2) On hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 2 of section 19(1)(i) of the Domestic Proceedings and Magistrates' Courts Act 1978 except that—
- (a) an order for the making of periodical payments for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child, and

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- (b) an order for the payment of a lump sum for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.
- (3) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 2 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
- (a) section 1 shall be omitted ;
  - (b) for the reference in section 2(1) to any ground mentioned in section 1 of that Act there shall be substituted a reference to noncompliance with any such order as is mentioned in subsection (1)(c) of this section;
  - (c) in section 3(1) for the reference to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the breakdown of the marriage;
  - (d) in section 4(2) the reference to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted;
  - (e) sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 28, 32(2), 33 and 34 shall be omitted.
- (4) A divorce obtained in a convention country 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.
- (5) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.
- (6) In this section the expression "child of the family" has the same meaning as in section 88 of the Domestic Proceedings and Magistrates' Courts Act 1978.”

**59 Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband**

After section 29 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

**“29A Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband.**

- (1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in Northern Ireland—
- (a) that person is a former husband of the applicant in a convention country who is seeking to recover maintenance, and
  - (b) the marriage between the applicant and the former husband has been dissolved by a divorce granted in a convention country which is recognised as valid by the law of Northern Ireland, and
  - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the marriage has, by reason of the divorce proceedings

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- in the convention country, been made by the court which granted the divorce or by any other court in that country,
- the application shall, notwithstanding that the marriage has been dissolved, be treated as a complaint for an order under section 3 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, and the provisions of this section shall have effect.
- (2) Subject to subsection (3) below, on hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 3(1)(c) or (d) (payment of weekly sum for benefit of wife, or of a child committed to her custody) or section 4 (interim payments) of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, treating, for the purposes of the said section 3(1)(d), a child whose legal custody has not been committed to any person as a child committed to the custody of the applicant.
- (3) An order shall not be made by virtue of subsection (2) above for the payment of a weekly sum for the benefit of the applicant unless the order made in the convention country provides for the making of periodical payments for her benefit; nor shall an order be made by virtue of that subsection for the payment of a weekly sum for the benefit of a child of the marriage unless the order made in the convention country provides for the making of periodical payments for the benefit of that child.
- (4) The Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 3 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
- (a) references to the husband or the wife shall be construed as references to, respectively, the former husband or the former wife, and references to the parties to the marriage shall be construed accordingly ;
  - (b) sections 1 and 2 shall be omitted ;
  - (c) for the reference in section 3(1) to an application under the foregoing provisions of that Act there shall be substituted a reference to an application such as is mentioned in subsection (1) above;
  - (d) in section 3, subsection (1)(a) and (b) and subsections (2) to (4) shall be omitted;
  - (e) payments made under section 3(1)(c) or (d) or section 4 shall be made in the prescribed manner to the prescribed person, instead of to such a person as is mentioned in those provisions (and accordingly subsection (9) of section 27 of this Act shall have effect as if those provisions were included among the enactments mentioned in that subsection);
  - (f) section 5(2) to (5) shall be omitted ;
  - (g) section 8 shall be omitted ;
  - (h) proviso (b) to section 13(1) shall be omitted.
- (5) A divorce obtained in a convention country shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of Northern Ireland, unless the contrary is proved by the defendant.

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- (6) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.
- (7) In this section the expression " child of the marriage" shall be construed in accordance with section 8 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.”.

## **60 Further amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland**

- (1) In section 31 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to applications for the recovery of maintenance in Scotland)—
  - (a) after subsection (1) there shall be inserted the following subsection—
 

“(1A) In any proceedings arising out of such an application as aforesaid the sheriff may subject to subsection (4) below make, with respect to an application under subsection (1) above, such order as he thinks fit having regard to the respective means of the applicant and the person from whom recovery of maintenance is sought and to all the circumstances of the case.”;
  - (b) in subsection (2)—
    - (i) after the word " sheriff" where it first occurs there shall be inserted the words " , or (on appeal or remit) the Court of Session, "; and
    - (ii) for the words " the sheriff clerk or sheriff clerk depute shall register the order in the prescribed manner in the court" there shall be substituted the words " the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly ";
  - (c) after subsection (2) there shall be inserted the following subsection—
 

“(2A) In subsection (2) above " the appropriate sheriff court" means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.”; and
  - (d) after subsection (3) there shall be inserted the following subsections—
 

“(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—

    - (i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been granted in a convention country and which is recognised as valid by the law of Scotland ;
    - (ii) an order for the payment of maintenance for the benefit of the applicant has, in or by reason of the divorce proceedings

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- in the convention country, been made by the court which granted the divorce or by any other court in that country ; and
- (iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.
- (5) Without prejudice to any existing power of variation or revocation but subject to section 34(1) of this Act, subsections (4) and (5) of section 5 of the Divorce (Scotland) Act 1976 shall, where an order with respect to an application under subsection (1) above requires the payment of maintenance by a person to a former spouse of that person, apply to that order as they apply to an order under section 5 of the said Act of 1976.
- (6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.”.
- (2) In section 34 of the said Act of 1972 (which provides for the variation and revocation of orders), in subsection (5) after the word " Scotland " there shall be inserted the words—
- “—
- (a) the words " and no court other than the registering court shall have power to vary or revoke a registered order " in subsection (1) above are subject to any power of the Court of Session on appeal; and
- (b)”.
- (3) In section 36 of the said Act of 1972 (which provides for the admissibility of written evidence), in subsection (1) after the words " magistrates' court or " there shall be inserted the words " in, or remitted from, a ".
- (4) In section 39 of the said Act of 1972 (which relates to the interpretation of Part II of that Act), in the definition of " maintenance " for the words " means aliment" there shall be substituted the words " includes aliment and any sums which are payable, following divorce, as a periodical allowance ".

## **61 Eligibility for Legal Aid in Scotland for proceedings under Maintenance Orders (Reciprocal Enforcement) Act 1972**

After section 43 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

### **“43A Eligibility for Legal Aid in Scotland**

- (1) In connection with proceedings under Part I of this Act in relation to a maintenance order made by a court in a reciprocating country, where there is produced a certificate from the responsible authority in that country to the effect that the payee would, in that country, be financially eligible for complete or partial—
- (i) legal aid ; or
- (ii) exemption from costs or expenses,

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in proceedings there in relation to that maintenance order, sections 2(1) and (6)(c), 3 and 4 of the Legal Aid (Scotland) Act 1967 shall not apply in respect of the payee and, subject to the other provisions of that Act, legal aid shall under that Act be available to the payee without inquiry into the payee's resources.

- (2) In connection with proceedings under Part II of this Act—
- (a) arising out of an application received from a convention country for the recovery of maintenance; or
  - (b) relating to an order made in respect of such an application,
- where there is produced a certificate from the appropriate authority in that county to the effect that the applicant would, in that country, be financially eligible for complete or partial—
- (i) legal aid; or
  - (ii) exemption from costs or expenses,
- in proceedings there for the recovery of maintenance, sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967 shall not apply in respect of the applicant and, subject to the other provisions of that Act, legal aid shall under that Act be available to the applicant without inquiry into the applicant's resources.
- (3) Where, in connection with proceedings under Part I or II of this Act, a person has received legal aid by virtue of subsection (1) or (2) above, legal advice and assistance under the Legal Advice and Assistance Act 1972 shall, notwithstanding—
- (i) any financial conditions imposed by, or by virtue of, sections 1 and 4(2), (3) and (4); and
  - (ii) in relation to the effect of subsections (1) to (4) and (7) of section 4 of the said Act of 1967, the provisions of section 6(1)(b),
- of the said Act of 1972 (but subject otherwise to the provisions of the said Act of 1972), be available in Scotland for that person, without inquiry into his resources, in connection with any matter incidental to, or arising out of, those proceedings.
- (4) In subsection (1) above " maintenance order ", "reciprocating country", "responsible authority" and " payee " have the same meanings respectively as in Part I of this Act; and in subsection (2) above " convention country " means a country or territory specified in an Order in Council under section 25(1) of this Act, " maintenance " has the same meaning as in Part II of this Act, and " appropriate authority " means the authority from which the Secretary of State received the application.”.

