



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

#### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

##### *Maintenance agreements*

#### **34 Validity of maintenance agreements**

- (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—
- (a) that provision shall be void ; but
  - (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 35 and 36 below), be binding on the parties to the agreement.

- (2) In this section and in section 35 below—

" maintenance agreement " means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

" financial arrangements " means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

### **35 Alteration of agreements by court during lives of parties**

- (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (3) below, either party may apply to the court or to a magistrates' court for an order under this section.
- (2) If the court to which the application is made is satisfied either—
  - (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
  - (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,then subject to subsections (3), (4) and (5) below, that court may by order make such alterations in the agreement—
  - (i) by varying or revoking any financial arrangements contained in it, or
  - (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 25(3) above; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.
- (3) A magistrates' court shall not entertain an application under subsection (1) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the petty sessions area (within the meaning of the Magistrates' Courts Act 1952) for which the court acts, and shall not have power to make any order on such an application except—
  - (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
  - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.
- (4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—
  - (a) where the payments will not be secured, the term shall be so denned as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made ;
  - (b) where the payments will be secured, the term shall be so denned as not to extend beyond the death or remarriage of that party.

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

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- (5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 29(2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.
- (6) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

### **36 Alteration of agreements by court after death of one party**

- (1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 35 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of section 7 of the Family Provision Act 1966 (which confers jurisdiction on county courts in proceedings under the Inheritance (Family Provision) Act 1938 or section 26 of the Matrimonial Causes Act 1965 if the value of the deceased's net estate does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under section 26 of the Matrimonial Causes Act 1965 (application for maintenance out of deceased's estate by former spouse) in relation to the deceased's estate.
- (4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.

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- (7) Subsection (3) of section 7 of the Family Provision Act 1966 (transfer to county court of proceedings commenced in the High Court) and paragraphs (a) and (b) of subsection (5) of that section (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to any such proceedings as are referred to in subsection (1) of that section.