

## SCHEDULES

### SCHEDULE 1

Section 2

#### DETERMINATION OF THE FIXED NET SUM

The following is the Schedule inserted after the First Schedule to the Administration of Estates Act 1925—

#### “SCHEDULE 1A

##### DETERMINATION OF THE FIXED NET SUM

- 1 This Schedule has effect for determining the fixed net sum referred to in paragraph (B) of case (2) of the Table in section 46(1)(i).
- 2 On the coming into force of this Schedule, the amount of the fixed net sum is the amount fixed by order under section 1(1)(a) of the Family Provision Act 1966 immediately before the coming into force of this Schedule.
- 3 (1) The Lord Chancellor may from time to time by order made by statutory instrument specify the amount of the fixed net sum.  
(2) An order under sub-paragraph (1) relates only to deaths occurring after the coming into force of the order.  
(3) The first order under sub-paragraph (1) supersedes paragraph 2 of this Schedule.  
(4) A statutory instrument containing an order under sub-paragraph (1) is subject to annulment pursuant to a resolution of either House of Parliament.  
(5) Sub-paragraph (4) does not apply in the case mentioned in paragraph 6(3), or in the case of an instrument which also contains provision made by virtue of paragraph 8.
- 4 (1) This paragraph applies where—
  - (a) a figure for the consumer prices index for a month has become available, and
  - (b) the consumer prices index for that month is more than 15% higher than the consumer prices index for the base month.  
(2) The Lord Chancellor must, before the end of the period of 21 days beginning with the day on which the figure mentioned in sub-paragraph (1)(a) becomes available (“the publication date”), make an order under paragraph 3(1).  
(3) But if the Lord Chancellor determines under paragraph 6 that the order should specify an amount other than that mentioned in paragraph 6(1), the Lord Chancellor is to be taken to have complied with sub-paragraph (2) if, within the period of 21 days beginning with the publication date—
  - (a) a draft of a statutory instrument containing the order is laid before each House of Parliament, and
  - (b) paragraph 6(4) is complied with.

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- (4) In this paragraph—
- “the base month” means—
- (a) the month in which this Schedule came into force, or
  - (b) if one or more orders under paragraph 3(1) have been made before the publication date, the most recent month for which a figure for the consumer prices index was available when the Lord Chancellor made the most recent of those orders;
- “consumer prices index” means—
- (a) the all items consumer prices index published by the Statistics Board, or
  - (b) if that index is not published for a relevant month, any substituted index or index figures published by the Statistics Board.
- 5 The Lord Chancellor must ensure that the power under paragraph 3(1) is exercised in such a way that an order is made—
- (a) before the end of the period of 5 years beginning with the date this Schedule comes into force, and then
  - (b) before the end of the period of 5 years since the date on which the last order under paragraph 3(1) was made, and so on.
- 6 (1) Unless the Lord Chancellor otherwise determines, an order under paragraph 3(1) must specify the amount given by paragraph 7(2) or (as the case requires) 7(3).
- (2) If the Lord Chancellor does otherwise determine—
- (a) an order under paragraph 3(1) may provide for the fixed net sum to be of any amount (including an amount equal to or lower than the previous amount), and
  - (b) the Lord Chancellor must prepare a report stating the reason for the determination.
- (3) A statutory instrument containing an order under paragraph 3(1) that specifies an amount other than that mentioned in sub-paragraph (1) of this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) The Lord Chancellor must lay the report before Parliament no later than the date on which the draft of the instrument containing the order is laid before Parliament.
- 7 (1) The amount mentioned in paragraph 6(1) is found as follows.
- (2) If the consumer prices index for the current month is higher than that for the base month, the amount to be specified in the order is found by—
- (a) increasing the amount of the previous fixed net sum by the same percentage as the percentage increase in the consumer prices index between the base month and the current month, and
  - (b) if the resulting figure is not a multiple of £1,000, rounding it up to the nearest multiple of £1,000.
- (3) If the consumer prices index for the current month is the same as, or lower than, that for the base month, the amount specified in the order is to be the same as the amount of the previous fixed net sum.
- (4) In this paragraph—

“the base month” means—

- (a) in the case of the first order under paragraph 3(1), the month in which this Schedule came into force, and
- (b) in the case of each subsequent order, the month which was the current month in relation to the previous order;

“the current month” means the most recent month for which a figure for the consumer prices index is available when the Lord Chancellor makes the order;

“consumer prices index” has the same meaning as in paragraph 4.