*Amendments of the Matrimonial Causes Act 1973*

**62 Amendment of s. 4 of Matrimonial Causes Act 1973**

In section 4 of the 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—



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“(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;

- (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.”.

### **63 Amendment of s. 27 of Matrimonial Causes Act 1973**

(1) For subsection (1) of section 27 of the Matrimonial Causes Act 1973 there shall be substituted the following subsection—

“(1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)—

- (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.”

(2) For subsections (3) and (4) of the said section 27 there shall be substituted the following subsections—

“(3) Where an application under this section is made on the ground mentioned in subsection (1)(a) above then, in deciding—

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- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
- (b) what order, if any, to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(1)(a) to (f) above and, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.

(3A) Where an application under this section is made on the ground mentioned in subsection (1)(b) above then, in deciding—

- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
- (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(1)(a) and (b) and (2)(a) to (e) above, and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 25(3) above.

(3B) In relation to an application under this section on the ground mentioned in subsection (1)(a) above, section 25(1)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) above, section 25(2)(d) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.”.

(3) In subsection (6) of the said section 27 for the words such one or more of the following orders as it thinks just" there shall be substituted the words " any one or more of the following orders ".

(4) After subsection (6) of the said section 27 there shall be inserted the following subsections—

“(6A) An application for the variation under section 31 of this Act of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child 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 child 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 exercise its powers under section 31 of this Act in relation to any order so revived.”.

(5) Subsection (8) of the said section 27 shall cease to have effect.

*Amendments of the Children Act 1975*

**64 Extension of powers of court to make orders for maintenance and access under s. 34 of Children Act 1975**

For section 34 of the Children Act 1975 there shall be substituted the following section—

**“34 Access and maintenance.**

- (1) An authorised court may, on making a custodianship order or while a custodianship order is in force, by order—
  - (a) on the application of the mother, the father or a grandparent of the child, make such provision as it thinks fit requiring access to the child to be given to the applicant;
  - (b) on the application of the custodian, require the child's mother or father (or both) to make to the applicant for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order ;
  - (c) on the application of the custodian, require the child's mother or father (or both) to pay to the applicant for the benefit of the child or to the child such lump sum as may be so specified;
  - (d) on the application of the child's mother or father, revoke an order requiring the applicant to contribute to the child's maintenance made (otherwise than under this section) by any court;
  - (e) on the application of the child's mother or father or the custodian, vary an order made (otherwise than under this section) by any court requiring the mother or father to contribute towards the child's maintenance—
    - (i) by altering the amount of the contributions ;
    - (ii) by substituting the custodian for the person to whom the contributions were ordered to be made.
- (2) References in subsection (1) to the child's mother or father include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973).
- (3) No order shall be made under subsection(1)(b) or (c) requiring the father of an illegitimate child to make any payments to the child's custodian or to the child.
- (4) An authorised court shall have power to make an order under subsection (1) (a) in favour of a grandparent of a child notwithstanding that the child is illegitimate.
- (5) Subsections (2), (3), (3A), (3B), (4), (5A), (5B), (5C), (5D), (5E) and (6) (orders as to the supervision, local authority care, maintenance etc. of children) of section 2 of the Guardianship Act 1973 and sections 3 and 4 of that Act (supplementary provisions) shall apply to an application for a custodianship order as they apply to an application under section 9 of the Guardianship of Minors Act 1971 subject to the following modifications, that is to say—

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- (a) in section 2(2)(b) and (4)(a) of the Guardianship Act 1973 any reference to a parent of a minor to whom the order relates shall be construed as including a reference to any other individual;
  - (b) section 3(3) of that Act shall have effect as if the words " or the custodian " were inserted after the words "application of either parent
  - (c) in section 4(2) of that Act the reference to section 6 of that Act shall be construed as including a reference to section 39 and 40 of this Act.
- (6) A local authority may make contributions to a custodian towards the cost of the accommodation and maintenance of the child, except where the custodian is the husband or wife of a parent of the child.”.

## 65 Further provisions as to maintenance of child subject to custodianship order

After section 34 of the Children Act 1975 there shall be inserted the following sections—

### **“34A Matters to which court is required to have regard in exercising powers as to maintenance.**

- (1) The court, in deciding whether to exercise its powers under section 34(1)(b) or (c) and, if so, in what manner, 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 of each parent and of the custodian;
  - (b) the financial needs, obligations and responsibilities of each parent and of the custodian ;
  - (c) the financial needs of the child ;
  - (d) the income, earning capacity (if any), property and other financial resources of the child;
  - (e) any physical or mental disability of the child.
- (2) The court in deciding whether to exercise its powers under section 34(1)(b) or (c) against a person who is not the child's mother or father and, if so, in what manner, shall, in addition to the matters mentioned in subsection (1), have regard (among the circumstances of the case)—
  - (a) to whether that person had 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 he did so knowing that the child was not his own child;
  - (c) to the liability of any other person to maintain the child.
- (3) In subsection (1)—
  - (a) references to a parent of a child include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973);
  - (b) the reference in paragraph (a) to income, earning capacity, and other financial resources includes the income, earning capacity, property and

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other financial resources which the person concerned is likely to have in the foreseeable future; and

- (c) the reference in paragraph (b) to financial needs, obligations and responsibilities includes the financial needs, obligations and responsibilities which the person concerned is likely to have in the foreseeable future.

### **34B Duration of orders for maintenance.**

- (1) The term to be specified in an order made under section 34(1)(b) 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 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 (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 child's eighteenth birthday.
- (2) Paragraph (b) of subsection (1) shall not apply in the case of a child if it appears to the court that—
  - (a) the child 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 34(1)(b) 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.”.

## **66 Revocation and variation of orders for periodical payments**

- (1) Section 35 of the Children Act 1975 (which relates to the revocation and variation of orders) shall have effect subject to the provisions of this section.
- (2) In subsection (3) of the said section 35 after the words " section 34 " there shall be inserted the words " (other than an order under subsection (1)(c)) ".
- (3) In subsection (4) of the said section 35 for the words " such an order " there shall be substituted the words " an order made under that section (other than an order under subsection (1)(c)) ".
- (4) After subsection (4) of the said section 35 there shall be inserted the following subsection—
  - “(4A) An application for the variation of an order made under section 34(1)(b) may, if the child has attained the age of sixteen, be made by the child himself”.

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- (5) In subsection (5) of the said section 35 for the words " section 34" there shall be substituted the words " section 34(1)(a), (b) or (e) ".
- (6) In subsection (6) of the said section 35 for the words " section 34" there shall be substituted the words " section 34(1)(a) ".
- (7) At the end of the said section 35 there shall be added the following subsections—
- “(7) On an application under this section for the revocation or variation of an order made under section 34(1)(b), the court shall have power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.
- (8) In exercising its power under this section to revoke or vary an order made under section 34(1)(b), 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.
- (9) Where on an application under this section the court varies any payments required to be made under section 34(1)(b), 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.
- (10) Where an order made under section 34(1)(b) ceases to have effect on the date on which the child 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 child to an authorised court 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 revoke under this section any order so revived.
- (11) The powers of a magistrates' court to revoke or vary under section 53 of the Magistrates' Courts Act 1952 an order for the periodical payment of money and to suspend or rescind under section 54(2) of that Act certain other orders shall not apply in relation to a custodianship order or an order made under section 34.”.

## **67 Provisions relating to lump sums**

After section 35 of the Children Act 1975 there shall be inserted the following section—

### **“35A Provisions relating to lump sums.**

- (1) Without prejudice to the generality of section 34(1)(c), an order under that section for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the child 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 34(1)(c) 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.

