

## SCHEDULES

### SCHEDULE 5

Section 72(1)

#### FINANCIAL RELIEF IN THE HIGH COURT OR A COUNTY COURT ETC.

##### PART 1

##### FINANCIAL PROVISION IN CONNECTION WITH DISSOLUTION, NULLITY OR SEPARATION

##### *Circumstances in which orders under this Part may be made*

- 1 (1) The court may make any one or more of the orders set out in paragraph 2(1)—
- (a) on making a dissolution, nullity or separation order, or
  - (b) at any time afterwards.
- (2) The court may make any one or more of the orders set out in paragraph 2(1)(d), (e) and (f)—
- (a) in proceedings for a dissolution, nullity or separation order, before making the order;
  - (b) if proceedings for a dissolution, nullity or separation order are dismissed after the beginning of the trial, either straightaway or within a reasonable period after the dismissal.
- (3) The power of the court to make an order under sub-paragraph (1) or (2)(a) in favour of a child of the family is exercisable from time to time.
- (4) If the court makes an order in favour of a child under sub-paragraph (2)(b), it may from time to time make a further order in the child's favour of any of the kinds set out in paragraph 2(1)(d), (e) or (f).

##### *The orders: periodical and secured periodical payments and lump sums*

- 2 (1) The orders are—
- (a) an order that either civil partner must make to the other such periodical payments for such term as may be specified;
  - (b) an order that either civil partner must secure to the other, to the satisfaction of the court, such periodical payments for such term as may be specified;
  - (c) an order that either civil partner must pay to the other such lump sum or sums as may be specified;
  - (d) an order that one of the civil partners must make —
    - (i) to such person as may be specified for the benefit of a child of the family, or
    - (ii) to a child of the family,such periodical payments for such term as may be specified;
  - (e) an order that one of the civil partners must secure—

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- (i) to such person as may be specified for the benefit of a child of the family, or
  - (ii) to a child of the family,
- to the satisfaction of the court, such periodical payments for such term as may be specified;
- (f) an order that one of the civil partners must pay such lump sum as may be specified—
    - (i) to such person as may be specified for the benefit of a child of the family, or
    - (ii) to a child of the family.

(2) “Specified” means specified in the order.

*Particular provision that may be made by lump sum orders*

- 3 (1) An order under this Part requiring one civil partner to pay the other a lump sum may be made for the purpose of enabling the other civil partner to meet any liabilities or expenses reasonably incurred by the other in maintaining—
- (a) himself or herself, or
  - (b) a child of the family,
- before making an application for an order under this Part in his or her favour.
- (2) An order under this Part requiring a lump sum to be paid to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of the child before making an application for an order under this Part to be met.
- (3) An order under this Part for the payment of a lump sum may—
- (a) provide for its payment by instalments of such amount as may be specified, and
  - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (4) Sub-paragraphs (1) to (3) do not restrict the powers to make the orders set out in paragraph 2(1)(c) and (f).
- (5) If the court—
- (a) makes an order under this Part for the payment of a lump sum, and
  - (b) directs that—
    - (i) payment of the sum or any part of it is to be deferred, or
    - (ii) the sum or any part of it is to be paid by instalments,
- it may provide for the deferred amount or the instalments to carry interest at such rate as may be specified from such date as may be specified until the date when payment of it is due.
- (6) A date specified under sub-paragraph (5) must not be earlier than the date of the order.
- (7) “Specified” means specified in the order.

*When orders under this Part may take effect*

- 4 (1) If an order is made under paragraph 2(1)(a), (b) or (c) on or after making a dissolution or nullity order, neither the order nor any settlement made in pursuance of it takes effect unless the dissolution or nullity order has been made final.
- (2) This paragraph does not affect the power of the court to give a direction under paragraph 76 (settlement of instrument by conveyancing counsel).

*Restrictions on making of orders under this Part*

- 5 The power to make an order under paragraph 2(1)(d), (e) or (f) is subject to paragraph 49(1) and (5) (restrictions on orders in favour of children who have reached 18).

## PART 2

### PROPERTY ADJUSTMENT ON OR AFTER DISSOLUTION, NULLITY OR SEPARATION

*Circumstances in which property adjustment orders may be made*

- 6 (1) The court may make one or more property adjustment orders—
- (a) on making a dissolution, nullity or separation order, or
  - (b) at any time afterwards.
- (2) In this Schedule “property adjustment order” means a property adjustment order under this Part.

*Property adjustment orders*

- 7 (1) The property adjustment orders are—
- (a) an order that one of the civil partners must transfer such property as may be specified, being property to which he is entitled—
    - (i) to the other civil partner,
    - (ii) to a child of the family, or
    - (iii) to such person as may be specified for the benefit of a child of the family;
  - (b) an order that a settlement of such property as may be specified, being property to which one of the civil partners is entitled, be made to the satisfaction of the court for the benefit of—
    - (i) the other civil partner and the children of the family, or
    - (ii) either or any of them;
  - (c) an order varying for the benefit of—
    - (i) the civil partners and the children of the family, or
    - (ii) either or any of them,a relevant settlement;
  - (d) an order extinguishing or reducing the interest of either of the civil partners under a relevant settlement.
- (2) The court may make a property adjustment order under sub-paragraph (1)(c) even though there are no children of the family.

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(3) In this paragraph—

“entitled” means entitled in possession or reversion,

“relevant settlement” means, in relation to a civil partnership, a settlement made, during its subsistence or in anticipation of its formation, on the civil partners including one made by will or codicil, but not including one in the form of a pension arrangement (within the meaning of Part 4), and

“specified” means specified in the order.

*When property adjustment orders may take effect*

- 8 (1) If a property adjustment order is made on or after making a dissolution or nullity order, neither the property adjustment order nor any settlement made under it takes effect unless the dissolution or nullity order has been made final.
- (2) This paragraph does not affect the power to give a direction under paragraph 76 (settlement of instrument by conveyancing counsel).

*Restrictions on making property adjustment orders*

- 9 The power to make a property adjustment order under paragraph 7(1)(a) is subject to paragraph 49(1) and (5) (restrictions on making orders in favour of children who have reached 18).

### PART 3

#### SALE OF PROPERTY ORDERS

*Circumstances in which sale of property orders may be made*

- 10 (1) The court may make a sale of property order—
- (a) on making —
    - (i) under Part 1, a secured periodical payments order or an order for the payment of a lump sum, or
    - (ii) a property adjustment order, or
  - (b) at any time afterwards.
- (2) In this Schedule “sale of property order” means a sale of property order under this Part.

*Sale of property orders*

- 11 (1) A sale of property order is an order for the sale of such property as may be specified, being property in which, or in the proceeds of sale of which, either or both of the civil partners has or have a beneficial interest, either in possession or reversion.
- (2) A sale of property order may contain such consequential or supplementary provisions as the court thinks fit.
- (3) A sale of property order may in particular include—
- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and

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(b) provision requiring any property to which the order relates to be offered for sale to a specified person, or class of persons.

(4) “Specified” means specified in the order.

*When sale of property orders may take effect*

12 (1) If a sale of property order is made on or after the making of a dissolution or nullity order, it does not take effect unless the dissolution or nullity order has been made final.

(2) Where a sale of property order is made, the court may direct that—

(a) the order, or

(b) such provision of it as the court may specify,

is not to take effect until the occurrence of an event specified by the court or the end of a period so specified.

*When sale of property orders cease to have effect*

13 If a sale of property order contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a civil partner, the order ceases to have effect—

(a) on the death of the civil partner, or

(b) on the formation of a subsequent civil partnership or marriage by the civil partner.

*Protection of third parties*

14 (1) Sub-paragraphs (2) and (3) apply if—

(a) a civil partner has a beneficial interest in any property, or in the proceeds of sale of any property, and

(b) another person (“A”) who is not the other civil partner also has a beneficial interest in the property or the proceeds.

