

Butterworths Family Law Service

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Issue 3

February 1984

In this issue

Issue 3 brings Binder 1 up-to-date to 1 November 1983 and updates all the narrative divisions, A-F, incorporating the substantial body of recent case law affecting the different areas the book covers, the effects of recent important changes in legal aid regulations and welfare benefit law. In Division D a new section on enforcement of maintenance orders by means of registering orders made in the High Court and county courts in magistrates' courts is added. Binder 2 is updated to include material available on 30 November. In Division G amendments and prospective amendments to statutes are incorporated. Recent changes to the RSC and CCR 1981 are incorporated and annotated in Division H together with amendments of the legal regulations. The Supplementary Benefit (Requirements) Regulations 1983 are added. Several more 1983 Practice Directions are included in Division J and some precedents in Division K amended.

Adoption Publication of the Chapters on adoption in Division E has been postponed until Issue 4 to be published in May 1984, so as to take account of major changes in the law which are to be introduced shortly. These relate to the procedure of 'freeing for adoption', arrangements to improve the supervision of adoption placements and reporting on them to the court, the introduction of reporting officers, and changes in the role of the guardian ad litem.

Tables and index Revised supplementary tables and index are published with this issue. These are up-to-date to this issue. When looking something up turn first of all to the supplementary tables and index, for the most up-to-date reference, and then use the main tables and index for references not included in the supplementary pages.

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Instructions for inserting Issue No 3

(Please see the 'Filing record and instructions' guide card at the back of Binder 2 for guidance in inserting this looseleaf issue.)

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After Issue No 3 has been inserted, fill in the filing record at the back of Binder 2. The binders should now contain the material listed in the CHECK LIST: see pp 1-6 at the back of Binder 2.

Pages which have been replaced should be discarded, along with these inserting instructions.

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Abbreviation of statutes

Adoption Act 1976	AA 1976
Adoption of Children Act 1949	ACA 1949
Affiliation Proceedings Act 1957	APA 1957
Affiliation Proceedings (Amendment) Act 1972	AP (Amendment) A 1972
Attachment of Earnings Act 1971	AEA 1971
Bankruptcy Act 1914	BA 1914
Capital Gains Tax Act 1979	CGTA 1979
Child Benefit Act 1975	CBA 1975
Child Care Act 1980	CCA 1980
Children Act 1972	CA 1972
Children Act 1975	CA 1975
Children and Young Persons Act 1933	CYPA 1933
Children and Young Persons Act 1969	CYPA 1969
Civil Evidence Act 1968	CEA 1968
Domicile and Matrimonial Proceedings Act 1973	DMPA 1973
Domestic Proceedings and Magistrates Courts Act 1978	DPMCA 1978
Domestic Violence and Matrimonial Proceed- ings Act 1976	DVMPA 1976
Family Income Supplement Act 1970	FISA 1970
Family Income Supplement Payments Act 1972	FISPA 1972
Family Law Reform Act 1969	FLRA 1969
Finance Act 1971	FA 1971
Finance Act 1972	FA 1972
Finance Act 1974	FA 1974
Finance Act 1975	FA 1975
Finance Act 1981	FA 1981
Finance Act 1982	FA 1982
Finance Act 1983	FA 1983
Finance Act (No 2) Act 1983	FA (No 2) 1983
Foster Children Act 1980	FCA 1980
Guardianship Act 1973	GA 1973
Guardianship of Minors Act 1971	GMA 1971
Health and Social Services and Social Security Adjudications Act 1983	HSSSSAA 1983
Income and Corporation Taxes Act 1970	ICTA 1970
Law of Property Act 1925	LPA 1925
Law Reform (Miscellaneous Provisions) Act 1970	LR(MP)A 1970

