

SCHEDULES

SCHEDULE 5

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

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.

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;

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- (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;
 - (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),

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- (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).