(2) Before deciding whether to make a sale of property order in relation to the property, the court must give A an opportunity to make representations with respect to the order.

(3) Any representations made by A are included among the circumstances to which the court is required to have regard under paragraph 20.

## PART 4

### PENSION SHARING ORDERS ON OR AFTER DISSOLUTION OR NULLITY ORDER

*Circumstances in which pension sharing orders may be made*

15 (1) The court may make a pension sharing order—

(a) on making a dissolution or nullity order, or

(b) at any time afterwards.

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- (2) In this Schedule “pension sharing order” means a pension sharing order under this Part.

*Pension sharing orders*

- 16 (1) A pension sharing order is an order which—
- (a) provides that one civil partner's—
    - (i) shareable rights under a specified pension arrangement, or
    - (ii) shareable state scheme rights,
 are to be subject to pension sharing for the benefit of the other civil partner, and
  - (b) specifies the percentage value to be transferred.
- (2) Shareable rights under a pension arrangement are rights in relation to which pension sharing is available under—
- (a) Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (c. 30), or
  - (b) corresponding Northern Ireland legislation.
- (3) Shareable state scheme rights are rights in relation to which pension sharing is available under—
- (a) Chapter 2 of Part 4 of the 1999 Act, or
  - (b) corresponding Northern Ireland legislation.
- (4) In this Part “pension arrangement” means—
- (a) an occupational pension scheme,
  - (b) a personal pension scheme,
  - (c) a retirement annuity contract,
  - (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under—
    - (i) an occupational pension scheme, or
    - (ii) a personal pension scheme, and
  - (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under—
    - (i) section 29(1)(b) of the 1999 Act, or
    - (ii) corresponding Northern Ireland legislation.
- (5) In sub-paragraph (4)—
- “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 (c. 48);
  - “personal pension scheme” has the same meaning as in the 1993 Act;
  - “retirement annuity contract” means a contract or scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988 (c. 1).

*Pension sharing orders: apportionment of charges*

- 17 If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the civil partners of any charge under—
- (a) section 41 of the 1999 Act (charges in respect of pension sharing costs), or
  - (b) corresponding Northern Ireland legislation.

*Restrictions on making of pension sharing orders*

- 18 (1) A pension sharing order may not be made in relation to a pension arrangement which—
- (a) is the subject of a pension sharing order in relation to the civil partnership, or
  - (b) has been the subject of pension sharing between the civil partners.
- (2) A pension sharing order may not be made in relation to shareable state scheme rights if—
- (a) such rights are the subject of a pension sharing order in relation to the civil partnership, or
  - (b) such rights have been the subject of pension sharing between the civil partners.
- (3) A pension sharing order may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of Part 6 which relates to benefits or future benefits to which that person is entitled under the pension arrangement.

*When pension sharing orders may take effect*

- 19 (1) A pension sharing order is not to take effect unless the dissolution or nullity order on or after which it is made has been made final.
- (2) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (3) The power to make regulations under sub-paragraph (2) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

**PART 5**

MATTERS TO WHICH COURT IS TO HAVE REGARD UNDER PARTS 1 TO 4

*General*

- 20 The court in deciding—
- (a) whether to exercise its powers under—
    - (i) Part 1 (financial provision on dissolution etc.),
    - (ii) Part 2 (property adjustment orders),
    - (iii) Part 3 (sale of property orders), or
    - (iv) any provision of Part 4 (pension sharing orders) other than paragraph 17 (apportionment of charges), and
  - (b) if so, in what way,
- must have regard to all the circumstances of the case, giving first consideration to the welfare, while under 18, of any child of the family who has not reached 18.

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*Particular matters to be taken into account when exercising powers in relation to civil partners*

- 21 (1) This paragraph applies to the exercise by the court in relation to a civil partner of its powers under—
- (a) Part 1 (financial provision on dissolution etc.) by virtue of paragraph 2(1) (a), (b) or (c),
  - (b) Part 2 (property adjustment orders),
  - (c) Part 3 (sale of property orders), or
  - (d) Part 4 (pension sharing orders).
- (2) The court must in particular have regard to—
- (a) the income, earning capacity, property and other financial resources which each civil partner—
    - (i) has, or
    - (ii) is likely to have in the foreseeable future,
 including, in the case of earning capacity, any increase in that capacity which it would in the opinion of the court be reasonable to expect a civil partner in the civil partnership to take steps to acquire;
  - (b) the financial needs, obligations and responsibilities which each civil partner has or is likely to have in the foreseeable future;
  - (c) the standard of living enjoyed by the family before the breakdown of the civil partnership;
  - (d) the age of each civil partner and the duration of the civil partnership;
  - (e) any physical or mental disability of either of the civil partners;
  - (f) the contributions which each civil partner has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
  - (g) the conduct of each civil partner, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
  - (h) in the case of proceedings for a dissolution or nullity order, the value to each civil partner of any benefit which, because of the dissolution or annulment of the civil partnership, that civil partner will lose the chance of acquiring.

*Particular matters to be taken into account when exercising powers in relation to children*

- 22 (1) This paragraph applies to the exercise by the court in relation to a child of the family of its powers under—
- (a) Part 1 (financial provision on dissolution etc.) by virtue of paragraph 2(1) (d), (e) or (f),
  - (b) Part 2 (property adjustment orders), or
  - (c) Part 3 (sale of property orders).
- (2) The court must in particular have regard to—
- (a) the financial needs of the child;
  - (b) the income, earning capacity (if any), property and other financial resources of the child;
  - (c) any physical or mental disability of the child;
  - (d) the way in which the child was being and in which the civil partners expected the child to be educated or trained;



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- (e) the considerations mentioned in relation to the civil partners in paragraph 21(2)(a), (b), (c) and (e).
- (3) In relation to the exercise of any of those powers against a civil partner (“A”) in favour of a child of the family who is not A’s child, the court must also have regard to—
- (a) whether A has assumed any responsibility for the child’s maintenance;
  - (b) if so, the extent to which, and the basis upon which, A assumed such responsibility and the length of time for which A discharged such responsibility;
  - (c) whether in assuming and discharging such responsibility A did so knowing that the child was not A’s child;
  - (d) the liability of any other person to maintain the child.

#### *Terminating financial obligations*

- 23 (1) Sub-paragraphs (2) and (3) apply if, on or after the making of a dissolution or nullity order, the court decides to exercise its powers under—
- (a) Part 1 (financial provision on dissolution etc.) by virtue of paragraph 2(1)(a), (b) or (c),
  - (b) Part 2 (property adjustment orders),
  - (c) Part 3 (sale of property orders), or
  - (d) Part 4 (pension sharing orders),
- in favour of one of the civil partners.
- (2) The court must consider whether it would be appropriate to exercise those powers in such a way that the financial obligations of each civil partner towards the other will be terminated as soon after the making of the dissolution or nullity order as the court considers just and reasonable.
- (3) If the court decides to make—
- (a) a periodical payments order, or
  - (b) a secured periodical payments order,
- in favour of one of the civil partners (“A”), it must in particular consider whether it would be appropriate to require the payments to be made or secured only for such term as would in its opinion be sufficient to enable A to adjust without undue hardship to the termination of A’s financial dependence on the other civil partner.
- (4) If—
- (a) on or after the making of a dissolution or nullity order, an application is made by one of the civil partners for a periodical payments or secured periodical payments order in that civil partner’s favour, but
  - (b) the court considers that no continuing obligation should be imposed on either civil partner to make or secure periodical payments in favour of the other,
- the court may dismiss the application with a direction that the applicant is not entitled to make any future application in relation to that civil partnership for an order under Part 1 by virtue of paragraph 2(1)(a) or (b).

