



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART III

AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

Amendments of the Matrimonial Causes Act 1973

62 Amendment of s. 4 of Matrimonial Causes Act 1973

In section 4 of the Matrimonial Causes Act 1973 (which relates to petitions for divorce presented after the granting of a decree of judicial separation or an order in matrimonial proceedings in a magistrates' court)—

- (a) in subsection (3) after the words " judicial separation or " there shall be inserted the words " (subject to subsection (5) below) ";
- (b) at the end of the section there shall be added the following subsections—

“(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say—

- (a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home ;
- (b) any period during which there is in force an order made by the High Court or a county court under—
 - (i) section 1 of the Matrimonial Homes Act 1967, or
 - (ii) section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976,

which prohibits the exercise by the respondent of the right to occupy a dwelling-house in which the applicant and the respondent have or at any time have had a matrimonial home;

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- (c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.

(5) Where—

- (a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and
- (b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date,

then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.”.

63 Amendment of s. 27 of Matrimonial Causes Act 1973

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

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

- (a) has failed to provide reasonable maintenance for the applicant, or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.”

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

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

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

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

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

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

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(1)(a) and (b) and (2)(a) to (e) above, and

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where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in section 25(3) above.

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

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

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

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

(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then, if at any time before he attains the age of twenty-one an application is made by the child for an order under this subsection, the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under section 31 of this Act in relation to any order so revived.”.

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