

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules

Schedule 15: Financial relief in the High Court or a county court etc.: Northern Ireland

719. This Schedule provides for adjustment of financial provision and property rights of civil partners when a civil partnership is brought to an end and provides corresponding rights to those available to married people on divorce.

Part 1 - Financial provision in connection with dissolution, nullity or separation

720. This Part outlines the circumstances in which the High Court or a county court (with jurisdiction) can make an order for financial provision relating to dissolution, nullity or separation orders in connection with a civil partnership. It states that the court may make an order for a lump sum or for periodical payments to be made from one civil partner to the other or to a child of the family, or to a particular person for the benefit of a child of the family. The court can order periodic payments to be made for a specified time only and can order the civil partner paying to secure the payments by means of a charge or other arrangement. Part 1 also provides for special provisions to be made for lump sum orders either to be paid in instalments or to be secured by a charge on property. Lump sum payments can take account of liabilities or reasonable expenses incurred before the application was made. Where a lump sum order is deferred or ordered to be paid in instalments provision can be made for interest. Where an order is for periodical payments or a lump sum solely to the other civil partner in dissolution or nullity proceedings the order or settlement does not take effect until the dissolution or nullity order has been made final.

Part 2 - Property adjustment on or after dissolution, nullity or separation

721. This Part allows for property adjustment orders to be made on or after dissolution, nullity or separation. This provides for property to be transferred from one civil partner to the other or to a child of the family or to another person for the benefit of a child of the family. It also allows for a settlement of specified property to be made for the benefit of the other civil partner and/or children of the family. An order for a relevant settlement can be varied and the interest extinguished or reduced. Variation of a property adjustment order may be made even if there are no children of the family. In the case of a dissolution or nullity order the property adjustment or settlement can only take effect after the dissolution or nullity order has been made final.

Part 3 - Pension sharing orders on or after dissolution or nullity order

722. The Part provides for a pension sharing order to be made so that both civil partners share the benefit of the value of a pension that had previously been held by only one of the partners. The value of the pension is effectively split and the court specifies the amount

(in percentage terms) transferred to the other civil partner. The Court can apportion any charge from the cost of making pension sharing arrangements. A pension sharing order cannot be made on a pension that is, or has already been, the subject of a pension sharing order between the same two civil partners, or where there is already in force an order under Part 5 in relation to the same pension. The order can only take effect after the dissolution or nullity order has been made final. The Lord Chancellor, in regulations, can set a minimum period before a pension order can take effect.

Part 4 - Matters to which the court is to have regard under Parts 1 to 3

723. This Part sets out the matters which the court must consider when exercising its powers to make orders under the preceding three Parts. Whilst all the circumstances of the case have to be considered the first consideration has to be given to the welfare of any child of the family under 18 years old. The criteria the court must consider under this Part are parallel to those contained in Article 27 of the Matrimonial Causes (Northern Ireland) Order 1978 and reflect the relative financial positions of the civil partners, their current and future obligations, their age and the duration of the civil partnership and the contributions each civil partner has made to the welfare of the family, whether in financial terms or by caring or looking after the home. The conduct of each civil partner will be taken into account if it would be unfair to disregard it. When exercising the powers in relation to a child of the family the court has to consider the financial needs and resources of the child in addition to the financial position of the civil partners. Where a child is not a child of one of the civil partners the court needs to look at any responsibility that civil partner had assumed for the child and the duration of such responsibility. The court has to consider the appropriateness of the orders under Parts 1 to 3 in respect of termination of financial dependence or involvement.

Part 5 - Making of Part 1 orders having regard to pension benefits

724. This Part describes the matters the court must have regard to when taking into account the considerations in Part 4 where a pension arrangement exists and the procedure for making orders in relation to a pension benefit of one civil partner when it becomes due to make payments (in terms of an amount or percentage) for the benefit of the other civil partner. Any such payment discharges the civil partner's liability under the order. Where no pension sharing order has been made on the pension arrangement and that pension includes a lump sum payable on death the court can order that the other civil partner receives the whole or part of that sum. The Lord Chancellor can make regulations addressing: payment from a pension arrangement to be made for the benefit of the other civil partner, the terms on which payment is made, payments made under a mistaken belief, discharges from requirements imposed by this Part, calculation and verification of the valuation of the pension.