## PART 6

### MAKING OF PART 1 ORDERS HAVING REGARD TO PENSION BENEFITS

#### *Pension benefits to be included in matters to which court is to have regard*

- 24 (1) The matters to which the court is to have regard under paragraph 21(2)(a) include any pension benefits under a pension arrangement or by way of pension which a civil partner has or is likely to have; and, accordingly, in relation to any pension benefits paragraph 21(2)(a)(ii) has effect as if “in the foreseeable future” were omitted.
- (2) The matters to which the court is to have regard under paragraph 21(2)(h) include any pension benefits which, because of the making of a dissolution or nullity order, a civil partner will lose the chance of acquiring.
- (3) “Pension benefits” means—
- (a) benefits under a pension arrangement, or
  - (b) benefits by way of pension (whether under a pension arrangement or not).

#### *Provisions applying where pension benefits taken into account in decision to make Part 1 order*

- 25 (1) This paragraph applies if, having regard to any benefits under a pension arrangement, the court decides to make an order under Part 1.
- (2) To the extent to which the Part 1 order is made having regard to any benefits under a pension arrangement, it may require the person responsible for the pension arrangement, if at any time any payment in respect of any benefits under the arrangement becomes due to the civil partner with pension rights, to make a payment for the benefit of the other civil partner.
- (3) The Part 1 order must express the amount of any payment required to be made by virtue of sub-paragraph (2) as a percentage of the payment which becomes due to the civil partner with pension rights.
- (4) Any such payment by the person responsible for the arrangement—
- (a) discharges so much of his liability to the civil partner with pension rights as corresponds to the amount of the payment, and
  - (b) is to be treated for all purposes as a payment made by the civil partner with pension rights in or towards the discharge of that civil partner’s liability under the order.
- (5) If the civil partner with pension rights has a right of commutation under the arrangement, the Part 1 order may require that civil partner to exercise it to any extent.
- (6) This paragraph applies to any payment due in consequence of commutation in pursuance of the Part 1 order as it applies to other payments in respect of benefits under the arrangement.
- (7) The power conferred by sub-paragraph (5) may not be exercised for the purpose of commuting a benefit payable to the civil partner with pension rights to a benefit payable to the other civil partner.
- (8) The powers conferred by sub-paragraphs (2) and (5) may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the civil partnership, or
- (b) has been the subject of pension sharing between the civil partners.

*Pensions: lump sums*

- 26
- (1) This paragraph applies if the benefits which the civil partner with pension rights has or is likely to have under a pension arrangement include any lump sum payable in respect of that civil partner's death.
  - (2) The court's power under Part 1 to order a civil partner to pay a lump sum to the other civil partner includes the power to make by the order any provision in subparagraph (3) to (5).
  - (3) If the person responsible for the pension arrangement has power to determine the person to whom the sum, or any part of it, is to be paid, the court may require him to pay the whole or part of that sum, when it becomes due, to the other civil partner.
  - (4) If the civil partner with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, the court may require the civil partner with pension rights to nominate the other civil partner in respect of the whole or part of that sum.
  - (5) In any other case, the court may require the person responsible for the pension arrangement in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other civil partner instead of to the person to whom, apart from the order, it would be paid.
  - (6) Any payment by the person responsible for the arrangement under an order made under Part 1 made by virtue of this paragraph discharges so much of his liability in respect of the civil partner with pension rights as corresponds to the amount of the payment.
  - (7) The powers conferred by this paragraph may not be exercised in relation to a pension arrangement which—
    - (a) is the subject of a pension sharing order in relation to the civil partnership, or
    - (b) has been the subject of pension sharing between the civil partners.

*Pensions: supplementary*

- 27
- If—
- (a) a Part 1 order made by virtue of paragraph 25 or 26 imposes any requirement on the person responsible for a pension arrangement (“the first arrangement”),
  - (b) the civil partner with pension rights acquires rights under another pension arrangement (“the new arrangement”) which are derived (directly or indirectly) from the whole of that civil partner's rights under the first arrangement, and
  - (c) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,
- the Part 1 order has effect as if it had been made instead in respect of the person responsible for the new arrangement.

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### *Regulations*

- 28 (1) The Lord Chancellor may by regulations—
- (a) make provision, in relation to any provision of paragraph 25 or 26 which authorises the court making a Part 1 order to require the person responsible for a pension arrangement to make a payment for the benefit of the other civil partner, as to—
    - (i) the person to whom, and
    - (ii) the terms on which, the payment is to be made;
  - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of paragraph 25 or 26 in a Part 1 order, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
  - (c) require notices to be given in respect of changes of circumstances relevant to Part 1 orders which include provision made by virtue of paragraphs 25 and 26;
  - (d) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of paragraph 25 or 26;
  - (e) make provision about calculation and verification in relation to the valuation of—
    - (i) benefits under a pension arrangement, or
    - (ii) shareable state scheme rights (within the meaning of paragraph 16(3)),
 for the purposes of the court’s functions in connection with the exercise of any of its powers under this Schedule.
- (2) Regulations under sub-paragraph (1)(e) may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and
  - (b) provision by reference to regulations under section 30 or 49(4) of the 1999 Act.
- (3) The power to make regulations under paragraph 27 or this paragraph is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) “Prescribed” means prescribed by regulations.

### *Interpretation of provisions relating to pensions*

- 29 (1) In this Part “the civil partner with pension rights” means the civil partner who has or is likely to have benefits under a pension arrangement.
- (2) In this Part “pension arrangement” has the same meaning as in Part 4.
- (3) In this Part, references to the person responsible for a pension arrangement are to be read in accordance with section 26 of the Welfare Reform and Pensions Act 1999 (c. 30).

## PART 7

### PENSION PROTECTION FUND COMPENSATION ETC.

#### *PPF compensation to be included in matters to which court is to have regard*

- 30 (1) The matters to which a court is to have regard under paragraph 21(2)(a) include any PPF compensation to which a civil partner is or is likely to be entitled; and, accordingly, in relation to any PPF compensation paragraph 21(2)(a)(ii) has effect as if “in the foreseeable future” were omitted.
- (2) The matters to which a court is to have regard under paragraph 21(2)(h) include any PPF compensation which, because of the making of a dissolution or nullity order, a civil partner will lose the chance of acquiring entitlement to.
- (3) In this Part “PPF compensation” means compensation payable under—
- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), or
  - (b) corresponding Northern Ireland legislation.

#### *Assumption of responsibility by PPF Board in paragraph 25(2) cases*

- 31 (1) This paragraph applies to an order under Part 1 so far as it includes provision made by virtue of paragraph 25(2) which—
- (a) imposed requirements on the trustees or managers of an occupational pension scheme for which the Board has assumed responsibility, and
  - (b) was made before the trustees or managers received the transfer notice.
- (2) From the time the trustees or managers of the scheme receive the transfer notice, the order has effect—
- (a) except in descriptions of case prescribed by regulations, with the modifications set out in sub-paragraph (3), and
  - (b) with such other modifications as may be prescribed by regulations.
- (3) The modifications are that—
- (a) references in the order to the trustees or managers of the scheme have effect as references to the Board, and
  - (b) references in the order to any pension or lump sum to which the civil partner with pension rights is or may become entitled under the scheme have effect as references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum.

#### *Assumption of responsibility by PPF Board in paragraph 25(5) cases*

- 32 (1) This paragraph applies to an order under Part 1 if—
- (a) it includes provision made by virtue of paragraph 25(5) which requires the civil partner with pension rights to exercise his right of commutation under an occupational pension scheme to any extent, and
  - (b) before the requirement is complied with the Board has assumed responsibility for the scheme.
- (2) From the time the trustees or managers of the scheme receive the transfer notice, the order has effect with such modifications as may be prescribed by regulations.

