

SCHEDULES

SCHEDULE 2

Section 15.

FINANCIAL PROVISION

Introductory

- 1 Part II of the 1973 Act (financial provision and property adjustment orders) is amended as follows.

The orders

- 2 For section 21 (definitions) substitute—

“21 Financial provision and property adjustment orders

- (1) For the purposes of this Act, a financial provision order is—
- (a) an order that a party must make in favour of another person such periodical payments, for such term, as may be specified (a “periodical payments order”);
 - (b) an order that a party must, to the satisfaction of the court, secure in favour of another person such periodical payments, for such term, as may be specified (a “secured periodical payments order”);
 - (c) an order that a party must make a payment in favour of another person of such lump sum or sums as may be specified (an “order for the payment of a lump sum”).
- (2) For the purposes of this Act, a property adjustment order is—
- (a) an order that a party must transfer such of his or her property as may be specified in favour of the other party or a child of the family;
 - (b) an order that a settlement of such property of a party as may be specified must be made, to the satisfaction of the court, for the benefit of the other party and of the children of the family, or either or any of them;
 - (c) an order varying, for the benefit of the parties and of the children of the family, or either or any of them, any marriage settlement;
 - (d) an order extinguishing or reducing the interest of either of the parties under any marriage settlement.
- (3) Subject to section 40 below, where an order of the court under this Part of this Act requires a party to make or secure a payment in favour of another person or to transfer property in favour of any person, that payment must be made or secured or that property transferred—
- (a) if that other person is the other party to the marriage, to that other party; and

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- (b) if that other person is a child of the family, according to the terms of the order—
 - (i) to the child; or
 - (ii) to such other person as may be specified, for the benefit of that child.
- (4) References in this section to the property of a party are references to any property to which that party is entitled either in possession or in reversion.
- (5) Any power of the court under this Part of this Act to make such an order as is mentioned in subsection (2)(b) to (d) above is exercisable even though there are no children of the family.
- (6) In this section—
 - “marriage settlement” means an ante-nuptial or post-nuptial settlement made on the parties (including one made by will or codicil);
 - “party” means a party to a marriage; and
 - “specified” means specified in the order in question.”

Financial provision: divorce and separation

3 Insert, before section 23—

“22A Financial provision orders: divorce and separation

- (1) On an application made under this section, the court may at the appropriate time make one or more financial provision orders in favour of—
 - (a) a party to the marriage to which the application relates; or
 - (b) any of the children of the family.
- (2) The “appropriate time” is any time—
 - (a) after a statement of marital breakdown has been received by the court and before any application for a divorce order or for a separation order is made to the court by reference to that statement;
 - (b) when an application for a divorce order or separation order has been made under section 3 of the 1996 Act and has not been withdrawn;
 - (c) when an application for a divorce order has been made under section 4 of the 1996 Act and has not been withdrawn;
 - (d) after a divorce order has been made;
 - (e) when a separation order is in force.
- (3) The court may make—
 - (a) a combined order against the parties on one occasion,
 - (b) separate orders on different occasions,
 - (c) different orders in favour of different children,
 - (d) different orders from time to time in favour of the same child,
 but may not make, in favour of the same party, more than one periodical payments order, or more than one order for payment of a lump sum, in relation to any marital proceedings, whether in the course of the

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proceedings or by reference to a divorce order or separation order made in the proceedings.

- (4) If it would not otherwise be in a position to make a financial provision order in favour of a party or child of the family, the court may make an interim periodical payments order, an interim order for the payment of a lump sum or a series of such orders, in favour of that party or child.
- (5) Any order for the payment of a lump sum made under this section may—
 - (a) provide for the payment of the lump sum by instalments of such amounts as may be specified in the order; and
 - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (6) Nothing in subsection (5) above affects—
 - (a) the power of the court under this section to make an order for the payment of a lump sum; or
 - (b) the provisions of this Part of this Act as to the beginning of the term specified in any periodical payments order or secured periodical payments order.
- (7) Subsection (8) below applies where the court—
 - (a) makes an order under this section (“the main order”) for the payment of a lump sum; and
 - (b) directs—
 - (i) that payment of that sum, or any part of it, is to be deferred; or
 - (ii) that that sum, or any part of it, is to be paid by instalments.
- (8) In such a case, the court may, on or at any time after making the main order, make an order (“the order for interest”) for the amount deferred, or the instalments, to carry interest (at such rate as may be specified in the order for interest)—
 - (a) from such date, not earlier than the date of the main order, as may be so specified;
 - (b) until the date when the payment is due.
- (9) This section is to be read subject to any restrictions imposed by this Act and to section 19 of the 1996 Act.

22B Restrictions affecting section 22A

- (1) No financial provision order, other than an interim order, may be made under section 22A above so as to take effect before the making of a divorce order or separation order in relation to the marriage, unless the court is satisfied—
 - (a) that the circumstances of the case are exceptional; and
 - (b) that it would be just and reasonable for the order to be so made.
- (2) Except in the case of an interim periodical payments order, the court may not make a financial provision order under section 22A above at any time while the period for reflection and consideration is interrupted under section 7(8) of the 1996 Act.

