

SCHEDULES

SCHEDULE 5

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

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 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.
- (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

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- (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 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.
- (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,

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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.