



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART I

MATRIMONIAL PROCEEDINGS IN MAGISTRATES' COURTS

Powers of court as to the custody etc. of children

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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 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.