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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 35 to vary or revoke an order made under section 34(1)(b) shall include power to make an order under section 34(1)(c) for the payment of a lump sum by the child's mother or father (or both).
- (4) The amount of any lump sum which the mother or father of the child may be required to pay by virtue of subsection (3) 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), but a magistrates' court may make an order for the payment of a sum not exceeding that amount notwithstanding that the child's mother or father was required to pay a lump sum by a previous order under this Part of this Act.
- (5) An order made under section 34(1)(c) for the payment of a lump sum may provide for the payment of that sum by instalments, and where such an order makes provision for the payment of a lump sum by instalments, an authorised 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.
- (6) References in this section to the mother or father of a child include any person in relation to whom the child was treated as a child of the family (as denned in section 52(1) of the Matrimonial Causes Act 1973).”.

## **68 Amendment of s. 36 of Children Act 1975**

In section 36 of the Children Act 1975 (which gives the court power on the revocation of a custodianship order to commit the care of the child to a local authority) the following subsections shall be substituted for subsection (5)—

- “(5) Where the court makes an order under subsection (3)(a) the order may require either parent to make to the local authority or to the child 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 the local authority while it has the care of the child.
- (5A) An order made under subsection (3)(a) with reference to an illegitimate child shall not require the father of that child to make any payments to the local authority or to the child.
  - (5B) The court in deciding whether to exercise its powers under subsection (5) 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 34A.
  - (5C) Section 34B shall apply in relation to an order under subsection (5) as it applies in relation to an order under section 34(1)(b).”.

**69 Custodianship order made on application under Part I of this Act or under Guardianship of Minors Act 1971**

In section 37 of the Children Act 1975 after subsection (4) (which enables a custodianship order to be made on an application under section 9 of the Guardianship of Minors Act 1971) there shall be inserted the following subsection—

“(4A) Where a custodianship order is made by virtue of a direction under subsection (3) or a direction under section 8(3) of the Domestic Proceedings and Magistrates' Courts Act 1978, the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the custodianship order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.”.

**70 Restriction on removal of child from England and Wales**

After section 43 of the Children Act 1975 there shall be inserted the following section—

**“43A Restriction on removal of child from England and Wales.**

- (1) Where an authorised court makes—
  - (a) a custodianship order in respect of a child, or
  - (b) an interim order under section 34(4) containing provision regarding the legal custody of a child,the court, on making that order or at any time while that order is in force, may, if an application is made under this section, by order direct that no person shall take the child out of England and Wales while the order made under this section is in force, except with the leave of the court.
- (2) An authorised court may by order vary or revoke any order made under this section.
- (3) An application for an order under subsection (1), or for the variation or revocation of such an order, may be made by the mother or father of the child or by the custodian.”.

**71 Orders made on appeal from a magistrates' court**

At the end of section 101 of the Children Act 1975 (which relates to appeals) there shall be added the following subsection—

“(4) Any order made on an appeal under subsection (2) from a decision of a magistrates' court on an application under Part II (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of sections 35, 35A and 36 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.”.



*Amendments of enactments relating to adoption*

**72 Alteration in age limits for certain orders made on refusal of adoption order**

- (1) In section 17(1) of the Children Act 1975 (which enables the court, on the refusal of an adoption order, to make a supervision order or commit the child to the care of a local authority) the words " under the age of 16 " shall be omitted.
- (2) In section 26(1) of the Adoption Act 1976 (which enables the court, on the refusal of an adoption order, to make a supervision order or commit the child to the care of a local authority) the words " under the age of 16 years " shall be omitted.

**73 Hearing in private of adoption proceedings**

- (1) In section 21 of the Children Act 1975 (which relates to the hearing in private of proceedings under Part I of that Act)—
  - (a) in subsection (1) for the word " proceedings" there shall be substituted the words " adoption proceedings " and the words " under this Part " shall be omitted ;
  - (b) in subsection (2) for the words " all proceedings " there shall be substituted the words " adoption proceedings " and the words " under this Part" shall be omitted;
  - (c) after subsection (2) there shall be inserted the following subsection—

“(2A) In this section " adoption proceedings " means proceedings under this Part or under the Adoption Act 1958, the Adoption Act 1960 or the Adoption Act 1968.”.
- (2) In section 64 of the Adoption Act 1976 (which relates to the hearing in private of certain proceedings under that Act) for the words " Part II, section 29 or section 55 " there shall be substituted the words " this Act ".

**74 Provisions relating to Convention adoption orders**

- (1) In section 24 of the Children Act 1975 (which relates to Convention adoption orders) after subsection (8) there shall be inserted the following subsection—

“(8A) Section 6(1) of the Adoption Act 1968 (which relates to the annulment of convention adoptions) shall apply in relation to an adoption effected by a Convention adoption order as it applies in relation to a convention adoption except that an adoption effected by a Convention adoption order may be annulled only by the court which made that order; and section 7(1), (2) and (4) of that Act shall apply accordingly.”.
- (2) In section 53(1) of the Adoption Act 1976 (which relates to the annulment of regulated adoptions) after the words " regulated adoption " there shall be inserted the words " or an adoption effected by a Convention adoption order ".
- (3) In Schedule 3 to the Children Act 1975 paragraph 26 (which excludes Convention adoption orders from the provisions of the Adoption Act 1958 relating to notification of the revocation of an adoption order) shall be omitted.

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- (4) In Schedule 1 to the Adoption Act 1976 in paragraph 6 (which relates to the notification to the Registrar General of the revocation of an adoption order) the words " other than a Convention adoption order " shall be omitted.
- (5) In section 6(1) of the Adoption (Hague Convention) Act (Northern Ireland) 1969 after the word " annul" there shall be inserted the words " an adoption effected by a convention adoption order or " ; and in section 7(2) of that Act the words " in respect of a foreign convention adoption " shall be omitted.

## PART IV

### AMENDMENTS OF THE MAGISTRATES' COURTS ACT 1952

#### 75 **Jurisdiction to deal with complaints**

In section 44 of the Magistrates' Courts Act 1952 (which relates to the jurisdiction of magistrates' courts to hear complaints) for the words " petty sessions area for which the court acts " there shall be substituted the words " commission area for which the court is appointed " and at the end of that section there shall be added—

“In this Part of this Act the expression " commission area " has the same meaning as in section 1 of the Administration of Justice Act 1973.”.

#### 76 **Extension of power to vary orders for periodical payments**

At the end of section 53 of the Magistrates' Courts Act 1952 (which relates to the revocation, variation and revival of orders for the periodical payment of money) there shall be added the following paragraph—

“The power to vary an order by virtue of this section shall include power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.”.

#### 77 **Provisions as to payments required to be made to a child etc.**

After section 53 of the Magistrates' Courts Act 1952 there shall be inserted the following section—

##### “53A Provisions as to payments required to be made to a child etc.

(1) Where—

- (a) periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made by a magistrates' court, or
- (b) periodical payments are required to be made to a child under an order which is registered in a magistrates' court,

any sum required under the order to be paid to the child may be paid to the person with whom the child has his home, and that person—

- (i) may proceed in his own name for the variation, revival or revocation of the order, and
- (ii) may either proceed in his own name for the recovery of any sum required to be paid under the order or request the clerk

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to the magistrates' court, under subsection (3) of section 52 of this Act, to proceed for the recovery of that sum.