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*Lump sums: power to modify paragraph 26 in respect of assessment period*

- 33 Regulations may modify paragraph 26 in its application to an occupational pension scheme during an assessment period in relation to the scheme.

*Assumption of responsibility by the Board not to affect power of court to vary order etc.*

- 34 (1) This paragraph applies where the court makes, in relation to an occupational pension scheme—
- (a) a pension sharing order, or
  - (b) an order including provision made by virtue of paragraph 25(2) or (5).
- (2) If the Board subsequently assumes responsibility for the scheme, that does not affect—
- (a) the powers of the court under paragraph 51 to vary or discharge the order or to suspend or revive any provision of it;
  - (b) on an appeal, the powers of the appeal court to affirm, reinstate, set aside or vary the order.

*Regulations*

- 35 Regulations may make such consequential modifications of any provision of, or made by virtue of, this Schedule as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of this Part.
- 36 (1) In this Part “regulations” means regulations made by the Lord Chancellor.
- (2) A power to make regulations under this Part is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

*Interpretation*

- 37 (1) In this Part—
- “assessment period” means—
    - (a) an assessment period within the meaning of Part 2 of the Pensions Act 2004 (pension protection), or
    - (b) an equivalent period under corresponding Northern Ireland legislation;
  - “the Board” means the Board of the Pension Protection Fund;
  - “the civil partner with pension rights” has the meaning given by paragraph 29(1);
  - “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 (c. 48);
  - “transfer notice” has the same meaning as in—
    - (a) Chapter 3 of Part 2 of the 2004 Act, or
    - (b) corresponding Northern Ireland legislation.
- (2) References in this Part to the Board assuming responsibility for a scheme are to the Board assuming responsibility for the scheme in accordance with—
- (a) Chapter 3 of Part 2 of the 2004 Act (pension protection), or
  - (b) corresponding Northern Ireland legislation.

## PART 8

### MAINTENANCE PENDING OUTCOME OF DISSOLUTION, NULLITY OR SEPARATION PROCEEDINGS

- 38 On an application for a dissolution, nullity or separation order, the court may make an order requiring either civil partner to make to the other for the other's maintenance such periodical payments for such term—
- (a) beginning no earlier than the date on which the application was made, and
  - (b) ending with the date on which the proceedings are determined,
- as the court thinks reasonable.

## PART 9

### FAILURE TO MAINTAIN: FINANCIAL PROVISION (AND INTERIM ORDERS)

#### *Circumstances in which orders under this Part may be made*

- 39 (1) Either civil partner in a subsisting civil partnership may apply to the court for an order under this Part on the ground that the other civil partner (“the respondent”)—
- (a) has failed to provide reasonable maintenance for the applicant, or
  - (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.
- (2) The court must not entertain an application under this paragraph unless—
- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application,
  - (b) the applicant has been habitually resident there throughout the period of 1 year ending with that date, or
  - (c) the respondent is resident there on that date.
- (3) If, on an application under this paragraph, it appears to the court that—
- (a) the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but
  - (b) it is not yet possible to determine what order, if any, should be made on the application,
- the court may make an interim order.
- (4) If, on an application under this paragraph, the applicant satisfies the court of a ground mentioned in sub-paragraph (1), the court may make one or more of the orders set out in paragraph 41.

#### *Interim orders*

- 40 An interim order is an order requiring the respondent to make to the applicant, until the determination of the application, such periodical payments as the court thinks reasonable.

#### *Orders that may be made where failure to maintain established*

- 41 (1) The orders are—

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- (a) an order that the respondent must make to the applicant such periodical payments for such term as may be specified;
- (b) an order that the respondent must secure to the applicant, to the satisfaction of the court, such periodical payments for such term as may be specified;
- (c) an order that the respondent must pay to the applicant such lump sum as may be specified;
- (d) an order that the respondent must make such periodical payments for such term as may be specified—
  - (i) to such person as may be specified, for the benefit of the child to whom the application relates, or
  - (ii) to the child to whom the application relates;
- (e) an order that the respondent must secure—
  - (i) to such person as may be specified for the benefit of the child to whom the application relates, or
  - (ii) to the child to whom the application relates,
 to the satisfaction of the court, such periodical payments for such term as may be specified;
- (f) an order that the respondent must pay such lump sum as may be specified—
  - (i) to such person as may be specified for the benefit of the child to whom the application relates, or
  - (ii) to the child to whom the application relates.

(2) In this Part “specified” means specified in the order.

*Particular provision that may be made by lump sum orders*

- 42 (1) An order under this Part for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met.
- (2) An order under this Part for the payment of a lump sum may—
- (a) provide for its payment by instalments of such amount as may be specified, and
  - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (3) Sub-paragraphs (1) and (2) do not restrict the power to make an order by virtue of paragraph 41(1)(c) or (f).

*Matters to which the court is to have regard on application under paragraph 39(1)(a)*

- 43 (1) This paragraph applies if an application under paragraph 39 is made on the ground mentioned in paragraph 39(1)(a).
- (2) In deciding—
- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
  - (b) what order, if any, to make under this Part in favour of the applicant,
- the court must have regard to all the circumstances of the case including the matters mentioned in paragraph 21(2).



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- (3) If an application is also made under paragraph 39 in respect of a child of the family who has not reached 18, the court must give first consideration to the welfare of the child while under 18.
- (4) Paragraph 21(2)(c) has effect as if for the reference in it to the breakdown of the civil partnership there were substituted a reference to the failure to provide reasonable maintenance for the applicant.

*Matters to which the court is to have regard on application under paragraph 39(1)(b)*

- 44 (1) This paragraph applies if an application under paragraph 39 is made on the ground mentioned in paragraph 39(1)(b).
- (2) In deciding—
    - (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
    - (b) what order, if any, to make under this Part in favour of the child, the court must have regard to all the circumstances of the case.
  - (3) Those circumstances include—
    - (a) the matters mentioned in paragraph 22(2)(a) to (e), and
    - (b) if the child of the family to whom the application relates is not the child of the respondent, the matters mentioned in paragraph 22(3).
  - (4) Paragraph 21(2)(c) (as it applies by virtue of paragraph 22(2)(e)) has effect as if for the reference in it to the breakdown of the civil partnership there were substituted a reference to—
    - (a) the failure to provide, or
    - (b) the failure to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.

*Restrictions on making orders under this Part*

- 45 The power to make an order under paragraph 41(1)(d), (e) or (f) is subject to paragraph 49(1) and (5) (restrictions on orders in favour of children who have reached 18).

## **PART 10**

### **COMMENCEMENT OF CERTAIN PROCEEDINGS AND DURATION OF CERTAIN ORDERS**

*Commencement of proceedings for ancillary relief, etc.*

- 46 (1) Sub-paragraph (2) applies if an application for a dissolution, nullity or separation order has been made.
- (2) Subject to sub-paragraph (3), proceedings for—
    - (a) an order under Part 1 (financial provision on dissolution etc.),
    - (b) a property adjustment order, or

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- (c) an order under Part 8 (maintenance pending outcome of dissolution, nullity or separation proceedings),  
 may be begun (subject to and in accordance with rules of court) at any time after the presentation of the application.
- (3) Rules of court may provide, in such cases as may be prescribed by the rules, that—
- (a) an application for any such relief as is mentioned in sub-paragraph (2) must be made in the application or response, and
  - (b) an application for any such relief which—
    - (i) is not so made, or
    - (ii) is not made until after the end of such period following the presentation of the application or filing of the response as may be so prescribed,
 may be made only with the leave of the court.