- 8 (1) The Lord Chancellor may by order made by statutory instrument amend paragraphs 4 and 7 so as to—
  - (a) substitute for references to the consumer prices index (as defined) references to another index, and
  - (b) make amendments in those paragraphs consequential on that substitution.
- (2) A statutory instrument containing an order under sub-paragraph (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

## SCHEDULE 2

Section 6

### AMENDMENTS OF INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

- 1 The Inheritance (Provision for Family and Dependants) Act 1975 is amended as follows.

#### *Children of the family*

- 2 (1) Section 1 (application for financial provision from deceased's estate) is amended as follows.
  - (2) In subsection (1)(d), for the words from “who” to the end substitute “who in relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family;”.
  - (3) After subsection (2) insert—
    - “(2A) The reference in subsection (1)(d) above to a family in which the deceased stood in the role of a parent includes a family of which the deceased was the only member (apart from the applicant).”

#### *Maintenance*

- 3 In section 1 (application for financial provision from deceased's estate), for subsection (3) substitute—
  - “(3) For the purposes of subsection (1)(e) above, a person is to be treated as being maintained by the deceased (either wholly or partly, as the case may be) only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a

contribution made for full valuable consideration pursuant to an arrangement of a commercial nature.”

*Powers of court*

- 4 (1) Section 2 (powers of court to make orders) is amended as follows.
- (2) In subsection (1), at the end insert—
- “(h) an order varying for the applicant’s benefit the trusts on which the deceased’s estate is held (whether arising under the will, or the law relating to intestacy, or both).”
- (3) After subsection (3) insert—
- “(3A) In assessing for the purposes of an order under this section the extent (if any) to which the net estate is reduced by any debts or liabilities (including any inheritance tax paid or payable out of the estate), the court may assume that the order has already been made.”

*Matters to which court is to have regard*

- 5 (1) Section 3 (matters to which court is to have regard when exercising powers under section 2) is amended as follows.
- (2) In subsection (2), at the end of each of the final two sentences insert “; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.”
- (3) In subsection (3)—
- (a) for paragraph (a) substitute—
- “(a) to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;
- (aa) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;”;
- (b) in paragraph (b) for “assuming and discharging that responsibility” substitute “maintaining or assuming responsibility for maintaining the applicant”.
- (4) In subsection (4), for the words from “regard” to the end substitute “regard—
- (a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;
- (b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.”

*Time limit for applications*

- 6 In section 4 (time-limit for applications), at the end insert “(but nothing prevents the making of an application before such representation is first taken out)”.

*Joint tenancies*

- 7 (1) Section 9 (property held on joint tenancy) is amended as follows.
- (2) In subsection (1)—
- (a) omit the words from “, before the end” to “first taken out,” and
  - (b) omit “, at the value thereof immediately before his death,”.
- (3) After subsection (1) insert—
- “(1A) Where an order is made under subsection (1) the value of the deceased’s severable share of the property concerned is taken for the purposes of this Act to be the value that the share would have had at the date of the hearing of the application for an order under section 2 had the share been severed immediately before the deceased’s death, unless the court orders that the share is to be valued at a different date.”

SCHEDULE 3

Section 7

DETERMINATION OF DATE WHEN REPRESENTATION IS FIRST TAKEN OUT

- 1 In section 31 of the Matrimonial Causes Act 1973 (variation, discharge, etc, of certain orders for financial relief), for subsection (9) substitute—
- “(9) The following are to be left out of account when considering for the purposes of subsection (6) above when representation was first taken out—
- (a) a grant limited to settled land or to trust property,
  - (b) any other grant that does not permit any of the estate to be distributed,
  - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
  - (d) a grant, or its equivalent, made outside the United Kingdom (but see subsection (9A) below).
- (9A) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of subsection (9) above, but is to be taken as dated on the date of sealing.”
- 2 For section 23 of the Inheritance (Provision for Family and Dependants) Act 1975 (determination of date on which representation was first taken out) substitute—

**“23 Determination of date on which representation was first taken out**

- (1) The following are to be left out of account when considering for the purposes of this Act when representation with respect to the estate of a deceased person was first taken out—
- (a) a grant limited to settled land or to trust property,
  - (b) any other grant that does not permit any of the estate to be distributed,