Part 6 – Pension Protection Fund compensation etc.

725. This Part ensures that the provisions for financial relief in Northern Ireland reflect the creation of the Pension Protection Fund. It allows the court to include PPF compensation as financial resources of the parties to the civil partnership to which it can have regard to when it is exercising its powers to make financial provision on dissolution or nullity of a civil partnership or separation. This Part also ensures that an attachment order, commutation order or pension sharing order made as a result of dissolution or nullity of a civil partnership, and in certain cases as a result of separation continues to have effect if the pension scheme enters the PPF. Where the court exercises its powers of variation under paragraph 46 of Schedule 15, the PPF shall be bound by any variations made by the court to existing pension attachment orders and pension sharing orders. The Lord Chancellor may, by regulations make necessary and expedient consequential modifications to Schedule 15 as a result of the PPF assuming responsibility for pension sharing orders and attachment orders.

Part 7 - Maintenance pending outcome of dissolution, nullity or separation proceedings

726. This Part allows for the court to order one of the civil partners to make periodic payments for maintenance for the other civil partner before the final outcome of the proceedings has been determined.

Part 8 - Failure to maintain: financial provision (and interim orders)

727. This Part allows either civil partner to apply to the court because the other civil partner has failed to maintain them adequately or has failed to provide for, or make a proper contribution towards, the welfare of any child of the family. The court is empowered to make a range of orders, including orders for periodic payments for a set period of time, a lump sum payment and an order to secure payments. The court may make an order in favour of the other civil partner, the child of the family or another person for the benefit of the child. An order for a lump sum payment can be made to cover reasonable expenses and liabilities incurred in maintaining the applicant or any child of the family before the application was made. Where there is immediate need of financial assistance an interim order can be made. The Part sets out the matters the court must consider when deciding whether proper maintenance has been provided, which are the same as used in other financial provision cases as set out in Part 4.

Part 9 - Commencement of certain proceedings and duration of certain orders

728. This Part establishes that, subject to any rules of court, applications for financial provision can be commenced at any time after the application for a dissolution, nullity or separation order. The Part also establishes provisions for the circumstances when orders will cease to have effect or cannot be applied for, for example when a child of the family reaches the age of 18 and where a civil partner in receipt of periodic payment marries or forms a subsequent civil partnership. It also deals with applications for periodical payments where a maintenance calculation is still in force.

Part 10 - Variation, discharge etc of certain orders for financial relief

729. This Part establishes conditions for the court to vary financial orders made and includes powers to vary orders, discharge orders, suspend or revive suspended provisions of an order, remit (cancel) arrears and to vary property adjustment and pension sharing orders. Where a court discharges or varies a periodical payments order the court can make additional provision through one of the other orders. The Part gives the circumstances in which a child who is sixteen or over can apply for the variation of a periodical payments order. The court may vary periodic payments which are secured when the person liable has died and deal with the liability within the context of the deceased person's estate. The court will also have power to direct when the variation or other order will take effect.

Part 11 - Arrears and repayments

730. This Part deals with arrears and repayments and provides that arrears cannot be enforced without the leave of the court. The court can order repayment of various sums paid under certain circumstances, for example sums paid by mistake when an order had already ceased to have effect because the recipient had married or formed another civil partnership.

Part 12 - Consent orders and maintenance agreements

731. In this Part provisions are made for civil partners to reach agreement on the terms of financial orders and for the court to make an order (a consent order) on terms as set out by the parties and presented to the court. There are also provisions for agreements to be altered by the court during the lives of the parties, restrictions on applications to magistrates' courts for maintenance and provisions relating to the duration and limits

*These notes refer to the Civil Partnership Act 2004 (c.33)
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of periodical and secured periodical payments where those provisions are inserted into an agreement to alter it. This Part also provides for agreements to be altered after the death of one of the parties, if an agreement for maintenance allows for payments after the death of one of the parties.

Part 13 - Miscellaneous and supplementary

732. This Part provides: for the court to make orders overturning transactions carried out in an attempt to defeat financial orders under the Schedule provisions; for a settlement to be overturned on the bankruptcy of the person who made it; for orders for payments made to a person suffering from a mental disorder to be paid to another person and; for appeals when a pension order has taken effect. This Part also defines a number of terms used in the Schedule.