*Duration of periodical and secured periodical payments orders for a civil partner*

- 47 (1) The court may specify in a periodical payments or secured periodical payments order in favour of a civil partner such term as it thinks fit, except that the term must not—
- (a) begin before the date of the making of an application for the order, or
  - (b) extend beyond the limits given in sub-paragraphs (2) and (3).
- (2) The limits in the case of a periodical payments order are—
- (a) the death of either civil partner;
  - (b) where the order is made on or after the making of a dissolution or nullity order, the formation of a subsequent civil partnership or marriage by the civil partner in whose favour the order is made.
- (3) The limits in the case of a secured periodical payments order are—
- (a) the death of the civil partner in whose favour the order is made;
  - (b) where the order is made on or after the making of a dissolution or nullity order, the formation of a subsequent civil partnership or marriage by the civil partner in whose favour the order is made.
- (4) In the case of an order made on or after the making of a dissolution or nullity order, sub-paragraphs (1) to (3) are subject to paragraphs 23(3) and 59(4).
- (5) If a periodical payments or secured periodical payments order in favour of a civil partner is made on or after the making of a dissolution or nullity order, the court may direct that that civil partner is not entitled to apply under paragraph 51 for the extension of the term specified in the order.
- (6) If—
- (a) a periodical payments or secured periodical payments order in favour of a civil partner is made otherwise than on or after the making of a dissolution or nullity order, and
  - (b) the civil partnership is subsequently dissolved or annulled but the order continues in force,
- the order ceases to have effect (regardless of anything in it) on the formation of a subsequent civil partnership or marriage by that civil partner, except in relation to any arrears due under it on the date of its formation.

*Subsequent civil partnership or marriage*

- 48 If after the making of a dissolution or nullity order one of the civil partners forms a subsequent civil partnership or marriage, that civil partner is not entitled to apply, by reference to the dissolution or nullity order, for—
- (a) an order under Part 1 in that civil partner’s favour, or
  - (b) a property adjustment order,
- against the other civil partner in the dissolved or annulled civil partnership.

*Duration of continuing orders in favour of children, and age limit on making certain orders in their favour*

- 49 (1) Subject to sub-paragraph (5)—
- (a) no order under Part 1,
  - (b) no property adjustment order made by virtue of paragraph 7(1)(a) (transfer of property), and
  - (c) no order made under Part 9 (failure to maintain) by virtue of paragraph 41, is to be made in favour of a child who has reached 18.
- (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with—
- (a) the date of the making of an application for the order or a later date, or
  - (b) a date ascertained in accordance with sub-paragraph (7) or (8).
- (3) The term to be specified in such an order—
- (a) must not in the first instance extend beyond the date of the birthday of the child next following the child’s reaching the upper limit of the compulsory school age unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date, and
  - (b) must not in any event, subject to sub-paragraph (5), extend beyond the date of the child’s 18th birthday.
- (4) Sub-paragraph (3)(a) must be read with section 8 of the Education Act 1996 (c. 56) (which applies to determine for the purposes of any enactment whether a person is of compulsory school age).
- (5) Sub-paragraphs (1) and (3)(b) do not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be, or, if an order were made without complying with either or both of those provisions, would be—
    - (i) receiving instruction at an educational establishment, or
    - (ii) undergoing training for a trade, profession or vocation,whether or not the child also is, will be or would be in gainful employment, or
  - (b) there are special circumstances which justify the making of an order without complying with either or both of sub-paragraphs (1) and (3)(b).
- (6) A periodical payments order in favour of a child, regardless of anything in the order, ceases to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.
- (7) If—

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- (a) a maintenance calculation (“the current calculation”) is in force with respect to a child, and
  - (b) an application is made under this Schedule for a periodical payments or secured periodical payments order in favour of that child—
    - (i) in accordance with section 8 of the Child Support Act 1991 (c. 48), and
    - (ii) before the end of 6 months beginning with the making of the current calculation,

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (8) “The earliest permitted date” is whichever is the later of—
- (a) the date 6 months before the application is made, or
  - (b) the date on which the current calculation took effect or, where successive maintenance calculations have been continuously in force with respect to a child, on which the first of those calculations took effect.
- (9) If—
- (a) a maintenance calculation ceases to have effect by or under any provision of the 1991 Act, and
  - (b) an application is made, before the end of 6 months beginning with the relevant date, for a periodical payments or secured periodical payments order in favour of a child with respect to whom that maintenance calculation was in force immediately before it ceased to have effect,
- the term to be specified in any such order made on that application may begin with the date on which that maintenance calculation ceased to have effect or any later date.
- (10) “The relevant date” means the date on which the maintenance calculation ceased to have effect.
- (11) In this paragraph “maintenance calculation” has the same meaning as it has in the 1991 Act by virtue of section 54 of the 1991 Act as read with any regulations in force under that section.

## PART 11

### VARIATION, DISCHARGE ETC. OF CERTAIN ORDERS FOR FINANCIAL RELIEF

#### *Orders etc. to which this Part applies*

- 50 (1) This Part applies to the following orders—
- (a) a periodical payments order under Part 1 (financial provision on dissolution etc.) or Part 9 (failure to maintain);
  - (b) a secured periodical payments order under Part 1 or 9;
  - (c) an order under Part 8 (maintenance pending outcome of dissolution proceedings etc.);
  - (d) an interim order under Part 9;
  - (e) an order made under Part 1 by virtue of paragraph 3(3) or under Part 9 by virtue of paragraph 42(2) (lump sum by instalments);

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- (f) a deferred order made under Part 1 by virtue of paragraph 2(1)(c) (lump sum for civil partner) which includes provision made by virtue of—
    - (i) paragraph 25(2), or
    - (ii) paragraph 26,(provision in respect of pension rights);
  - (g) a property adjustment order made on or after the making of a separation order by virtue of paragraph 7(1)(b), (c) or (d) (order for settlement or variation of settlement);
  - (h) a sale of property order;
  - (i) a pension sharing order made before the dissolution or nullity order has been made final.
- (2) If the court has made an order referred to in sub-paragraph (1)(f)(ii), this Part ceases to apply to the order on the death of either of the civil partners.
- (3) The powers exercisable by the court under this Part in relation to an order are also exercisable in relation to any instrument executed in pursuance of the order.

*Powers to vary, discharge, suspend or revive order*

- 51 (1) If the court has made an order to which this Part applies, it may—
- (a) vary or discharge the order,
  - (b) suspend any provision of it temporarily, or
  - (c) revive the operation of any provision so suspended.
- (2) Sub-paragraph (1) is subject to the provisions of this Part and paragraph 47(5).

*Power to remit arrears*

- 52 (1) If the court has made an order referred to in paragraph 50(1)(a), (b), (c) or (d), it may remit the payment of any arrears due under the order or under any part of the order.
- (2) Sub-paragraph (1) is subject to the provisions of this Part.

*Additional powers on discharging or varying a periodical or secured periodical payments order after dissolution of civil partnership*

- 53 (1) Sub-paragraph (2) applies if, after the dissolution of a civil partnership, the court—
- (a) discharges a periodical payments order or secured periodical payments order made in favour of a civil partner, or
  - (b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.
- (2) The court may make supplemental provision consisting of any of the following—
- (a) an order for the payment of a lump sum in favour of one of the civil partners;
  - (b) one or more property adjustment orders in favour of one of the civil partners;
  - (c) one or more pension sharing orders;
  - (d) a direction that the civil partner in whose favour the original order discharged or varied was made is not entitled to make any further application for—
    - (i) a periodical payments or secured periodical payments order, or

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- (ii) an extension of the period to which the original order is limited by any variation made by the court.
- (3) The power under sub-paragraph (2) is in addition to any power the court has apart from that sub-paragraph.
- 54 (1) An order for the payment of a lump sum under paragraph 53 may—
  - (a) provide for the payment of it by instalments of such amount as may be specified, and
  - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (2) Sub-paragraphs (5) and (6) of paragraph 3 (interest on deferred instalments) apply where the court makes an order for the payment of a lump sum under paragraph 53 as they apply where it makes such an order under Part 1.
- (3) If under paragraph 53 the court makes more than one property adjustment order in favour of the same civil partner, each of those orders must fall within a different paragraph of paragraph 7(1) (types of property adjustment orders).
- (4) Part 3 (orders for the sale of property) and paragraph 76 (direction for settlement of instrument) apply where the court makes a property adjustment order under paragraph 53 as they apply where it makes any other property adjustment order.
- (5) Paragraph 18 (restrictions on making of pension sharing order) applies in relation to a pension sharing order under paragraph 53 as it applies in relation to any other pension sharing order.