- (2) Where a child has a right under any enactment to apply for the revival of an order made by a magistrates' court which provided for the making of periodical payments to or for the benefit of the child, the person with whom the child has his home may proceed in his own name for the revival of that order.
- (3) Where any person by whom periodical payments are required to be paid to a child under an order made by or registered in a magistrates' court makes a complaint for the variation or revocation of that order, the person with whom the child has his home may answer the complaint in his own name.
- (4) Nothing in subsections (1) and (2) of this section shall affect any right of a child to proceed in his own name for the variation, revival or revocation of an order or for the recovery of any sum payable thereunder.
- (5) In this section references to the person with whom a child has his home shall be construed in accordance with Part IV of the Children Act 1975, except that, in the case of any child in the care of a local authority, the local authority shall be treated for the purposes of this section as the person with whom the child has his home.
- (6) In this section any reference to an order registered in a magistrates' court is a reference to an order registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958.
- (7) In this section the expression " child " means a person who has not attained the age of eighteen.”.

## **78 Penalties for disobeying orders other than for the payment of money**

- (1) In section 54(3) of the Magistrates' Courts Act 1952 (which provides penalties for disobeying orders other than for the payment of money) for the words from " the court may " to the end of the subsection there shall be substituted the words " the court may—
  - (a) order him to pay a sum not exceeding £50 for every day during which he is in default or a sum not exceeding £1,000; or
  - (b) commit him to custody until he has remedied his default or for a period not exceeding two months;

but a person who is ordered to pay a sum for every day during which he is in default or who is committed to custody until he has remedied his default shall not by virtue of this section be ordered to pay more than £1,000 or be committed for more than two months in all for doing or abstaining from doing the same thing contrary to the order (without prejudice to the operation of this section in relation to any subsequent default).”.

- (2) For subsection (4) of the said section 54 there shall be substituted the following subsection—
  - “(4) Any sum ordered to be paid under the last preceding subsection shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court.”.

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## 79 Meaning of " domestic proceedings "

- (1) For subsection (1) of section 56 of the Magistrates' Courts Act 1952 (which defines " domestic proceedings " for the purposes of that Act) there shall be substituted the following subsections—

“(1) In this Act " domestic proceedings " means proceedings under any of the following enactments, that is to say—

- (a) the Maintenance Orders (Facilities for Enforcement) Act 1920;
- (b) section 87 or section 88 of the Children and Young Persons Act 1933;
- (c) section 43 or section 44 of the National Assistance Act 1948;
- (d) section 26 of the Children Act 1948 ;
- (e) section 3 of the Marriage Act 1949 ;
- (f) the Affiliation Proceedings Act 1957 ;
- (g) the Guardianship of Minors Acts 1971 and 1973 ;
- (h) Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972;
- (i) Part II of the Children Act 1975 ;
- (j) the Adoption Act 1976, except proceedings under section 34 of that Act;
- (k) section 18 or section 19 of the Supplementary Benefits Act 1976;
- (l) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 ;
- (m) section 53 of this Act;

except that, subject to subsection (1A) below, it does not include—

- (i) proceedings for the enforcement of any order made, confirmed or registered under any of those enactments ;
- (ii) proceedings for the variation of any provision for the periodical payment of money contained in an order made, confirmed or registered under any of those enactments; or
- (iii) proceedings on an information in respect of the commission of an offence under any of those enactments.

(1A) The court before which there fall to be heard any of the following proceedings, that is to say—

- (a) proceedings (whether under this Act or any other enactment) for the enforcement of any order made, confirmed or registered under any of the enactments specified in paragraphs (a) to (l) of subsection (1) of this section ;
- (b) proceedings (whether under this Act or any other enactment) for the variation of any provision for the making of periodical payments contained in an order made, confirmed or registered under any of those enactments;
- (c) proceedings for an attachment of earnings order to secure maintenance payments within the meaning of the Attachment of Earnings Act 1971 or for the discharge or variation of such an order; or
- (d) proceedings for the enforcement of a maintenance order which is registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958 or for the variation of the rate of payments specified by such an order,

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may if it thinks fit order that those proceedings and any other proceedings being heard therewith shall, notwithstanding anything in subsection (1) of this section, be treated as domestic proceedings for the purposes of this Act.

- (1B) Where the same parties are parties—
- (a) to proceedings which are domestic proceedings by virtue of subsection (1) of this section, and
  - (b) to proceedings which the court has power to treat as domestic proceedings by virtue of subsection (1A) of this section,
- and the proceedings are heard together by a magistrates' court, the whole of those proceedings shall be treated as domestic proceedings for the purposes of this Act.
- (1C) No appeal shall lie from the making of, or refusal to make, an order under subsection (1A) of this section.
- (1D) Until the Adoption Act 1976 comes into force subsection (1) of this section shall have effect as if for paragraph (j) thereof there were substituted the following paragraph—
- “(j) the Adoption Act 1958, the Adoption Act 1960 or Part I of the Children Act 1975, except proceedings under section 42 or 43 of the Adoption Act 1958.””

## 80 Domestic courts

After section 56 of the Magistrates' Courts Act 1952 there shall be inserted the following sections—

### “56A Domestic courts.

- (1) Magistrates' courts constituted in accordance with the provisions of this section and sitting for the purpose of hearing domestic proceedings shall be known as domestic courts.
- (2) A justice shall not be qualified to sit as a member of a domestic court unless he is a member of a domestic court panel, that is to say a panel of justices specially appointed to deal with domestic proceedings.
- (3) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949 relating to the procedure and practice to be followed in magistrates' courts, provision may be made by such rules with respect to any of the following matters, that is to say—
  - (a) the formation and revision of domestic court panels and the eligibility of justices to be members of such panels ;
  - (b) the appointment of persons as chairmen of domestic courts; and
  - (c) the composition of domestic courts.
- (4) Any provision made by rules by virtue of subsection (3) of this section for the formation of domestic court panels shall include provision for the formation of at least one domestic court panel for each commission area, but provision shall not be made by the rules for the formation of more than one domestic court panel for any petty sessions area.

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- (5) Rules made by virtue of subsection (3) of this section may confer powers on the Lord Chancellor with respect to any of the matters specified in the rules and may, in particular, provide for the appointment of domestic court panels by him and for the removal from a domestic court panel of any justice who, in his opinion, is unsuitable to serve on a domestic court.
- (6) Rules made by virtue of subsection (3) of this section may make different provision in relation to different areas for which domestic court panels are formed; and in the application of this section to the counties of Greater Manchester, Merseyside and Lancashire for any reference in subsection (5) of this section to the Lord Chancellor there shall be substituted a reference to the Chancellor of the Duchy of Lancaster.
- (7) A stipendiary magistrate who is a member of a domestic court panel may, notwithstanding anything in section 56(2) of this Act, hear and determine domestic proceedings when sitting alone.
- (8) Nothing in this section shall require the formation of a domestic court panel for the City of London.

#### **56B Combined domestic court panels.**

- (1) Where the Secretary of State considers—
  - (a) that a combined domestic court panel should be formed for two or more petty sessions areas, or
  - (b) that any combined domestic court panel which has been so formed should be dissolved,
 he may direct the magistrates' court committee for the area concerned to review the functioning of domestic courts in their area and on completion of the review to submit a report to the Secretary of State.
- (2) Where the Secretary of State gives a direction under subsection (1) of this section then—
  - (a) after consideration of any report submitted to him under that subsection, or
  - (b) if the committee fail to comply with the direction within six months from the giving thereof, after the expiration of that period of six months,
 the Secretary of State may if he thinks fit, make an order for the formation of a combined domestic court panel for the petty sessions areas concerned or, as the case may be, for the dissolution of the combined domestic court panel concerned.
- (3) Where the Secretary of State proposes to make an order under subsection (2) of this section, he shall send a copy of the proposed order to the magistrates' courts committee for any area the whole or part of which is concerned and to any domestic court panel which is concerned.
- (4) Where a copy of the proposed order is required to be sent under subsection (3) of this section to any committee or panel, the Secretary of State shall, before making an order, consider any representations made to him by the committee or panel within one month from the time the copy of the proposed order was sent.

