



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART IV

AMENDMENTS OF THE MAGISTRATES' COURTS ACT 1952

75 Jurisdiction to deal with complaints

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

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

76 Extension of power to vary orders for periodical payments

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

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

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

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

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

- (1) Where—
- (a) periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made by a magistrates' court, or
 - (b) periodical payments are required to be made to a child under an order which is registered in a magistrates' court,
any sum required under the order to be paid to the child may be paid to the person with whom the child has his home, and that person—
 - (i) may proceed in his own name for the variation, revival or revocation of the order, and
 - (ii) may either proceed in his own name for the recovery of any sum required to be paid under the order or request the clerk to the magistrates' court, under subsection (3) of section 52 of this Act, to proceed for the recovery of that sum.
- (2) Where a child has a right under any enactment to apply for the revival of an order made by a magistrates' court which provided for the making of periodical payments to or for the benefit of the child, the person with whom the child has his home may proceed in his own name for the revival of that order.
- (3) Where any person by whom periodical payments are required to be paid to a child under an order made by or registered in a magistrates' court makes a complaint for the variation or revocation of that order, the person with whom the child has his home may answer the complaint in his own name.
- (4) Nothing in subsections (1) and (2) of this section shall affect any right of a child to proceed in his own name for the variation, revival or revocation of an order or for the recovery of any sum payable thereunder.
- (5) In this section references to the person with whom a child has his home shall be construed in accordance with Part IV of the Children Act 1975, except that, in the case of any child in the care of a local authority, the local authority shall be treated for the purposes of this section as the person with whom the child has his home.
- (6) In this section any reference to an order registered in a magistrates' court is a reference to an order registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958.
- (7) In this section the expression " child " means a person who has not attained the age of eighteen.”.

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

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

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

(2) For subsection (4) of the said section 54 there shall be substituted the following subsection—

“(4) Any sum ordered to be paid under the last preceding subsection shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court.”.

79 Meaning of " domestic proceedings "

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

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

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

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

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

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

- (a) proceedings (whether under this Act or any other enactment) for the enforcement of any order made, confirmed or registered under any of the enactments specified in paragraphs (a) to (l) of subsection (1) of this section ;

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- (b) proceedings (whether under this Act or any other enactment) for the variation of any provision for the making of periodical payments contained in an order made, confirmed or registered under any of those enactments;
 - (c) proceedings for an attachment of earnings order to secure maintenance payments within the meaning of the Attachment of Earnings Act 1971 or for the discharge or variation of such an order; or
 - (d) proceedings for the enforcement of a maintenance order which is registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958 or for the variation of the rate of payments specified by such an order,
- may if it thinks fit order that those proceedings and any other proceedings being heard therewith shall, notwithstanding anything in subsection (1) of this section, be treated as domestic proceedings for the purposes of this Act.
- (1B) Where the same parties are parties—
- (a) to proceedings which are domestic proceedings by virtue of subsection (1) of this section, and
 - (b) to proceedings which the court has power to treat as domestic proceedings by virtue of subsection (1A) of this section,
- and the proceedings are heard together by a magistrates' court, the whole of those proceedings shall be treated as domestic proceedings for the purposes of this Act.
- (1C) No appeal shall lie from the making of, or refusal to make, an order under subsection (1A) of this section.
- (1D) Until the Adoption Act 1976 comes into force subsection (1) of this section shall have effect as if for paragraph (j) thereof there were substituted the following paragraph—
- “(j) the Adoption Act 1958, the Adoption Act 1960 or Part I of the Children Act 1975, except proceedings under section 42 or 43 of the Adoption Act 1958.””

80 Domestic courts

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

“56A Domestic courts.

- (1) Magistrates' courts constituted in accordance with the provisions of this section and sitting for the purpose of hearing domestic proceedings shall be known as domestic courts.
- (2) A justice shall not be qualified to sit as a member of a domestic court unless he is a member of a domestic court panel, that is to say a panel of justices specially appointed to deal with domestic proceedings.
- (3) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949 relating to the procedure and practice to

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be followed in magistrates' courts, provision may be made by such rules with respect to any of the following matters, that is to say—

