

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules

Schedule 17: Financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership

742. This Schedule provides for applications in courts in Northern Ireland for financial relief following the dissolution, annulment or legal separation of civil partners as a result of legal proceedings in an overseas country. The provisions correspond to those available for overseas divorces etc in Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

Part 1 - Financial relief

743. **Part 1** provides that the Schedule will apply where a civil partnership has been dissolved or annulled or the civil partners have been legally separated in an overseas country and the dissolution etc. is entitled to be recognised as valid in Northern Ireland. Sub-paragraph 2 of paragraph 1 provides that for the purposes of application for financial relief, the dissolution, annulment or separation may have taken place before the Civil Partnership Act is brought into force. Sub-paragraph 3 of paragraph 1 defines an overseas country as a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man. Sub-paragraph 4 defines a child of the family and sub-paragraph 5 defines “authority” and “voluntary organisation” as per the Children (Northern Ireland) Order 1995.
744. Under *paragraph 2* either civil partner may apply to the court for orders under *paragraph 9* or *13* of the Schedule. However, under *paragraph 3* no application will be possible if the applicant has subsequently formed a new civil partnership or married. *Paragraph 4* provides that leave of the court is required for an application to be made.
745. Under *paragraph 5* where it appears to the court that the applicant or a child of the family is in need of immediate assistance, an interim order for maintenance may be made in favour of the applicant or the child.
746. *Paragraph 7* sets out the criteria the court will use to determine whether it has jurisdiction to deal with an application for financial relief following an overseas dissolution etc. One of the civil partners must be domiciled or have been habitually resident in Northern Ireland for a period of one year when the application is made or when the civil partnership was dissolved or annulled or the order for legal separation was made. Alternatively either or both of the civil partners must have an interest in a dwelling-house in Northern Ireland on the date of application for leave to apply which was at some time during the civil partnership a civil partnership home of the civil partners.

747. *Paragraph 8* provides that the court must consider whether Northern Ireland is the appropriate venue for the application, and outlines the criteria the court is to take into account when considering this.
748. *Paragraph 9* describes the orders that the court is able to make on applications under this Schedule. The court may make the same orders for financial provision as are available for civil partnerships formed in Northern Ireland under Part 1, 2 and 3 of Schedule 15 (Financial relief in the High Court or a county court etc.: Northern Ireland) of the Act including orders for property adjustment and pension sharing if the civil partnership has been dissolved or annulled. If the partners are legally separated the court may make orders for financial provision and property adjustment as provided in Part 1 and 2 of Schedule 15 (Financial relief in the High Court or a county court etc.: Northern Ireland) to the Act.
749. *Paragraph 10* sets out the matters to which the court must have regard when exercising its powers under this Schedule, which are the same as those to be considered when making financial provision for civil partners in civil partnerships formed in Northern Ireland and for any children involved.
750. *Paragraph 11* establishes the restrictions on the court's powers when its jurisdiction to deal with the application arises only from the fact that the civil partnership home is situated in Northern Ireland. In these circumstances the court may make various orders including for lump sum payments, transfer of the property or sale of the property.
751. *Paragraph 12* provides for the court to make an order on terms agreed by the civil partners (a consent order).
752. *Paragraph 13* provides for the court to order transfer of tenancies of dwelling houses.
753. *Paragraph 14* applies certain provisions of Schedule 15 (Financial relief in the High Court or a county court etc.: Northern Ireland) to interim orders or orders for financial provision, property adjustment and pension sharing made under paragraphs 5 and 9 of this Schedule.
754. *Paragraph 15* provides for the avoidance of transactions designed to defeat claims under *paragraphs 5 and 9*. Where one of the civil partners (A) is granted leave to make an application for an order under paragraph 9 and the court is satisfied that the other civil partner (B) is, with the intention of defeating a claim by (A), about to deal with any property, it may make an order restraining (B) from doing so. *Paragraph 15* also provides that where one civil partner (A) is granted leave to make an application under *paragraph 9* or where an order has been made under *paragraph 5 or 9* and the other civil partner (B) has, with the intention of defeating a claim by (A), made a disposition, then the court may in certain circumstances set aside the disposition.
755. *Paragraph 16* provides circumstances in which it can be presumed, for the purposes of *paragraph 15*, that the person who disposed of or is about to dispose of property did so, or is about to do so, with the intention of defeating the other civil partner's claim.

Part 2 - Steps to prevent avoidance prior to application for leave under paragraph 4

756. *Part 2* provides the court with powers to make such orders as it thinks fit restraining a party from making any disposition or transfer out of the jurisdiction intended to defeat the other party's prospective claim. The court may only make an order under this Part where the applicant intends to apply for leave to make an application for an order under *paragraph 9* as soon as he or she has been habitually resident in Northern Ireland for one year.

*These notes refer to the Civil Partnership Act 2004 (c.33)
which received Royal Assent on 18th November 2004*

Part 3 - Supplementary

757. **Part 3** clarifies the meaning of and defines various terms for the purposes of this Schedule and provides that the provisions relating to avoidance and prevention of transactions are without prejudice to any power of the High Court to grant injunctions under section 91 of the Judicature (Northern Ireland) Act 1978.