*Variation etc. of periodical or secured periodical payments orders made in cases of failure to maintain*

- 55 (1) An application for the variation under paragraph 51 of a periodical payments order or secured periodical payments order made under Part 9 in favour of a child may, if the child has reached 16, be made by the child himself.
- (2) Sub-paragraph (3) applies if a periodical payments order made in favour of a child under Part 9 ceases to have effect—
  - (a) on the date on which the child reaches 16, or
  - (b) at any time after that date but before or on the date on which the child reaches 18.
- (3) If, on an application made to the court for an order under this sub-paragraph, it appears to the court that—
  - (a) the child is, will be or, if an order were made under this sub-paragraph, would be—
    - (i) receiving instruction at an educational establishment, or
    - (ii) undergoing training for a trade, profession or vocation,
 whether or not the child also is, will be or would be in gainful employment, or
  - (b) there are special circumstances which justify the making of an order under this sub-paragraph,
 the court may by order revive the order mentioned in sub-paragraph (2) from such date as it may specify.

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- (4) A date specified under sub-paragraph (3) must not be earlier than the date of the application under that sub-paragraph.
- (5) If under sub-paragraph (3) the court revives an order it may exercise its power under paragraph 51 in relation to the revived order.

*Variation etc. of property adjustment and pension sharing orders*

- 56 The court must not exercise the powers conferred by this Part in relation to a property adjustment order falling within paragraph 7(1)(b), (c) or (d) (order for settlement or for variation of settlement) except on an application made in proceedings—
- (a) for the rescission of the separation order by reference to which the property adjustment order was made, or
  - (b) for a dissolution order in relation to the civil partnership.
- 57 (1) In relation to a pension sharing order which is made at a time before the dissolution or nullity order has been made final—
- (a) the powers conferred by this Part (by virtue of paragraph 50(1)(i)) may be exercised—
    - (i) only on an application made before the pension sharing order has or, but for paragraph (b), would have taken effect, and
    - (ii) only if, at the time when the application is made, the dissolution or nullity order has not been made final, and
  - (b) an application made in accordance with paragraph (a) prevents the pension sharing order from taking effect before the application has been dealt with.
- (2) No variation of a pension sharing order is to be made so as to take effect before the order is made final.
- (3) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.
- (4) The power to make regulations under sub-paragraph (3) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.
- 58 (1) Sub-paragraphs (2) and (3)—
- (a) are subject to paragraphs 53 and 54, and
  - (b) do not affect any power exercisable by virtue of paragraph 50(e), (f), (g) or (i) or otherwise than by virtue of this Part.
- (2) No property adjustment order or pension sharing order may be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a civil partner or in favour of a child of the family) under Part 1.
- (3) No order for the payment of a lump sum may be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a civil partner (whether made under Part 1 or 9).

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*Matters to which court is to have regard in exercising powers under this Part*

- 59 (1) In exercising the powers conferred by this Part the court must have regard to all the circumstances of the case, giving first consideration to the welfare, while under 18, of any child of the family who has not reached 18.
- (2) The circumstances of the case include, in particular, any change in any of the matters to which the court was required to have regard when making the order to which the application relates.
- (3) Sub-paragraph (4) applies in the case of—
- (a) a periodical payments order, or
  - (b) a secured periodical payments order,
- made on or after the making of a dissolution or nullity order.
- (4) The court must consider whether in all the circumstances, and after having regard to any such change, it would be appropriate to vary the order so that payments under the order are required—
- (a) to be made, or
  - (b) to be secured,
- only for such further period as will in the opinion of the court be sufficient to enable the civil partner in whose favour the order was made to adjust without undue hardship to the termination of those payments.
- (5) In considering what further period will be sufficient, the court must, if the civil partnership has been dissolved, take into account any proposed exercise by it of its powers under paragraph 53.
- (6) If the civil partner against whom the order was made has died, the circumstances of the case also include the changed circumstances resulting from that civil partner's death.

*Variation of secured periodical payments order where person liable has died*

- 60 (1) This paragraph applies if the person liable to make payments under a secured periodical payments order has died.
- (2) Subject to sub-paragraph (3), an application under this Part relating to the order (and to any sale of property order which requires the proceeds of sale of property to be used for securing those payments) may be made by—
- (a) the person entitled to payments under the periodical payments order, or
  - (b) the personal representatives of the deceased person.
- (3) No such application may be made without the leave of the court after the end of 6 months from the date on which representation in regard to the estate of that person is first taken out.
- (4) The personal representatives of the person who has died are not liable for having distributed any part of the estate of the deceased after the end of the 6 month period on the ground that they ought to have taken into account the possibility that the court might allow an application under this paragraph to be made after that period by the person entitled to payments under the order.
- (5) Sub-paragraph (4) does not affect 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.



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- (6) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out—
- (a) a grant limited to settled land or to trust property is to be disregarded, and
  - (b) a grant limited to real estate or to personal estate is to be disregarded unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

*Power to direct when variation etc. is to take effect*

- 61 (1) If the court, in exercise of its powers under this Part, decides—
- (a) to vary, or
  - (b) to discharge,
- a periodical payments or secured periodical payments order, it may direct that the variation or discharge is not to take effect until the end of such period as may be specified in the order.
- (2) Sub-paragraph (1) is subject to paragraph 47(1) and (6).
- 62 (1) If—
- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force,
  - (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them,
  - (c) a maintenance calculation (“the calculation”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made, and
  - (d) an application is made, before the end of the period of 6 months beginning with the date on which the calculation was made, for the variation or discharge of the order,
- the court may, in exercise of its powers under this Part to vary or discharge the order, direct that the variation or discharge is to take effect from the date on which the calculation took effect or any later date.
- (2) If—
- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 (c. 48) is affected by a maintenance calculation,
  - (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the civil partner’s order”) in favour of a civil partner having the care of the child in whose favour the child order was made, and
  - (c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance calculation was made, for the civil partner’s order to be varied or discharged,
- the court may, in exercise of its powers under this Part to vary or discharge the civil partner’s order, direct that the variation or discharge is to take effect from the date on which the child order became so affected or any later date.
- (3) For the purposes of sub-paragraph (2), an order is affected if it ceases to have effect or is modified by or under section 10 of the 1991 Act.

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- (4) Sub-paragraphs (1) and (2) do not affect any other power of the court to direct that the variation of discharge of an order under this Part is to take effect from a date earlier than that on which the order for variation or discharge was made.
- (5) In this paragraph “maintenance calculation” has the same meaning as it has in the 1991 Act by virtue of section 54 of the 1991 Act as read with any regulations in force under that section.

## PART 12

### ARREARS AND REPAYMENTS

#### *Payment of certain arrears unenforceable without the leave of the court*

- 63 (1) This paragraph applies if any arrears are due under—
- (a) an order under Part 1 (financial provision on dissolution etc.),
  - (b) an order under Part 8 (maintenance pending outcome of dissolution, nullity or separation proceedings), or
  - (c) an order under Part 9 (failure to maintain),
- and the arrears became due more than 12 months before proceedings to enforce the payment of them are begun.
- (2) A person is not entitled to enforce through the High Court or any county court the payment of the arrears without the leave of that court.
- (3) The court hearing an application for the grant of leave under this paragraph may—
- (a) refuse leave,
  - (b) grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or
  - (c) remit the payment of the arrears or of any part of them.
- (4) An application for the grant of leave under this paragraph must be made in such manner as may be prescribed by rules of court.

