
Changes to legislation: Children Act 1989, Cross Heading: Alteration of maintenance agreements is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 1

FINANCIAL PROVISION FOR CHILDREN

Alteration of maintenance agreements

- 10 (1) In this paragraph and in paragraph 11 “maintenance agreement” means any agreement in writing made with respect to a child, whether before or after the commencement of this paragraph, which—
- (a) is or was made between the father and mother of the child; and
 - (b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,
- and any such provisions are in this paragraph, and paragraph 11, referred to as “financial arrangements”.
- (2) [^{F1}Subject to sub-paragraph (2A), 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, either party may apply to the court for an order under this paragraph.
- [^{F2}(2A) If an application or part of an application relates to a matter [^{F3}in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18].
- (2B) In sub-paragraph (2A), [^{F4}“the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague].]
- (3) 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 (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
 - (b) that the agreement does not contain proper financial arrangements with respect to the child,
- then that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.
- (4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.
- (5) Where a court decides to make an order under this paragraph altering the maintenance agreement—

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- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or
- (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the 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 sub-paragraphs (1) and (2) of paragraph 3 as if the order were an order under paragraph 1(2)(a) or (b).

^{F5}(6)

- (7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.
- [^{F6}(8) In the case of a child who has a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, the reference in sub-paragraph (1)(a) to the child's father is a reference to the woman who is a parent of the child by virtue of that section.]

Textual Amendments

- F1** Words in Sch. 1 para. 10(2) substituted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 12(2)(a)**
- F2** Sch. 1 para. 10(2A)(2B) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 12(2)(b)**
- F3** Words in Sch. 1 para. 10(2A) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 17(2)(a) (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(g)**)
- F4** Words in Sch. 1 para. 10(2B) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 17(2)(b) (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(g)**)
- F5** Sch. 1 para. 10(6) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 11 para. 116**; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F6** Sch. 1 para. 10(8) inserted (6.4.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, **Sch. 6 para. 32(3)**; S.I. 2009/479, art. 6(1)(e)

Commencement Information

- I1** Sch. 1 para 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 11 (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may apply to the High Court or [^{F7}the family court] for an order under paragraph 10.
- (2) If a maintenance agreement is altered by a court on an application under this paragraph, the agreement shall have effect thereafter as if the alteration had been

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made, immediately before the death, by agreement between the parties and for valuable consideration.

- (3) An application under this paragraph shall not, except with leave of the High Court or [^{F8}the family court], be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.
- [^{F9}(4) The following are to be left out of account when considering for the purposes of sub-paragraph (3) when representation was first taken out—
- (a) a grant limited to settled land or to trust property,
 - (b) any other grant that does not permit any of the estate to be distributed,
 - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
 - (d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (4A)).
- (4A) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (4), but is to be taken as dated on the date of sealing.]
- ^{F10}(5)
- (6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by the surviving party after that period.
- (7) Sub-paragraph (6) 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 paragraph.

Textual Amendments

- F7** Words in Sch. 1 para. 11(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 117\(a\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F8** Words in Sch. 1 para. 11(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 117\(b\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F9** [Sch. 1 para. 11\(4\)\(4A\)](#) substituted for [Sch. 1 para. 11\(4\)](#) (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), s. 12(2), [Sch. 3 para. 4\(3\)](#) (with s. 12(4)); [S.I. 2014/2039](#), art. 2
- F10** [Sch. 1 para. 11\(5\)](#) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 117\(c\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

Commencement Information

- I2** [Sch. 1 para 11](#) wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), art. 3(2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(1A)(aa) inserted by 2009 c. 24 Sch. 6 para. 21(3)
- s. 4(1C) inserted by 2009 c. 24 Sch. 6 para. 21(4)
- s. 4ZA(2)(aa) inserted by 2009 c. 24 Sch. 6 para. 22(3)
- s. 4ZA(3A) inserted by 2009 c. 24 Sch. 6 para. 22(4)
- s. 8(4)(k) inserted by 2021 c. 17 s. 52(1)
- s. 31A(4A) inserted by 2014 c. 6 s. 15(2)(b)