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- (3) No financial provision order may be made under section 22A above by reference to the making of a statement of marital breakdown if, by virtue of section 5(3) or 7(9) of the 1996 Act (lapse of divorce or separation process), it has ceased to be possible—
 - (a) for an application to be made by reference to that statement; or
 - (b) for an order to be made on such an application.
- (4) No financial provision order may be made under section 22A after a divorce order has been made, or while a separation order is in force, except—
 - (a) in response to an application made before the divorce order or separation order was made; or
 - (b) on a subsequent application made with the leave of the court.
- (5) In this section, “period for reflection and consideration” means the period fixed by section 7 of the 1996 Act.”

Financial provision: nullity of marriage

4 For section 23 substitute—

“23 Financial provision orders: nullity

- (1) On or after granting a decree of nullity of marriage (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more financial provision orders in favour of—
 - (a) either party to the marriage; or
 - (b) any child of the family.
- (2) Before granting a decree in any proceedings for nullity of marriage, the court may make against either or each of the parties to the marriage—
 - (a) an interim periodical payments order, an interim order for the payment of a lump sum, or a series of such orders, in favour of the other party;
 - (b) an interim periodical payments order, an interim order for the payment of a lump sum, a series of such orders or any one or more other financial provision orders in favour of each child of the family.
- (3) Where any such proceedings are dismissed, the court may (either immediately or within a reasonable period after the dismissal) make any one or more financial provision orders in favour of each child of the family.
- (4) An order under this section that a party to a marriage must pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour.
- (5) An order under this section for the payment of a lump sum 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 that child before the making of an application for an order under this section in his favour to be met.

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- (6) An order under this section for the payment of a lump sum may—
- (a) provide for the payment of that sum by instalments of such amount as may be specified in the order; and
 - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (7) Nothing in subsections (4) to (6) above affects—
- (a) the power under subsection (1) above to make an order for the payment of a lump sum; or
 - (b) the provisions of this Act as to the beginning of the term specified in any periodical payments order or secured periodical payments order.
- (8) The powers of the court under this section to make one or more financial provision orders are exercisable against each party to the marriage by the making of—
- (a) a combined order on one occasion, or
 - (b) separate orders on different occasions,
- but the court may not make more than one periodical payments order, or more than one order for payment of a lump sum, in favour of the same party.
- (9) The powers of the court under this section so far as they consist in power to make one or more orders in favour of the children of the family—
- (a) may be exercised differently in favour of different children; and
 - (b) except in the case of the power conferred by subsection (3) above, may be exercised from time to time in favour of the same child; and
 - (c) in the case of the power conferred by that subsection, if it is exercised by the making of a financial provision order of any kind in favour of a child, shall include power to make, from time to time, further financial provision orders of that or any other kind in favour of that child.
- (10) Where an order is made under subsection (1) above in favour of a party to the marriage on or after the granting of a decree of nullity of marriage, neither the order nor any settlement made in pursuance of the order takes effect unless the decree has been made absolute.
- (11) Subsection (10) above does not affect the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel.
- (12) Where the court—
- (a) makes an order under this section (“the main order”) for the payment of a lump sum; and
 - (b) directs—
 - (i) that payment of that sum or any part of it is to be deferred; or
 - (ii) that that sum or any part of it is to be paid by instalments,it may, on or at any time after making the main order, make an order (“the order for interest”) for the amount deferred or the instalments to carry interest at such rate as may be specified by the order for interest from such date, not earlier than the date of the main order, as may be so specified, until the date when payment of it is due.

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(13) This section is to be read subject to any restrictions imposed by this Act.”

Property adjustment orders: divorce and separation

5 Insert, before section 24—

“23A Property adjustment orders: divorce and separation

- (1) On an application made under this section, the court may, at any time mentioned in section 22A(2) above, make one or more property adjustment orders.
- (2) If the court makes, in favour of the same party to the marriage, more than one property adjustment order in relation to any marital proceedings, whether in the course of the proceedings or by reference to a divorce order or separation order made in the proceedings, each order must fall within a different paragraph of section 21(2) above.
- (3) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more property adjustment orders in relation to the marriage as it thinks fit.
- (4) Subsection (3) above does not affect section 31 or 31A below.
- (5) This section is to be read subject to any restrictions imposed by this Act and to section 19 of the 1996 Act.

23B Restrictions affecting section 23A

- (1) No property adjustment order may be made under section 23A above so as to take effect before the making of a divorce order or separation order in relation to the marriage unless the court is satisfied—
 - (a) that the circumstances of the case are exceptional; and
 - (b) that it would be just and reasonable for the order to be so made.
- (2) The court may not make a property adjustment order under section 23A above at any time while the period for reflection and consideration is interrupted under section 7(8) of the 1996 Act.
- (3) No property adjustment order may be made under section 23A above by virtue of the making of a statement of marital breakdown if, by virtue of section 5(3) or 7(5) of the 1996 Act (lapse of divorce or separation process), it has ceased to be possible—
 - (a) for an application to be made by reference to that statement; or
 - (b) for an order to be made on such an application.
- (4) No property adjustment order may be made under section 23A above after a divorce order has been made, or while a separation order is in force, except—
 - (a) in response to an application made before the divorce order or separation order was made; or
 - (b) on a subsequent application made with the leave of the court.
- (5) In this section, “period for reflection and consideration” means the period fixed by section 7 of the 1996 Act.”