Legal Aid Act 1974	LAA 1974
Legal Aid Act 1979	LAA 1979
Legal Aid Act 1982	LAA 1982
Legitimacy Act 1976	LA 1976
Maintenance Orders Act 1950	MOA 1950
Maintenance Orders Act 1958	MOA 1958
Maintenance Orders Act 1968	MOA 1968
Maintenance Orders (Reciprocal Enforcement) Act 1972	MO(RE)A 1972
Marriage Act 1949	MA 1949
Marriage Act 1983	MA 1983
Married Women's Property Act 1882	MWPA 1882
Married Women's Property Act 1893	MWPA 1893
Married Women's Property Act 1964	MWPA 1964
Matrimonial Causes Act 1973	MCA 1973
Matrimonial Causes (Property and Maintenance) Act 1958	MC(PM)A 1958
Matrimonial Homes Act 1983	MHA 1983
Matrimonial Homes and Property Act 1981	MHPA 1981
Matrimonial Proceedings Act 1973	MPA 1973
Matrimonial Proceedings (Polygamous Marriages) Act 1972	MP(PM)A 1972
Matrimonial Proceedings and Property Act 1970	MPPA 1970
National Health Service Act 1977	NHSA 1977
National Insurance (Old Persons' and Widows' Pension and Attendance Allowance) Act 1970	NI(OPWPAA)A 1970
National Insurance Surcharge Act 1976	NISA 1976
Recognition of Divorces and Legal Separations Act 1971	RDLSA 1971
Social Security Act 1973	SSA 1973
Social Security Act 1974	SSA 1974
Social Security (Consequential Provisions) Act 1975	SS(CP)A 1975
Social Security (Miscellaneous Provisions) Act 1977	SS(MP)A 1977
Social Security Act 1975	SSA 1975
Social Security Act 1979	SSA 1979
Social Security Act 1980	SSA 1980
Social Security (No 2) Act 1980	SS(No 2)A 1980
Social Security (Contributions) Act 1981	SS(C)A 1981
Social Security (Contributions) Act 1982	SS(C)A 1982
Social Security and Housing Benefit Act 1982	SSHBA 1982
Social Security (Miscellaneous Provisions) Act 1977	SS(MP)A 1977
Social Security Pensions Act 1975	SSPA 1975
Supplementary Benefits Act 1976	SBA 1976

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Bulletin 5

March 1984

This Bulletin covers material available on 1 March 1984, it should be filed behind the Bulletins guide card, and in front of Bulletin 4. Each new bulletin should be filed in front of the last one.

Division C

Institution of Proceedings

Chapter 7 Appeals

A FROM COUNTY COURT AND HIGH COURT

**C[179]-
C[184]**
see also
E[100]

In *Hoey v Hoey* [1984] 1 All ER 177 both parents sought custody of the children in divorce proceedings in the county court. The judge gave the father sole custody, but stated that he did not intend to give formal judgement but would state his reasons on request if the case went further.

The Court of Appeal dismissed the mother's appeal against the order but in so doing made observations on the procedure to be followed when a judge did not give reasons for judgement at the hearing.

Cumming Bruce LJ stated that the judge had taken an inappropriate course. Even if there had been no appeal, there might have been and frequently are, changes in the circumstances of the parents and children. If the judge did not give a judgment stating his findings of fact, in subsequent proceedings it would be difficult to judge whether there had been a change of circumstances which had changed the basis of the earlier order. Further, in such proceedings it is usual for the parents to be strongly emotionally involved. In such situations they should know how the judge's mind was working and therefore, no matter how inconvenient, the judge should state his reasons for judgment at the hearing. If for some good reason the judge does not do so but announces that on request he will give reasons for judgment if the case is going further the judge is under a clear obligation to send the proposed appellant's solicitors those reasons without delay so that the notice of, and the decision to, appeal can be dealt with in the light of the judge's reasons.

B FROM MAGISTRATES

(8) Judicial review

C[200]
see also
D[682]

In *R v Chester Justices, ex parte Holland* (1984) Times, 18 February. W applied to Chester justices for periodical payments for herself and the two children of the family. An agreement which had been reached between the parties, that the children's order should be made direct to the children as this was of tax benefit to W, was placed before the justices. Their written order did not reflect that agreement and the children's order was made to the wife for their benefit. The clerk to the justices later stated that the order made was correct.

W applied by judicial review for an order of mandamus directing the justices to rectify the order.

The High Court, Queens Bench Division, held that it was clear from authority that an order of a magistrates court made orally could be rectified if the document subsequently drawn up did not reflect the order as pronounced. The court was satisfied, in the light of the evidence of both solicitors and in the absence of evidence from the justices, that the order was drawn up incorrectly from an inaccurate minute. There would be an order of mandamus directing the justices to correct the record.