- (a) the formation and revision of domestic court panels and the eligibility of justices to be members of such panels ;
 - (b) the appointment of persons as chairmen of domestic courts; and
 - (c) the composition of domestic courts.
- (4) Any provision made by rules by virtue of subsection (3) of this section for the formation of domestic court panels shall include provision for the formation of at least one domestic court panel for each commission area, but provision shall not be made by the rules for the formation of more than one domestic court panel for any petty sessions area.
- (5) Rules made by virtue of subsection (3) of this section may confer powers on the Lord Chancellor with respect to any of the matters specified in the rules and may, in particular, provide for the appointment of domestic court panels by him and for the removal from a domestic court panel of any justice who, in his opinion, is unsuitable to serve on a domestic court.
- (6) Rules made by virtue of subsection (3) of this section may make different provision in relation to different areas for which domestic court panels are formed; and in the application of this section to the counties of Greater Manchester, Merseyside and Lancashire for any reference in subsection (5) of this section to the Lord Chancellor there shall be substituted a reference to the Chancellor of the Duchy of Lancaster.
- (7) A stipendiary magistrate who is a member of a domestic court panel may, notwithstanding anything in section 56(2) of this Act, hear and determine domestic proceedings when sitting alone.
- (8) Nothing in this section shall require the formation of a domestic court panel for the City of London.

56B Combined domestic court panels.

- (1) Where the Secretary of State considers—
- (a) that a combined domestic court panel should be formed for two or more petty sessions areas, or
 - (b) that any combined domestic court panel which has been so formed should be dissolved,

he may direct the magistrates' court committee for the area concerned to review the functioning of domestic courts in their area and on completion of the review to submit a report to the Secretary of State.

- (2) Where the Secretary of State gives a direction under subsection (1) of this section then—
- (a) after consideration of any report submitted to him under that subsection, or
 - (b) if the committee fail to comply with the direction within six months from the giving thereof, after the expiration of that period of six months,

the Secretary of State may if he thinks fit, make an order for the formation of a combined domestic court panel for the petty sessions areas concerned or,

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as the case may be, for the dissolution of the combined domestic court panel concerned.

- (3) Where the Secretary of State proposes to make an order under subsection (2) of this section, he shall send a copy of the proposed order to the magistrates' courts committee for any area the whole or part of which is concerned and to any domestic court panel which is concerned.
- (4) Where a copy of the proposed order is required to be sent under subsection (3) of this section to any committee or panel, the Secretary of State shall, before making an order, consider any representations made to him by the committee or panel within one month from the time the copy of the proposed order was sent.
- (5) An order of the Secretary of State under subsection (2) of this section shall be made by statutory instrument and may be revoked or varied by a subsequent order thereunder.
- (6) Any order made under subsection (2) of this section may contain supplementary, incidental and consequential provisions.
- (7) In the application of this section to the inner London area (within the meaning of the Administration of Justice Act 1964) any reference to the magistrates' courts committee shall be treated as a reference to the committee of magistrates.”.

81 Persons who may be present during hearing of domestic proceedings

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

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

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

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

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

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

82 Restriction on newspaper reports of domestic proceedings

- (1) In subsection (1) of section 58 of the Magistrates' Courts Act 1952 (which relates to newspaper reports of domestic proceedings) at the beginning there shall be inserted the words " In the case of domestic proceedings in a magistrates' court (other than proceedings under the Adoption Act 1976) " and for the words " domestic proceedings in a magistrates' court" there shall be substituted the words " the proceedings ".
- (2) After subsection (1) of the said section 58 there shall be inserted the following subsections—
- “(1A) In the case of domestic proceedings in a magistrates' court under the Adoption Act 1976, subsection (1) above shall apply with the omission of paragraphs (a) and (b) and the reference in that subsection to the particulars of the proceedings shall, in relation to any child concerned in the proceedings, include—
- (a) the name, address or school of the child,
 - (b) any picture as being, or including, a picture of the child, and
 - (c) any other particulars calculated to lead to the identification of the child.
- (1B) Until the coming into operation of the Adoption Act 1976 this section shall have effect as if for any reference to that Act there were substituted a reference to the Adoption Act 1958, the Adoption Act 1960 and Part I of the Children Act 1975.”.
- (3) For subsection (2) of the said section 58 there shall be substituted the following subsection—
- “(2) Any person acting in contravention of this section shall be liable on summary conviction to a fine not exceeding £500.”.

83 Reports by probation officers on means of parties

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

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

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

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

(3A) The court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor shall, require the probation

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officer to give evidence about his investigation, and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any matter referred to either in the statement or in the evidence given by the officer.”;

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