

iGuide: Variation of Financial Orders

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Lives move on and circumstances change: what may have been an appropriate financial order at the time of a divorce or civil partnership dissolution could no longer be appropriate a few or very many years down the line. In those circumstances the Family Courts of England and Wales have the power to vary some types of financial orders.

These applications pose unique challenges whether as applicant or respondent to an application; the law is complex and the Court has a wide discretion. This iGuide sets out in summary the position of what can be done when a financial order may need to be varied several years after a divorce or civil partnership dissolution.

This iGuide does not cover circumstances where there has been an immediate change or circumstances which undermine the basis of the original financial order or where there has been material non-disclosure at the time of a financial order. The International Family Law Group LLP assist in such matters and legal advice should be taken.

The Law – what can be varied

The Courts of England and Wales have the power to vary, discharge, suspend and revive provisions made within a final financial order granted upon divorce/dissolution made by the Courts in England and Wales. Not all provisions are variable and the below table sets out a general guide to the provisions which can be varied:

Order	Variable	Notes
Maintenance Pending Suit	Yes	Always until the final order.
Periodical payments (maintenance)	Yes	The amount is always variable. The length of the term is only variable if the application is made during the original term of the order and only if there is no section 28(1A) bar.
Secured periodical payments (secured maintenance)	Yes	As above.
Orders of sale of a property	Yes	
Certain property orders made within Judicial Separation proceedings	Yes	
Orders for lump sums by instalments	Yes	Not variable if not by instalments.
Orders for deferred lump sums in respect of pension rights and pension compensation rights	Yes	
Property adjustment orders	No	Save for orders for sale, as above
Lump sum orders	No	Save for lump sums by instalments and deferred lump sums in respect of pensions.
Pension sharing orders	No	Save for lump sums by instalments and deferred lump sums in respect of pensions.

Principles of Variation

There are two pulls on the Court when considering a variation application. The first is of course the original order and the core principle of finality. The Court must also consider the current circumstances and what the Court would order if the Court was assessing the financial circumstances as they are now. Essentially the Court must have regard to all the circumstances including the original order, the rationale behind that order and any change of circumstances since the time of the original court order.

The Court will apply the usual factors for making financial orders. The Court will look at how those factors were assessed at the time of the original order and how those factors as assessed have now changed. The circumstances of both spouses are scrutinised.

To give an extreme example: if the paying party under a maintenance order has hit hard times and the recipient party has new-found wealth, the original order may be varied to lower or end the maintenance: the payer can no longer afford to pay the maintenance and the recipient no longer needs the maintenance.

To take another extreme: if the paying party has obtained newfound wealth and the recipient party has become severely unwell and is unable to work, the original may be varied to increase the maintenance.

By way of a non-exhaustive list of factors which might be a change of circumstances significant to a variation application:

- Any material increase/decrease to the incomes of the parties
- Any windfall of capital to either party
- Changes in geographic location
- Cohabitation or re-marriage (see below)
- Loss of employment
- Ill-health or death of either of the parties or any dependants

Essentially the Court will look at:

- What were the circumstances at the time of the original order
- How those circumstances shaped the original order
- What has changed
- What would the Court order now looking at matters afresh
- The effect of any cohabitation or and re-marriage

A motivating factor in some variation applications is the cohabitation or re-marriage of one or both of the former spouses. Whilst either will not automatically lead to a variation of the original order, either can be a prevalent factor in a variation application.

The only certainty is that the re-marriage of the spouse who receives spousal maintenance will end those payments without any investigation into the merits. It is automatic.

Otherwise, the Court will need to know more about the circumstances rather than just the fact of the cohabitation or re-marriage including the practical arrangements, the financial circumstances of the new cohabitee/spouse, the length of the relationship, whether there has been a merger of financial affairs and numerous other factors how, if at all, those factors should impact on the terms of the original court order.

The newly cohabiting recipient party will not automatically be subject to a downward variation of maintenance although it is possible.

If the paying party is cohabiting or has re-married then their new financial circumstances will be taken into account and this will include any new financial obligations although the needs of the new cohabitee/spouse will not be given priority over the needs of the first spouse.

As with all variation applications there is a large discretion available to the Court and all circumstances will need to be taken into account. Legal advice is essential, if only a preliminary meeting to understand the rights and duties.

For more information about variation applications or other questions you may have, please contact a member of our

specialist family law team. You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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