



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Variation, revocation and cessation of orders etc.

20 Variation, revival and revocation of orders for periodical payments

- (1) Where a magistrates' court has made an order under section 2(1)(a) or (c) of this Act for the making of periodical payments the court shall have power, on an application made under this section, to vary or revoke that order and also to make an order under section 2(1)(b) or (d) of this Act.
- (2) Where a magistrates' court has made an order under section 6 of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order so far as it relates to the making of periodical payments and, if that order also provided for the payment of a lump sum by one of the parties to the marriage in question, the court shall also have power on such an application to make an order for the payment of a further lump sum by that party either—
 - (a) to the other party to the marriage, or
 - (b) to a child of the family or to that other party for the benefit of that child.
- (3) Where a magistrates' court has made an order under section 7 of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order.
- (4) Where a magistrates' court has made an order under section 11(2)(a), (3)(a) or (4) of this Act for the making of periodical payments, the court shall have power, on an application made under this section, to vary or revoke that order and also, in the case

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- 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 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,

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- (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.
- (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

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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,
 - (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

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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.