

SCHEDULES

SCHEDULE 6

FINANCIAL RELIEF IN MAGISTRATES' COURTS ETC.

PART 1

FAILURE TO MAINTAIN ETC.: FINANCIAL PROVISION

Circumstances in which orders under this Part may be made

- 1 (1) On an application to it by one of the civil partners, a magistrates' court may make any one or more of the orders set out in paragraph 2 if it is satisfied that the other civil partner—
- (a) has failed to provide reasonable maintenance for the applicant,
 - (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family,
 - (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, or
 - (d) has deserted the applicant.
- (2) The power of the court under sub-paragraph (1) is subject to the following provisions of this Schedule.

The orders: periodical and secured periodical payments and lump sums

- 2 (1) The orders are—
- (a) an order that the respondent must make to the applicant such periodical payments for such term as may be specified;
 - (b) an order that the respondent must pay to the applicant such lump sum as may be specified;
 - (c) an order that the respondent must make—
 - (i) to the applicant for the benefit of a child of the family to whom the application relates, or
 - (ii) to a child of the family to whom the application relates;such periodical payments for such term as may be specified;
 - (d) an order that the respondent must pay such lump sum as may be specified—
 - (i) to the applicant for the benefit of a child of the family to whom the application relates, or
 - (ii) to such a child of the family to whom the application relates.
- (2) The amount of a lump sum required to be paid under sub-paragraph (1)(b) or (d) must not exceed—
- (a) £1,000, or

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- (b) such larger amount as the Lord Chancellor may from time to time by order fix for the purposes of this sub-paragraph.
- (3) The power to make an order under sub-paragraph (2) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) “Specified” means specified in the order.

Particular provision that may be made by lump sum orders

- 3 (1) An order under this Part for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the order to be met.
- (2) Sub-paragraph (1) does not restrict the power to make the orders set out in paragraph 2(1)(b) and (d).

Matters to which court is to have regard in exercising its powers under this Part—general

- 4 If an application is made for an order under this Part, the court, in deciding—
 - (a) whether to exercise its powers under this Part, 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

- 5 (1) This paragraph applies in relation to the exercise by the court of its power to make an order by virtue of paragraph 2(1)(a) or (b).
- (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;
 - (c) the standard of living enjoyed by the civil partners before the occurrence of the conduct which is alleged as the ground of the application;
 - (d) the age of each civil partner and the duration of the civil partnership;
 - (e) any physical or mental disability of either civil partner;
 - (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.

Particular matters to be taken into account when exercising powers in relation to children

- 6 (1) This paragraph applies in relation to the exercise by the court of its power to make an order by virtue of paragraph 2(1)(c) or (d).
- (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 standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
 - (e) the way in which the child was being and in which the civil partners expected the child to be educated or trained;
 - (f) the considerations mentioned in relation to the civil partners in paragraph 5(2)(a) and (b).
- (3) In relation to the exercise of its power to make an order in favour of a child of the family who is not the respondent's child, the court must also have regard to—
- (a) whether the respondent has assumed any responsibility for the child's maintenance;
 - (b) if so, the extent to which, and the basis on which, the respondent assumed that responsibility and the length of time during which the respondent discharged that responsibility;
 - (c) whether in assuming and discharging that responsibility the respondent did so knowing that the child was not the respondent's child;
 - (d) the liability of any other person to maintain the child.

Reconciliation

- 7 (1) If an application is made for an order under this Part—
- (a) the court, before deciding whether to exercise its powers under this Part, must consider whether there is any possibility of reconciliation between the civil partners, and
 - (b) if at any stage of the proceedings on that application it appears to the court that there is a reasonable possibility of such a reconciliation, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.
- (2) If the court adjourns any proceedings under sub-paragraph (1), it may request—
- (a) an officer of the Children and Family Court Advisory and Support Service, or
 - (b) any other person,
- to attempt to effect a reconciliation between the civil partners.
- (3) If any such request is made, the officer or other person—
- (a) must report in writing to the court whether the attempt has been successful, but
 - (b) must not include in the report any other information.

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Refusal of order in case more suitable for High Court

- 8 (1) If on hearing an application for an order under this Part a magistrates' court is of the opinion that any of the matters in question between the civil partners would be more conveniently dealt with by the High Court, the magistrates' court must refuse to make any order on the application.
- (2) No appeal lies from a refusal under sub-paragraph (1).
- (3) But, in any proceedings in the High Court relating to or comprising the same subject matter as an application in respect of which a magistrates' court has refused to make any order, the High Court may order the application to be reheard and determined by a magistrates' court acting for the same local justice area as the court which refused to make any order.