- (5) An order of the Secretary of State under subsection (2) of this section shall be made by statutory instrument and may be revoked or varied by a subsequent order thereunder.
- (6) Any order made under subsection (2) of this section may contain supplementary, incidental and consequential provisions.
- (7) In the application of this section to the inner London area (within the meaning of the Administration of Justice Act 1964) any reference to the magistrates' courts committee shall be treated as a reference to the committee of magistrates.”.

## **81 Persons who may be present during hearing of domestic proceedings**

- (1) For subsection (2) of section 57 of the Magistrates' Courts Act 1952 there shall be substituted the following subsection—

“(2) In the case of domestic proceedings in a magistrates' court other than proceedings under the Adoption Act 1976, no person shall be present during the hearing and determination by the court of the proceedings except—

- (a) officers of the court;
- (b) parties to the case before the court, their solicitors and counsel, witnesses and other persons directly concerned in the case ;
- (c) representatives of newspapers or news agencies;
- (d) any other person whom the court may in its discretion permit to be present, so, however, that permission shall not be withheld from a person who appears to the court to have adequate grounds for attendance.”.

- (2) After subsection (2) of section 57 of the Magistrates' Courts Act 1952 there shall be inserted the following subsections—

“(2A) In relation to any domestic proceedings under the Adoption Act 1976, subsection (2) of this section shall apply with the omission of paragraphs (c) and (d).

(2B) Until the coming into operation of the Adoption Act 1976 this section shall have effect as if for any reference to that Act there were substituted a reference to the Adoption Act 1958, the Adoption Act 1960 and Part I of the Children Act 1975.”.

## **82 Restriction on newspaper reports of domestic proceedings**

- (1) In subsection (1) of section 58 of the Magistrates' Courts Act 1952 (which relates to newspaper reports of domestic proceedings) at the beginning there shall be inserted the words " In the case of domestic proceedings in a magistrates' court (other than proceedings under the Adoption Act 1976) " and for the words " domestic proceedings in a magistrates' court" there shall be substituted the words " the proceedings ".

- (2) After subsection (1) of the said section 58 there shall be inserted the following subsections—

“(1A) In the case of domestic proceedings in a magistrates' court under the Adoption Act 1976, subsection (1) above shall apply with the omission of paragraphs (a) and (b) and the reference in that subsection to the particulars of the

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proceedings shall, in relation to any child concerned in the proceedings, include—

- (a) the name, address or school of the child,
- (b) any picture as being, or including, a picture of the child, and
- (c) any other particulars calculated to lead to the identification of the child.

(1B) Until the coming into operation of the Adoption Act 1976 this section shall have effect as if for any reference to that Act there were substituted a reference to the Adoption Act 1958, the Adoption Act 1960 and Part I of the Children Act 1975.”.

(3) For subsection (2) of the said section 58 there shall be substituted the following subsection—

“(2) Any person acting in contravention of this section shall be liable on summary conviction to a fine not exceeding £500.”.

### **83 Reports by probation officers on means of parties**

Section 60 of the Magistrates' Courts Act 1952 (which provides that a court which has requested a probation officer to investigate the means of parties may require the probation officer to furnish to the court a statement in writing or make an oral statement about his investigation) shall have effect subject to the following provisions—

- (a) in subsection (1) the word " periodical" and the words " or in any proceedings in any matter of bastardy " shall be omitted;
- (b) in subsection (2) the words " which shall be read aloud in the presence of such parties to the proceedings as may be present at the hearing " shall be omitted;
- (c) for subsection (3) there shall be substituted the following subsections—

“(3) Where the court requires a probation officer to furnish a statement in writing under subsection (2) of this section—

- (a) a copy of the statement shall be given to each party to the proceedings or to his counsel or solicitor at the hearing; and
- (b) the court may, if it thinks fit, require that the statement, or such part of the statement as the court may specify, shall be read aloud at the hearing.

(3A) The court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor shall, require the probation officer to give evidence about his investigation, and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any matter referred to either in the statement or in the evidence given by the officer.”;

- (d) in subsection (4) for the words " subsection (3)" there shall be substituted the words " subsection (3A) ".



## PART V

### SUPPLEMENTARY PROVISIONS

#### **84 Reasons for decisions in domestic proceedings**

- (1) The power to make rules conferred by section 15 of the Justices of the Peace Act 1949 shall, without prejudice to the generality of subsection (1) of that section, include power to make provision for the recording by a magistrates' court, in such manner as may be prescribed by the rules, of reasons for a decision made in such domestic proceedings or class of domestic proceedings as may be so prescribed, and for making available a copy of any record made in accordance with those rules of the reasons for a decision of a magistrates' court to any person who requests a copy thereof for the purposes of an appeal against that decision or for the purpose of deciding whether or not to appeal against that decision.
- (2) A copy of any record made by virtue of this section of the reasons for a decision of a magistrates' court shall, if certified by such officer of the court as may be prescribed, be admissible as evidence of those reasons.

#### **85 Periodical payments payable by one person under more than one order**

- (1) The power to make rules conferred by section 15 of the Justices of the Peace Act 1949 shall, without prejudice to the generality of subsection (1) of that section, include power to make provision—
  - (a) for enabling a person to make one complaint for the recovery of payments required to be made to him by another person under more than one periodical payments order; and
  - (b) for apportioning between two or more periodical payments orders, in such manner as may be prescribed by the rules, any sum paid to a clerk to a magistrates' court on any date by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him).
- (2) In this section—

"child" means a person who has not attained the age of eighteen;

"periodical payments order" means an order made by a magistrates' court, or registered in a magistrates court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958, which requires the making of periodical payments,

and any payments required under a periodical payments order to be made to a child shall for the purposes of subsection (1) above be treated as if they were required to be made to the person with whom the child has his home.

#### **86 Amendment of Administration of Justice Act 1964**

- (1) Section 2(3) of the Administration of Justice Act 1964 (which provides that, for the purposes of the law relating to justices of the peace, magistrates' courts and other

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matters therein mentioned, a London commission area shall be deemed to be a county) shall have effect, and shall be deemed to have had effect as from 1st April 1974, as if—

- (a) after the words " magistrates' courts " there were inserted the words " magistrates' courts committees ";
  - (b) before the word " county ", where it first occurs, there were inserted the words " non-metropolitan "; and
  - (c) after the words " passing of this Act " there were inserted the words " and references to a non-metropolitan county in any enactment or instrument as amended or modified by or under the Local Government Act 1972 ".
- (2) Section 2(3A) of the said Act of 1964 (which provides that for the purposes of the law relating to magistrates' courts committees a London commission area shall be deemed to be a non-metropolitan county) shall cease to have effect.

## 87 Expenses

There shall be defrayed out of moneys provided by Parliament any increase attributable to this Act in the sums payable out of moneys so provided under any other enactment.

## 88 Interpretation

(1) In this Act—

" actual custody," in relation to a child, means the actual possession of his person ;

" child ", in relation to one or both of the parties to a marriage, includes an illegitimate child of that party or, as the case may be, of both parties ;

" child of the family", in relation to the parties to a marriage, means—

- (a) a child of both of those parties; and
- (b) any other child, not being a child who is being boarded-out with those parties by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;

" commission area " has the same meaning as in section 1 of the Administration of Justice Act 1973 ;

" domestic proceedings " has the meaning assigned to it by section 56 of the Magistrates' Courts Act 1952;

" local authority " means the council of a county (other than a metropolitan county), of a metropolitan district or of a London borough, or the Common Council of the City of London;

" petty sessions area " means any of the following areas, that is to say, a non-metropolitan county which is not divided into petty sessional divisions, a petty sessional division of a non-metropolitan county, a metropolitan district which is not divided into petty sessional divisions, a petty sessional division of a metropolitan district, a London commission area which is not divided into petty sessional divisions, a petty sessional division of a London commission area and the City of London;

" rules " means rules made under section 15 of the Justices of the Peace Act 1949.