Property adjustment orders: nullity

6 For section 24, substitute—

“24 Property adjustment orders: nullity of marriage

- (1) On or after granting a decree of nullity of marriage (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more property adjustment orders in relation to the marriage.
- (2) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more property adjustment orders in relation to the marriage as it thinks fit.
- (3) Subsection (2) above does not affect section 31 or 31A below.
- (4) Where a property adjustment order is made under this section on or after the granting of a decree of nullity of marriage, neither the order nor any settlement made in pursuance of the order is to take effect unless the decree has been made absolute.
- (5) That does not affect the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel.
- (6) This section is to be read subject to any restrictions imposed by this Act.”

Period of secured and unsecured payments orders

7 (1) In section 28(1) (duration of a continuing financial provision order in favour of a party to a marriage), for paragraphs (a) and (b) substitute—

- “(a) a term specified in the order which is to begin before the making of the order shall begin no earlier—
- (i) where the order is made by virtue of section 22A(2)(a) or (b) above, unless sub-paragraph (ii) below applies, than the beginning of the day on which the statement of marital breakdown in question was received by the court;
 - (ii) where the order is made by virtue of section 22A(2)(b) above and the application for the divorce order was made following cancellation of an order preventing divorce under section 10 of the 1996 Act, than the date of the making of that application;
 - (iii) where the order is made by virtue of section 22A(2)(c) above, than the date of the making of the application for the divorce order; or
 - (iv) in any other case, than the date of the making of the application on which the order is made;
- (b) a term specified in a periodical payments order or secured periodical payments order shall be so defined as not to extend beyond—
- (i) in the case of a periodical payments order, the death of the party by whom the payments are to be made; or
 - (ii) in either case, the death of the party in whose favour the order was made or the remarriage of that party following the making of a divorce order or decree of nullity.”

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(2) In section 29 (duration of continuing financial provision order in favour of a child of the family) insert after subsection (1)—

“(1A) The term specified in a periodical payments order or secured periodical payments order made in favour of a child shall be such term as the court thinks fit.

(1B) If that term is to begin before the making of the order, it may do so no earlier than—

- (a) in the case of an order made by virtue of section 22A(2)(a) or (b) above, except where paragraph (b) below applies, the beginning of the day on which the statement of marital breakdown in question was received by the court;
- (b) in the case of an order made by virtue of section 22A(2)(b) above where the application for the divorce order was made following cancellation of an order preventing divorce under section 10 of the 1996 Act, the date of the making of that application;
- (c) in the case of an order made by virtue of section 22A(2)(c) above, the date of the making of the application for the divorce order; or
- (d) in any other case, the date of the making of the application on which the order is made.”

Variations etc. following reconciliations

8

Insert after section 31—

“31A Variation etc. following reconciliations

(1) Where, at a time before the making of a divorce order—

- (a) an order (“a paragraph (a) order”) for the payment of a lump sum has been made under section 22A above in favour of a party,
- (b) such an order has been made in favour of a child of the family but the payment has not yet been made, or
- (c) a property adjustment order (“a paragraph (c) order”) has been made under section 23A above,

the court may, on an application made jointly by the parties to the marriage, vary or discharge the order.

(2) Where the court varies or discharges a paragraph (a) order, it may order the repayment of an amount equal to the whole or any part of the lump sum.

(3) Where the court varies or discharges a paragraph (c) order, it may (if the order has taken effect)—

- (a) order any person to whom property was transferred in pursuance of the paragraph (c) order to transfer—
 - (i) the whole or any part of that property, or
 - (ii) the whole or any part of any property appearing to the court to represent that property,
 in favour of a party to the marriage or a child of the family; or
- (b) vary any settlement to which the order relates in favour of any person or extinguish or reduce any person’s interest under that settlement.

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- (4) Where the court acts under subsection (3) it may make such supplemental provision (including a further property adjustment order or an order for the payment of a lump sum) as it thinks appropriate in consequence of any transfer, variation, extinguishment or reduction to be made under paragraph (a) or (b) of that subsection.
- (5) Sections 24A and 30 above apply for the purposes of this section as they apply where the court makes a property adjustment order under section 23A or 24 above.
- (6) The court shall not make an order under subsection (2), (3) or (4) above unless it appears to it that there has been a reconciliation between the parties to the marriage.
- (7) The court shall also not make an order under subsection (3) or (4) above unless it appears to it that the order will not prejudice the interests of—
 - (a) any child of the family; or
 - (b) any person who has acquired any right or interest in consequence of the paragraph (c) order and is not a party to the marriage or a child of the family.”