#### *Orders for repayment in certain cases of sums paid under certain orders*

- 64 (1) This paragraph applies if—
- (a) a person (“R”) is entitled to receive payments under an order listed in sub-paragraph (2), and
  - (b) R’s circumstances or the circumstances of the person (“P”) liable to make payments under the order have changed since the order was made, or the circumstances have changed as a result of P’s death.
- (2) The orders are—
- (a) any order under Part 8 (maintenance pending outcome of dissolution, nullity or separation proceedings);
  - (b) any interim order under Part 9;
  - (c) any periodical payments order;
  - (d) any secured periodical payments order.

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- (3) P or P's personal representatives may (subject to sub-paragraph (7)) apply for an order under this paragraph against R or R's personal representatives.
- (4) If it appears to the court that, because of the changed circumstances or P's death, the amount received by R in respect of a relevant period exceeds the amount which P or P's personal representatives should have been required to pay, it may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as it thinks just.
- (5) "Relevant period" means a period after the circumstances changed or (as the case may be) after P's death.
- (6) An order under this paragraph for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (7) An application under this paragraph—
  - (a) may be made in proceedings in the High Court or a county court for—
    - (i) the variation or discharge of the order listed in sub-paragraph (2), or
    - (ii) leave to enforce, or the enforcement of, the payment of arrears under that order, but
  - (b) if not made in such proceedings, must be made to a county court; and accordingly references in this paragraph to the court are references to the High Court or a county court, as the circumstances require.
- (8) The jurisdiction conferred on a county court by this paragraph is exercisable even though, because of the amount claimed in the application, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.

*Orders for repayment after cessation of order because of subsequent civil partnership etc.*

- 65
- (1) Sub-paragraphs (3) and (4) apply if—
    - (a) a periodical payments or secured periodical payments order in favour of a civil partner ("R") has ceased to have effect because of the formation of a subsequent civil partnership or marriage by R, and
    - (b) the person liable to make payments under the order ("P") (or P's personal representatives) has made payments in accordance with it in respect of a relevant period in the mistaken belief that the order was still subsisting.
  - (2) "Relevant period" means a period after the date of the formation of the subsequent civil partnership or marriage.
  - (3) P (or P's personal representatives) is not entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraph (1)(a) and (b) against R (or R's personal representatives).
  - (4) But, on an application under this paragraph by P (or P's personal representatives) against R (or R's personal representatives), the court—
    - (a) may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the relevant period, or
    - (b) if it appears to the court that it would be unjust to make that order, may—
      - (i) order the respondent to pay to the applicant such lesser sum as it thinks fit, or
      - (ii) dismiss the application.

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- (5) An order under this paragraph for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) An application under this paragraph—
- (a) may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but
  - (b) if not made in such proceedings, must be made to a county court;
- and accordingly references in this paragraph to the court are references to the High Court or a county court, as the circumstances require.
- (7) The jurisdiction conferred on a county court by this paragraph is exercisable even though, because of the amount claimed in the application, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.
- (8) Subject to sub-paragraph (9)—
- (a) the designated officer for a magistrates' court to whom any payments under a payments order are required to be made is not liable for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect because of the formation of a subsequent civil partnership or marriage by the person entitled to payments under it, and
  - (b) the collecting officer under an attachment of earnings order made to secure payments under a payments order is not liable for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with.
- (9) Sub-paragraph (8) applies if (and only if) the act—
- (a) was one which the officer would have been under a duty to do had the payments order not ceased to have effect, and
  - (b) was done before notice in writing of the formation of the subsequent civil partnership or marriage was given to him by or on behalf of—
    - (i) the person entitled to payments under the payments order,
    - (ii) the person liable to make payments under it, or
    - (iii) the personal representatives of either of them.
- (10) In sub-paragraphs (8) and (9) “payments order” means a periodical payments order or secured periodical payments order and “collecting officer”, in relation to an attachment of earnings order, means—
- (a) the officer of the High Court,
  - (b) the district judge of a county court, or
  - (c) the designated officer for a magistrates' court,
- to whom a person makes payments in compliance with the order.

## PART 13

### CONSENT ORDERS AND MAINTENANCE AGREEMENTS

#### *Consent orders for financial relief*

- 66 (1) Regardless of anything in the preceding provisions of this Schedule, on an application for a consent order for financial relief, the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of such information supplied with the application as is required by rules of court.
- (2) Sub-paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this paragraph—  
“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;  
“order for financial relief” means an order under any of Parts 1, 2, 3, 4 and 9.

#### *Meaning of “maintenance agreement” and “financial arrangements”*

- 67 (1) In this Part “maintenance agreement” means any agreement in writing between the civil partners in a civil partnership which—  
(a) is made during the continuance or after the dissolution or annulment of the civil partnership and contains financial arrangements, or  
(b) is a separation agreement which contains no financial arrangements but is made in a case where no other agreement in writing between the civil partners contains financial arrangements.
- (2) In this Part “financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the civil partners in a civil partnership (including a civil partnership which has been dissolved or annulled) in respect of—  
(a) the making or securing of payments, or  
(b) the disposition or use of any property,  
including such rights and liabilities with respect to the maintenance or education of a child (whether or not a child of the family).
- (3) “Education” includes training.

#### *Validity of maintenance agreements*

- 68 If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements—  
(a) that provision is void, but  
(b) any other financial arrangements contained in the agreement—  
(i) are not void or unenforceable as a result, and  
(ii) unless void or unenforceable for any other reason, are (subject to paragraphs 69 and 73) binding on the parties to the agreement.

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*Alteration of agreements by court during lives of parties*

- 69 (1) Either party to a maintenance agreement may apply to the court or, subject to sub-paragraph (6), to a magistrates' court for an order under this paragraph if—
- (a) the maintenance agreement is for the time being subsisting, and
  - (b) each of the parties to the agreement is for the time being domiciled or resident in England and Wales.
- (2) The court may make an order under this paragraph if it is satisfied that—
- (a) because of a change in the circumstances in the light of which—
    - (i) any financial arrangements contained in the agreement were made, or
    - (ii) financial arrangements were omitted from it,the agreement should be altered so as to make different financial arrangements or so as to contain financial arrangements, or
  - (b) that the agreement does not contain proper financial arrangements with respect to any child of the family.
- (3) In sub-paragraph (2)(a) the reference to a change in the circumstances includes a change foreseen by the parties when making the agreement.
- (4) An order under this paragraph may make such alterations in the agreement—
- (a) by varying or revoking any financial arrangements contained in it, or
  - (b) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,
- as appear to the court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in paragraph 22(3).
- (5) The effect of the order is that the agreement is to be treated as if any alteration made by the order had been made by agreement between the partners and for valuable consideration.
- (6) The power to make an order under this paragraph is subject to paragraphs 70 and 71.