- (2) References in this Act to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

- (3) For the avoidance of doubt it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.
- (4) Anything authorised or required by this Act to be done by, to or before the magistrates' court by, to or before which any other thing was done, or is to be done, may be done by, to or before any magistrates' court acting for the same petty sessions area as that court.
- (5) Any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any subsequent enactment, including this Act.

## **89 Transitional provisions, amendments, repeals and commencement**

- (1) The transitional provisions contained in Schedule 1 to this Act shall have effect.
- (2) Subject to the transitional provisions contained in Schedule 1 to this Act—
  - (a) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments and amendments consequential on the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) This Act shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint and different dates may be appointed for, or for different purposes of, different provisions.
- (4) Without prejudice to the transitional provisions contained in Schedule 1 to this Act, an order under subsection (3) above may make such further transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of the provisions thereby brought into force or any provision of this Act then in force as appear to him to be necessary or expedient in consequence of the partial operation of this Act or the Children Act 1975.
- (5) An order under subsection (3) above may repeal any provision of this Act which has ceased to have effect by reason of the coming into force of the Adoption Act 1976.
- (6) The inclusion in this Act of any express transitional provision or amendment shall not be taken as prejudicing the general application of section 38 of the Interpretation Act 1889 with regard to the effect of repeals.

## **90 Short title and extent**

- (1) This Act may be cited as the Domestic Proceedings, and Magistrates' Courts Act 1978.
- (2) Except for the following provisions, that is to say—
  - (a) sections 54, 55, 60, 61, 74(1) and (3), 87, 88(5), 89(2)(a), (3) and (4) and this section, and
  - (b) paragraphs 1, 12, 13, 14, 17 and 18 of Schedule 2this Act does not extend to Scotland.
- (3) Except for the following provisions, that is to say—
  - (a) sections 54, 59, 74(5), 88(5), 89(2), (3) and (4) and this section, and
  - (b) paragraphs 12, 13, 14, 33 and 34(a) of Schedule 2 and Schedule 3,

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this Act does not extend to Northern Ireland, and in section 88(5) of this Act any reference to an enactment includes a reference to an enactment contained in an Act of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly.

## SCHEDULES

### SCHEDULE 1

Section 89.

#### TRANSITIONAL PROVISIONS

- 1 This Act (including the repeals and amendments made by it) shall not have effect in relation to any application made under any enactment repealed or amended by this Act if that application is pending at the time when the provision of this Act which repeals or amends that enactment comes into force.
- 2 Any order made or other thing done under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 which is in force: immediately before the coming into force of Part I of this Act shall not be affected by the repeal by this Act of that Act, and the provisions of that Act shall after the coming into force of the said Part I apply in relation to such an order, and to an order made under that Act by virtue of paragraph 1 above, subject to the following modifications—
  - (a) on a complaint for the revocation of the order the court shall not be bound under section 8 of that Act to revoke the order by reason of an act of adultery committed by the person on whose complaint the order was made ;
  - (b) on a complaint for the variation, revival or revocation of the order, the court, in exercising its powers under the said section 8 in relation to a provision of the order requiring the payment of money, shall have regard to any change in any of the matters to which the court would have been required to have regard when making that order if the order had been made on an application under section 2 of this Act;
  - (c) where the order contains a provision for the legal custody of a child, the court shall have power, on a complaint made by a grandparent of the child, to vary that order under the said section 8 by the addition to the order of a provision requiring access to the child to be given to that grandparent;
  - (d) where the court, by virtue of paragraph (c) above, varies the order by the addition of a provision requiring access to a child to be given to a grandparent, the court shall have power to vary or revoke that provision on a complaint made—
    - (i) by that grandparent, or
    - (ii) by either party to the marriage in question, or
    - (iii) where the child is not a child of both the parties to the marriage, by any person who though not a party to the marriage is a parent of the child, or
    - (iv) where under the order a child is for the time being committed to the legal custody of some person other than one of the parents or a party to the marriage, by the person to whose legal custody the child is committed by the order.
- 3 The amendment by this Act of any enactment shall not affect the operation of that enactment in relation to any order made or having effect as if made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (including an order made under that Act by virtue of paragraph 1 above) or in relation to any decision of a

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- magistrates' court made on an application for such an order or for the variation, revival or revocation of such an order.
- 4 Any reference in paragraph 1 above to an application made under an enactment repealed by this Act shall be construed as including a reference to an application which is treated as a complaint under section 1 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 by virtue of section 27 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 and any reference in paragraph 2 or 3 above to an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 shall be construed as including a reference to an order which is made under that Act by virtue of section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972.
- 5 A provision contained in section 72 or in any of sections 79 to 82 of this Act shall not apply in relation to proceedings commenced before the coming into force of that provision.
- 6 The amendment by subsection (1) of section 78 of this Act of section 54(3) of the Magistrates' Courts Act 1952 shall not affect the punishment for disobeying an order of a magistrates' court if the default occurred before the date on which the said subsection (1) comes into force.
- 7 The amendment by subsection (3) of section 82 of this Act of section 58(2) of the Magistrates' Courts Act 1952 shall not affect the punishment for an offence under the said section 58 which is committed before the date on which the said subsection (3) comes into force, except that a person shall not be liable to imprisonment in respect of an offence for which proceedings are commenced after that date even if the offence was committed before that date.
- 8 A provision of Schedule 2 to this Act which relates to the punishment by way of fine which may be imposed for any offence shall not affect the punishment which may be imposed for an offence which is committed before the date on which that provision comes into force.

## SCHEDULE 2

Section 89.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Sheriff Courts (Scotland) Act 1907 (c. 51)*

- 1 In section 5 of the Sheriff Courts (Scotland) Act 1907—
- (a) in subsection (2), after the words "Actions of aliment", there shall be inserted the words " (other than any action mentioned in sub-section (2A) below) ";
  - (b) the following subsection shall be inserted after subsection (2)—
 

“(2A) Actions, arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, for the recovery of maintenance :”; and
  - (c) in the final proviso, for the words " the second sub-section " there shall be substituted the words " sub-section (2) or (2A) ".

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*The Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33)*

- 2 In section 3(4) of the Maintenance Orders Act 1920 for the words " sitting and acting for the same place " there shall be substituted the words " appointed for the same commission area (within the meaning of section 1 of the Administration of Justice Act 1973) ".

*The Children and Young Persons Act 1933 (c. 12)*

- 3 In subsections (1) and (4) of section 87 of the Children and Young Persons Act 1933 for the words " having jurisdiction in the place" there shall be substituted the words " appointed for the commission area ".
- 4 In section 88 of that Act—
- (a) in subsections (1), (2) and (4) for the words "having jurisdiction in the place " there shall be substituted the words " appointed for the commission area ".
  - (b) in subsection (2)(c) for the words " £10 " there shall be substituted the words " £50 ".
- 5 In section 107(1) of that Act after the definition of " child " there shall be inserted the following definition—
- “ commission area' has the same meaning as in section 1 of the Administration of Justice Act 1973.”

*The National Assistance Act 1948 (c. 29)*

- 6 In section 43(4) of the National Assistance Act 1948 for the words " having jurisdiction in the place " there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) ".
- 7 In section 44(2) of that Act for the words " having jurisdiction in the place" there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973). "

*The Children Act 1948 (c. 43)*

- 8 In subsections (1) and (4) of section 26 of the Children Act 1948 for the words " having jurisdiction in " there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) which includes. "

*The Marriage Act 1949 (c. 76)*

- 9 In section 3(5) of the Marriage Act 1949 for the words " having jurisdiction in the place" there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973). "

*The Justices of the Peace Act 1949 (c. 101)*

- 10 In section 13(4) of the Justices of the Peace Act 1949 after the words " juvenile " there shall be inserted the words " or domestic ".