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- (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
  - (d) a grant, or its equivalent, made outside the United Kingdom (but see subsection (2) below).
- (2) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of this section, but is to be taken as dated on the date of sealing.”
- 3 In section 20 of the Administration of Justice Act 1982 (rectification of wills), for subsection (4) substitute—
  - “(4) The following are to be left out of account when considering for the purposes of this section when representation with respect to the estate of a deceased person was first taken out—
    - (a) a grant limited to settled land or to trust property,
    - (b) any other grant that does not permit any of the estate to be distributed,
    - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
    - (d) a grant, or its equivalent, made outside the United Kingdom (but see subsection (5)).
  - (5) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of subsection (4), but is to be taken as dated on the date of sealing.”
- 4 (1) Schedule 1 to the Children Act 1989 (financial provision for children) is amended as follows.
  - (2) In paragraph 7 (variation of orders for secured periodical payments after death of parent), for sub-paragraph (6) substitute—
    - “(6) The following are to be left out of account when considering for the purposes of sub-paragraph (2) when representation was first taken out—
      - (a) a grant limited to settled land or to trust property,
      - (b) any other grant that does not permit any of the estate to be distributed,
      - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
      - (d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (6A)).
    - (6A) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (6), but is to be taken as dated on the date of sealing.”
  - (3) In paragraph 11 (alteration of maintenance agreements after death of one of the parties), for sub-paragraph (4) substitute—
    - “(4) The following are to be left out of account when considering for the purposes of sub-paragraph (3) when representation was first taken out—

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- (a) a grant limited to settled land or to trust property,
  - (b) any other grant that does not permit any of the estate to be distributed,
  - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
  - (d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (4A)).
- (4A) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (4), but is to be taken as dated on the date of sealing.”
- 5 In Schedule 5 to the Civil Partnership Act 2004, in paragraph 60 (variation of secured periodical payments order where person liable has died), for sub-paragraph (6) substitute—
- “(6) The following are to be left out of account when considering for the purposes of sub-paragraph (3) when representation was first taken out—
- (a) a grant limited to settled land or to trust property,
  - (b) any other grant that does not permit any of the estate to be distributed,
  - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
  - (d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (7)).
- (7) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (6), but is to be taken as dated on the date of sealing.”

## SCHEDULE 4

Section 11

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Administration of Estates Act 1925*

- 1 (1) The Administration of Estates Act 1925 is amended as follows.
- (2) Omit section 46(3) (which relates to deaths in circumstances where it is uncertain which of two people survived the other).
  - (3) Omit section 47A (right of surviving spouse to have own life interest redeemed).
  - (4) In section 48 (powers of personal representative in respect of interests of surviving spouse), in subsection (2), omit the following—
    - (a) paragraph (b), and the word “and” after paragraph (a), and
    - (b) the words “in either case”.
  - (5) In section 49 (application of Part 4 of Act to partial intestacies), omit subsection (4).

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*Intestates' Estates Act 1952*

- 2 (1) Schedule 2 to the Intestates' Estates Act 1952 (rights of surviving spouse or civil partner as respects home) is amended as follows.
- (2) Omit paragraph 1(4).
- (3) In paragraph 3, for sub-paragraph (3) substitute—
- “(3) The court may extend the period of 12 months referred to in sub-paragraph (1)(a) if the surviving spouse or civil partner applies for it to be extended and satisfies the court that a period limited to 12 months would operate unfairly—
- (a) in consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid, or
- (b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out, or
- (c) in consequence of some other circumstances affecting the administration or distribution of the estate.
- (4) For the purposes of the construction of the references in this paragraph to the first taking out of representation, there shall be left out of account—
- (a) a grant limited to settled land or to trust property,
- (b) any other grant that does not permit any of the estate to be distributed,
- (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,
- (d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (5)).
- (5) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (4), but is to be taken as dated on the date of sealing.”

*Administration of Justice Act 1977*

- 3 In section 28 of the Administration of Justice Act 1977, omit subsection (1).

*Inheritance Tax Act 1984*

- 4 In the Inheritance Tax Act 1984—
- (a) in section 17 (changes in distribution of deceased's estate, etc.), omit paragraph (c);
- (b) omit section 145 (redemption of surviving spouse's or civil partner's life interest).