



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

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
- (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 ;

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- (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.
- (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

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- (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,
- (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.

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.
- (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—
- (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

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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.
- (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,

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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—

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- (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.

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- (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 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

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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

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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.

*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

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- (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—
- (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—
 - (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 subsection (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 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.

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- (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.
- (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

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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 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

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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 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.

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- (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' 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,

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- (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),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.

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

- (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 " 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.

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

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.