Division D

Property and Financial Provision

Chapter 1 Disputes with regard to property

In *Harman v Glencross and Glencross* (1984) Times, 20 February H and W jointly owned the matrimonial home. W obtained a decree of divorce, filed a notice of severance of their joint interest in the home, and made application for ancillary relief. The plaintiff (who was in partnership with H and was now a creditor of his) obtained a charging order under the Charging Orders Act 1979 on H's interest in the matrimonial home. W received no notice of this application. W then sought to have the charging order varied. On undertaking to transfer her application for ancillary relief to the High Court, the action and W's application for variation was transferred to the Family Division. A registrar varied the order by making the charge subject to any order made by the court in the application. The registrar ordered H's interest to be transferred to W and dismissed her other claims. The plaintiff appealed.

It was held, Ewbank J that the appeal from the registrar's order should be dismissed. The creditor knew his partner was married and involved in divorce proceedings yet no notice of the charging order was served on W. W as a wife in occupation of the matrimonial home was an interested party within the meaning of the Charging Orders Act 1979 and should have been given notice of the order. Further as an interested person she was entitled to apply for an order discharging or varying the charging order under s 3(5) of the 1979 Act. Section 1(5) conferred a wide discretion on the court when considering whether to make a charging order. The court had a difficult task balancing the two competing interests of a wife who had care of children and the husband's creditor. The Act required the court to consider all the circumstances. In this case the creditor's debt would exhaust H's equity. The refusal of the

charging order would not discharge the debt, there were other ways the creditor could enforce his judgment. The debt was H's and not W's and she had been deceived as to the nature and extent of his debts. Therefore in all the circumstances the registrar had made the correct order.

Chapter 6 Implications of welfare benefits

1(1) Supplementary benefit as a resource in determining levels of financial provision

D[1151]
see also
D[603]

In *Peacock v Peacock* (1983) 128 Sol Jo 116 H and W were separated. W filed a petition for divorce and applied for maintenance pending suit and periodical payments for the children. W was in receipt of supplementary benefit and the DHSS were paying the interest on the mortgage relating to the matrimonial home. The DHSS had assessed H's obligations to W and family and H was making a voluntary payment of such to the Department. The registrar refused to make any interim orders for periodical payments and maintenance pending suit on the ground that any order made by the court would not be enough to prevent W and the children needing to claim supplementary benefit.

On appeal, the High Court, Family Division, held that the principles applicable to interim orders were the same as to 'final orders' after the grant of decree absolute. The quantum of an order should be assessed on what H could afford having regard to his needs and circumstances. The fact that a court order would not assist the wife by putting her outside supplementary benefit bracket, so the money would go direct to the DHSS, was not relevant. H would receive tax relief for the money paid under a court order but not on voluntary payments. The court could take into account the W's supplementary benefit entitlement when assessing the quantum of the orders. H was ordered to pay maintenance pending suit to W and interim periodical payments to each of the children.

Division E

Children

Chapter 5 The Illegitimate Child

D BLOOD TESTS

(2) Court's powers

In *H v H* (1984) Times, 9 February W petitioned for divorce alleging unreasonable behaviour. H denied that and alleged adultery committed by W with the party cited. W admitted adultery. No issue as to the paternity of the children was raised. H contended that the court because of its obligation to be satisfied that proper arrangements were made for the care and upbringing of the children had jurisdiction to order blood tests on H and W, the party cited and the two children.

E[228]-
E[229]

The Court of Appeal held that there was no jurisdiction to carry out the blood tests under the FLRA 1969. Even if there was jurisdiction as H contended the judge would have been at fault in exercising it. The children were old enough for the purpose of the tests to be apparent to them and would be affected by the consequences of illegitimizing them.

Division F

Costs

Chapter 1 Award of costs

A GENERALLY

(3) Personal liability of solicitors for costs

In *Davy-Chiesman v Davy-Chiesman* [1984] 1 All ER 321 H an undischarged bankrupt was granted a legal aid certificate to pursue his claim for ancillary relief under the MCA 1973 s 23(1). H sought a lump sum payment. Counsel had previously advised in writing that a lump sum would go to H's trustee in bankruptcy and therefore no court would make such an order. Nevertheless at a subsequent conference counsel advised making such a claim and at the hearing counsel pursued the application despite the judge having briefly adjourned the hearing for H and his advisors to take stock of the position. The judge dismissed the application stating that it was without merit and should not have been made. The

F[4]