*Restrictions on applications to and orders by magistrates' courts under paragraph 69*

- 70 (1) A magistrates' court must not entertain an application under paragraph 69(1) unless—
- (a) both the parties to the agreement are resident in England and Wales, and
  - (b) the court acts in, or is authorised by the Lord Chancellor to act for, a local justice area in which at least one of the parties is resident.
- (2) A magistrates' court must not make any order on such an application other than—
- (a) if the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of—
    - (i) the other party, or
    - (ii) any child of the family;
  - (b) if the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

*Provisions relating to periodical and secured periodical payments: duration*

- 71 (1) If a court decides to make an order under paragraph 69 altering an agreement—
- (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 other party, or
  - (b) by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other,
- it may specify such term as it thinks fit as the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the altered agreement, except that the term must not extend beyond the limits in sub-paragraphs (2) and (3).
- (2) The limits if the payments are not to be secured are—
- (a) the death of either of the parties to the agreement, or
  - (b) the formation of a subsequent civil partnership or marriage by the party to whom the payments are to be made.
- (3) The limits if the payments are to be secured are—
- (a) the death of the party to whom the payments are to be made, or
  - (b) the formation of a subsequent civil partnership or marriage by that party.
- (4) Sub-paragraph (5) applies if a court decides to make an order under paragraph 69 altering an agreement by—
- (a) inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family, or
  - (b) increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child.
- (5) The court, in deciding the term for which under the agreement as altered by the order—
- (a) the payments are to be made or secured for the benefit of the child, or
  - (b) the additional payments attributable to the increase are to be made or secured for the benefit of the child,
- must apply paragraph 49(2) to (5) (age limits) as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

*Saving*

- 72 Nothing in paragraphs 68 to 71 affects—
- (a) any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Schedule) to make an order containing financial arrangements, or
  - (b) any right of either party to apply for such an order in such proceedings.

*Alteration of agreements by court after death of one party*

- 73 (1) This paragraph applies if—
- (a) a maintenance agreement provides for the continuation of payments under the agreement after the death of one of the parties, and

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- (b) that party (“A”) dies domiciled in England and Wales.
- (2) Subject to sub-paragraph (4), the surviving party or A’s personal representatives may apply to the High Court or a county court for an order under paragraph 69.
- (3) If a maintenance agreement is altered by a court on an application made under sub-paragraph (2), the same consequences follow as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (4) An application under this paragraph may not, without the leave of the High Court or a county court, be made after the end of 6 months from the date on which representation in regard to A’s estate is first taken out.
- (5) A’s personal representatives are not liable for having distributed any part of A’s estate after the end of the 6 month period on the ground that they ought to have taken into account the possibility that a court might allow an application by virtue of this paragraph to be made by the surviving party after that period.
- (6) Sub-paragraph (5) does not affect 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.
- (7) Paragraph 60(6) applies for the purposes of sub-paragraph (4) as it applies for the purposes of paragraph 60(3).

## PART 14

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Avoidance of transactions intended to prevent or reduce financial relief*

- 74 (1) This paragraph applies if proceedings for relief (“financial relief”) are brought by one person (“A”) against another (“B”) under Part 1, 2, 4, 8, 9, or 11 (other than paragraph 60(2)), or paragraph 69.
- (2) If the court is satisfied, on an application by A, that B is, with the intention of defeating A’s claim for financial relief, about to—
- (a) make any disposition, or
  - (b) transfer out of the jurisdiction or otherwise deal with any property,
- it may make such order as it thinks fit for restraining B from doing so or otherwise for protecting the claim.
- (3) If the court is satisfied, on an application by A, that—
- (a) B has, with the intention of defeating A’s claim for financial relief, made a reviewable disposition, and
  - (b) if the disposition were set aside, financial relief or different financial relief would be granted to A,
- it may make an order setting aside the disposition.
- (4) If the court is satisfied, on an application by A in a case where an order has been obtained by A against B under any of the provisions mentioned in sub-paragraph (1), that B has, with the intention of defeating A’s claim for financial relief, made a reviewable disposition, it may make an order setting aside the disposition.



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- (5) An application for the purposes of sub-paragraph (3) must be made in the proceedings for the financial relief in question.
- (6) If the court makes an order under sub-paragraph (3) or (4) setting aside a disposition it must give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).
- 75 (1) Any reference in paragraph 74 to defeating A's claim for financial relief is to—
- (a) preventing financial relief from being granted to A, or to A for the benefit of a child of the family,
  - (b) reducing the amount of any financial relief which might be so granted, or
  - (c) frustrating or impeding the enforcement of any order which might be or has been made at A's instance under any of those provisions.
- (2) In paragraph 74 and this paragraph "disposition"—
- (a) does not include any provision contained in a will or codicil, but
  - (b) subject to paragraph (a), includes any conveyance, assurance or gift of property of any description (whether made by an instrument or otherwise).
- (3) Any disposition made by B (whether before or after the commencement of the proceedings for financial relief) is a reviewable disposition for the purposes of paragraphs 74(3) and (4) unless it was made—
- (a) for valuable consideration (other than formation of a civil partnership), and
  - (b) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on B's part to defeat A's claim for financial relief.
- (4) If an application is made under paragraph 74 with respect to a disposition which took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—
- (a) in a case falling within paragraph 74(2) or (3), that the disposition or other dealing would (apart from paragraph 74) have the consequence of defeating A's claim for financial relief, or
  - (b) in a case falling within paragraph 74(4), that the disposition has had the consequence of defeating A's claim for financial relief,
- it is presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating A's claim for financial relief.

*Direction for settlement of instrument for securing payments or effecting property adjustment*

- 76 (1) This paragraph applies if the court decides to make—
- (a) an order under Part 1 or 9 requiring any payments to be secured, or
  - (b) a property adjustment order.
- (2) The court may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.
- (3) If the order referred to in sub-paragraph (1) is to be made in proceedings for a dissolution, nullity or separation order, the court may, if it thinks fit, defer the making

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of the dissolution, nullity or separation order until the instrument has been duly executed.

*Settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settlor*

77 The fact that—

- (a) a settlement, or
- (b) a transfer of property,

had to be made in order to comply with a property adjustment order does not prevent the settlement or transfer from being a transaction in respect of which an order may be made under section 339 or 340 of the Insolvency Act 1986 (c. 45) (transfers at an undervalue and preferences).

*Payments, etc., under order made in favour of person suffering from mental disorder*

78 (1) This paragraph applies if—

- (a) the court makes an order under this Schedule requiring—
  - (i) payments (including a lump sum payment) to be made, or
  - (ii) property to be transferred,
 to a civil partner, and
- (b) the court is satisfied that the person in whose favour the order is made is incapable, because of mental disorder, of managing and administering his or her property and affairs.

(2) “Mental disorder” has the same meaning as in the Mental Health Act 1983 (c. 20).

(3) Subject to any order, direction or authority made or given in relation to that person under Part 8 of the 1983 Act, the court may order the payments to be made or, as the case may be, the property to be transferred to such persons having charge of that person as the court may direct.

*Appeals relating to pension sharing orders which have taken effect*

79 (1) Sub-paragraphs (2) and (3) apply if an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person’s rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the order taking effect.

(3) If the pension sharing order relates to a person’s shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of sub-paragraph (2) or (3) whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(5) Where sub-paragraph (2) or (3) applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

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- (6) Paragraph 19 only applies to a pension sharing order under this paragraph if the decision of the appeal court can itself be the subject of an appeal.
- (7) In sub-paragraph (2), the reference to the person responsible for the pension arrangement is to be read in accordance with paragraph 29(3).

### *Interpretation*

- 80 (1) References in this Schedule to—
- (a) periodical payments orders,
  - (b) secured periodical payments orders, and
  - (c) orders for the payment of a lump sum,
- are references to such of the orders that may be made under Parts 1 and 9 (other than interim orders) as are relevant in the context of the reference in question.
- (2) In this Schedule “child of the family”, in relation to two people who are civil partners of each other, means—
- (a) a child of both of them, and
  - (b) any other child, other than a child placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both the civil partners as a child of their family.
- (3) In this Schedule “the court” (except where the context otherwise requires) means—
- (a) the High Court, or
  - (b) where a county court has jurisdiction by virtue of Part 5 of the Matrimonial and Family Proceedings Act 1984 (c. 42), a county court.
- (4) References in this Schedule to a subsequent civil partnership include a civil partnership which is by law void or voidable.
- (5) References in this Schedule to a subsequent marriage include a marriage which is by law void or voidable.