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*The Maintenance Orders Act 1950 (c. 37.)*

- 11 In section 3(2) of the Maintenance Orders Act 1950 for the words " having jurisdiction in the place " there shall be substituted the words " appointed for the commission area (within the meaning of the Administration of Justice Act 1973) ".
- 12 In section 15(1)(a) of that Act for sub-paragraph (ii) there shall be substituted the following sub-paragraph—  
     “(ii) section 24(1) and 30(3) of the Domestic Proceedings and Magistrates' Courts Act 1978”.
- 13 In section 16(2)(a) of that Act, for sub-paragraph (ii) there shall be substituted the following sub-paragraph—  
     “(ii) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978.”
- 14 In section 22(1) of that Act after the words " person liable to make ", in the first place where they occur, there shall be inserted the word " periodical ".

*The Magistrates' Courts Act 1952 (c. 55)*

- 15 In section 52(2) of the Magistrates' Courts Act 1952 for the words "the Summary Jurisdiction (Separation and Maintenance) Acts 1895 to 1949" there shall be substituted the words " Part I of the Domestic Proceedings and Magistrates' Courts Act 1978. "

*The Affiliation Proceedings Act 1957 (c. 55)*

- 16 In section 9(2) of the Affiliation Proceedings Act 1957 for the words " £10 " there shall be substituted the words " £50 ".

*The Adoption Act 1958 (7 & 8 Eliz. 2 c. 5)*

- 17 In section 32(2) of the Adoption Act 1958 for the words " subsection (2)" there shall be substituted the words " subsection (1A) ".
- 18 In section 34A(3) of that Act—
- (a) for the words "the authority", in the first place where those words occur, there shall be substituted the words " a local authority ";
  - (b) after the words " the authority", in the second place where those words occur, there shall be inserted the words " in whose care the child is ";
  - (c) for the words " the court" there shall be substituted the words " a court ".

*The County Courts Act 1959 (c. 22)*

- 19 In section 109(2) of the County Courts Act 1959—
- (a) in paragraph (g) for the words " section 13A of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 " there shall be substituted the words " section 35 of the Domestic Proceedings and Magistrates' Courts Act 1978 ";
  - (b) in paragraph (h) after the words " proceedings under " there shall be inserted the words " section 34 or 34A of the Adoption Act 1958 ; "
  - (c) in paragraph (i) for the words " section 29 " there shall be substituted the words " section 27, 28, 29 ".



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*The Children and Young Persons Act 1963 (c. 51)*

- 20 In sections 47 and 58 of the Children and Young Persons Act 1963 for the words "the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words "Part I of the Domestic Proceedings and Magistrates' Courts Act 1978".

*Administration of Justice Act 1964 (c. 42)*

- 21 In section 11(1) of the Administration of Justice Act 1964—
- (a) at the beginning there shall be inserted the words "notwithstanding anything in section 56A of the Magistrates' Courts Act 1952";
  - (b) at the end of paragraph (a) there shall be inserted the words "who are members of the domestic court panel for that area";
  - (c) at the end of paragraph (b) there shall be inserted the words "who are members of that panel".

*The Health Services and Public Health Act 1968 (c. 46)*

- 22 In section 64(3)(a) of the Health Services and Public Health Act 1968 for sub-paragraph (ix) there shall be substituted the following sub-paragraph—
- “(ix) section 9 of the Domestic Proceedings and Magistrates' Courts Act 1978”.
- 23 In section 65(3)(b) of that Act for sub-paragraph (x) there shall be substituted the following sub-paragraph—
- “(x) section 9 of the Domestic Proceedings and Magistrates' Courts Act 1978”.

*The Children and Young Persons Act 1969 (c. 54)*

- 24 In section 63(6)(g) of the Children and Young Persons Act 1969 for the words "section 2(1)(f) of the Matrimonial Proceedings (Magistrates Courts) Act 1960" there shall be substituted the words "section 9 of the Domestic Proceedings and Magistrates' Courts Act 1978".

*The Administration of Justice Act 1970 (c. 31)*

- 25 In Schedule 1 of the Administration of Justice Act 1970 for the words "section 11 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words "section 29 of the Domestic Proceedings and Magistrates' Courts Act 1978" and for the words "the Matrimonial Proceedings (Magistrates' Courts) Act 1960" in the second and third place where those words occur there shall be substituted the words "Part I of the Domestic Proceedings and Magistrates' Courts Act 1978".
- 26 In Schedule 8 of that Act in paragraph 3 for the words "or having effect as if made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words "under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978".

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*The Local Authority Social Services Act 1970 (c. 42)*

- 27 In Schedule 1 of the Local Authority Social Services Act 1970, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act 1960 shall be omitted and at the end of that Schedule there shall be inserted—

“The Domestic Proceedings and Magistrates' Courts Act 1978. Section 9.	Supervision of child subject to court order in matrimonial proceedings.”
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*The Matrimonial Proceedings and Property Act 1970 (c. 45)*

- 28 In section 30(2) of the Matrimonial Proceedings and Property Act 1970 for the words "Subsections (4), (5) and (6) of section 7 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words " Section 4(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 "for the words " section 2(1)(b) or (c) " there shall be substituted the words " section 2(1)(a) " and for the words " as they apply in relation to such an order as is referred to in the said subsection (4) " there shall be substituted the words " as it applies in relation to an order made under section 2(1)(a) of the Domestic Proceedings and Magistrates' Courts Act 1978 ".

*The Guardianship of Minors Act 1971 (c. 3)*

- 29 In section 13(2) of the Guardianship of Minors Act 1971 for the words " £10 " there shall be substituted the words " £50 ".
- 30 In section 14(3) of that Act for the words " and 10 " there shall be substituted the words " 10 and 14A(5) and (6) ".
- 31 In section 16(5) of that Act after the words "magistrates' court under" there shall be inserted the words " section 14A of this Act regarding access to a minor by a grandparent or under ".

*The Attachment of Earnings Act 1971 (c. 32)*

- 32 In Schedule 1 to the Attachment of Earnings Act 1971 in paragraph 4 for the words " or having effect as if made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words " under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 ".

*The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)*

- 33 In section 8(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for the words " £10 " there shall be substituted the words " £50 ".
- 34 In section 27 of that Act—
- (a) in subsection (1) for the words " sections 28, 29 " there shall be substituted the words " sections 28, 28A, 29, 29A ";
  - (b) in subsection (9) for the words " section 13(2) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 " there shall be substituted the words " section 32(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 ".

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- 35 In section 35(1) of that Act for the words " section 28(6)(d)" there shall be substituted the words " 28, 28A(3)(e) ".
- 36 In section 41 of that Act—
- (a) in subsection (1) for paragraphs (a) and (b) there shall be substituted the words " an affiliation order ";
  - (b) for subsection (2) there shall be substituted the following subsections: —
    - “(2) The jurisdiction to revoke or vary an order for the periodical payment of money conferred on magistrates' courts by sections 9, 10 or 11 of the Guardianship of Minors Act 1971 shall be exercisable notwithstanding that the proceedings for the revocation or variation of the order are brought by or against a person residing outside England and Wales.
    - (2A) Subject to subsection (2B) below, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules made under section 15 of the Justices of the Peace Act 1949, proceed on—
      - (a) an application made under section 53 of the Magistrates' Courts Act 1952 for the revocation, revival or variation of an affiliation order, or
      - (b) an application made under section 9, 10, 11 or 12C(5) of the Guardianship of Minors Act 1971 for the revocation, revival or variation of an order for the periodical payment of money made under the said section 9,10 or 11,notwithstanding that the respondent has not been served with the summons ; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.
    - (2B) A magistrates' court shall not—
      - (a) exercise its powers under section 53 of the Magistrates' Courts Act 1952 so as to increase the amount of any periodical payments required to be made by any person under an affiliation order; or
      - (b) exercise its powers under section 9, 10 or 11 of the Guardianship of Minors Act 1971 so as to increase the amount of any periodical payments required to be made by any person by an order under one of those sections,unless those powers are exercised at a hearing at which the person required to make the periodical payment appears or the requirements of section 47(3) of the Magistrates' Courts Act 1952 with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.”
- 37 In section 42(1) of that Act for the words " section 2(1)(b) or (c) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (payment of weekly sums by husband or wife)" there shall be substituted the words " section 2(1)(a) of the Domestic Proceedings and Magistrates' Courts Act 1978 (making of periodical payments by husband or wife) ".

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*The Matrimonial Causes Act 1973 (c. 18)*

- 38 In section 4(1) of the Matrimonial Causes Act 1973 after the words " the Matrimonial Proceedings (Magistrates' Courts) Act 1960 " there shall be inserted the words " or Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 " .
- 39 In section 47(2)(e) of that Act for the words " the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words " Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 " .
- 40 In section 50(2)(b) of that Act for the words " the Matrimonial Proceedings (Magistrates' Courts) Act 1960 " there shall be substituted the words " Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 " .

*The Guardianship Act 1973 (c. 29)*

- 41 In section 4(2) of the Guardianship Act 1973 there shall be added at the end the words " but the court shall not be required by virtue of this subsection to inform the local authority of their proposal to make such an order if an officer of the authority has already made to the court under section 6 of this Act a report which contains a recommendation that an order should be made under the said section 2(2)(b) " .
- 42 In section 4(3) of that Act for the words " sections 12(2) and " there shall be substituted the word " section " .
- 43 In section 4(6) of that Act for the words " £10 " there shall be substituted the words " £50 " .
- 44 In section 5(2) of that Act for the words " section 9(3) and (4)" there shall be substituted the words " section 9(4) " .

*The Legal Aid Act 1974 (c. 4)*

- 45 In Schedule 1 to the Legal Aid Act 1974 in paragraph 3—
- (a) sub-paragraph (a) shall be omitted ;
  - (b) in sub-paragraph (d) for the words " proceedings in which " there shall be substituted the words " proceedings in relation to an application for leave of the court to remove a child from a person's custody under section 34 or 34A of the Adoption Act 1958 or proceedings in which " ;
  - (c) the following sub-paragraph shall be inserted after subparagraph (g)—
    - “(h) proceedings for or in relation to an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978” .

*The Children Act 1975 (c. 72)*

- 46 In section 36(6) of the Children Act 1975 there shall be added at the end the words " subject to the modification that the reference in section 4(2) of that Act to section 6 of that Act shall be construed as including a reference to subsection (4) of this section " .
- 47 In section 43(2) of that Act for the words " £10 " there shall be substituted the words " £50 " .
- 48 In section 46(3) of that Act—

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- (a) in paragraph (a) for the word " payments " there shall be substituted the words " periodical payments or pay a lump sum ";
  - (b) in paragraph (b) after the words " to make " there shall be inserted the word " periodical ".
- 49 In section 101(1) of that Act after the words " this Act" there shall be inserted the words " or under section 34 or 34A of the Adoption Act 1958 ".

*The Adoption Act 1976 (c. 36)*

- 50 In section 28(3) of the Adoption Act 1976—
- (a) in paragraph (b) for the words " the local authority " there shall be substituted the words " a local authority ";
  - (b) after the words " the authority " there shall be inserted the words " in whose care the child is ".
- 51 In section 63(4) of that Act the words " to remove a child from a person's custody under section 27 or 28 or" shall be omitted.
- 52 In Schedule 3 to that Act in paragraph 18 after the words " paragraph 3(d)" there shall be inserted the words " for the words ' section 34 or 34A of the Adoption Act 1958' " there are substituted the words ' section 27 or 28 of the Adoption Act 1976' and ".

*The Domestic Violence and Matrimonial Proceedings Act 1976 (c. 50)*

- 53 In section 2 of the Domestic Violence and Matrimonial Proceedings Act 1976 at the end of subsection (4) there shall be inserted:—
- “In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday”.

*The Supplementary Benefits Act 1976 (c. 71)*

- 54 In section 19(2) of the Supplementary Benefits Act 1976 for the words " acting for the petty sessions area " there shall be substituted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) "

SCHEDULE 3

Section 89.

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
1948 c. 29.	The National Assistance Act 1948.	In section 43, subsection (7).
1950 c. 37.	The Maintenance Orders Act 1950.	In section 2, subsection (3).
1952 c. 55.	The Magistrates' Courts Act 1952.	In section 57, subsection (4).

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Chapter	Short Title	Extent of Repeal
		Section 59. In section 60, in subsection (1) the word "periodical" and the words "or in any proceedings in any matter of bastardy" and in subsection (2)(a) the words from " which shall be read aloud " to " at the hearing ". In section 61, the words "or in proceedings in any matter of bastardy."
		Section 62. In section 121, subsection (2).
1957 c. 55.	The Affiliation Proceedings Act 1957.	In section 7, subsections (1) to (3).
1960 c. 48.	The Matrimonial Proceedings (Magistrates' Courts) Act 1960.	The whole Act.
1961 c. 39.	The Criminal Justice Act 1961.	In Schedule 4, the entry relating to section 54 of the Magistrates' Courts Act 1952.
1964 c. 42.	The Administration of Justice Act 1964.	In section 2, subsection (3A). In Schedule 3, paragraph 27.
1965 c. 72.	The Matrimonial Causes Act 1965.	Section 42.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act
1968 c. 36.	The Maintenance Orders Act 1968.	In the Schedule, the entry relating to the Matrimonial Proceedings (Magistrates' Courts) Act 1960.
1969 c. 46.	The Family Law Reform Act 1969.	In section 5, subsection (2).
1969 c. 22 (N.I.).	The Adoption (Hague Convention) Act (Northern Ireland) 1969.	In section 7(2) the words " in respect of a foreign convention adoption".
1970 c. 42.	The Local Authority Social Services Act 1970.	In Schedule 1, the entry relating to the Matrimonial

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Chapter	Short Title	Extent of Repeal
		Proceedings (Magistrates' Courts) Act 1960.
1970 c. 45.	The Matrimonial Proceedings and Property Act 1970.	In section 30, subsection (1). Sections 31 to 33.
1971 c. 3.	The Guardianship of Minors Act 1971.	In section 9, subsection (3). In section 14, subsection (4).
1971 c. 38.	The Misuse of Drugs Act 1971.	Section 34.
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	In section 17, subsections (1) to (3). In section 27, subsection (3). In the Schedule, paragraph 1.
1972 c. 49.	The Affiliation Proceedings (Amendment) Act 1972.	In section 3, subsections (1) and (2).
1972 c. 70.	The Local Government Act 1972.	In Schedule 23, paragraph 10.
1973 c. 18.	The Matrimonial Causes Act 1973.	In section 27, subsection (8).
1973 c. 29.	The Guardianship Act 1973.	In section 2, in subsection (5) the words from " but an interim order " to the end of the subsection. In section 3, in subsection (2) the words from " and where a supervision order" to the end of the subsection. Section 8. In Schedule 2, paragraph 1(2).
1974 c. 4.	The Legal Aid Act 1974.	In Schedule 1, paragraph 3(a).
1975 c. 72.	The Children Act 1975.	In section 17(1) the words " under the age of 16 ". In section 21, subsection (3). Section 91. In Schedule 3, paragraphs 12 and 26.
1976 c. 36.	The Adoption Act 1976.	In section 26(1) the words " under the age of 16 years ". In section 64, paragraph (c).

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Chapter	Short Title	Extent of Repeal
1976 c. 71.	The Supplementary Benefits Act 1976.	<p>In Schedule 1, in paragraph 6, the words " other than a Convention adoption order ".</p> <p>In Schedule 3, paragraph 4.</p> <p>In section 18(7) the words from " and any proceedings for such an order " to the end of the subsection.</p> <p>In Schedule 7, the entry relating to section 43(7) of the National Assistance Act 1948.</p>