

SCHEDULES

SCHEDULE 6

Section 72(3)

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.

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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.

PART 2

ORDERS FOR AGREED FINANCIAL PROVISION

Orders for payments which have been agreed by the parties

- 9 (1) Either civil partner may apply to a magistrates' court for an order under this Part on the ground that that civil partner or the other civil partner has agreed to make such financial provision as may be specified in the application.
- (2) On such an application, the court may order that the applicant or the respondent (as the case may be) is to make the financial provision specified in the application, if—
- (a) it is satisfied that the applicant or the respondent (as the case may be) has agreed to make that provision, and
 - (b) it has no reason to think that it would be contrary to the interests of justice to do so.
- (3) Sub-paragraph (2) is subject to paragraph 12.

Meaning of “financial provision” and of references to specified financial provision

- 10 (1) In this Part “financial provision” means any one or more of the following—
- (a) the making of periodical payments by one civil partner to the other;
 - (b) the payment of a lump sum by one civil partner to the other;
 - (c) the making of periodical payments by one civil partner to a child of the family or to the other civil partner for the benefit of such a child;
 - (d) the payment by one party of a lump sum to a child of the family or to the other civil partner for the benefit of such a child.
- (2) Any reference in this Part to the financial provision specified in an application or specified by the court is a reference—
- (a) to the type of provision specified in the application or by the court,
 - (b) to the amount so specified as the amount of any payment to be made under the application or order, and
 - (c) in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

Evidence to be produced where respondent not present etc.

- 11 (1) This paragraph applies if—
- (a) the respondent is not present, or
 - (b) is not represented by counsel or a solicitor,
- at the hearing of an application for an order under this Part.
- (2) The court must not make an order under this Part unless there is produced to it such evidence as may be prescribed by rules of court of—
- (a) the consent of the respondent to the making of the order,
 - (b) the financial resources of the respondent, and
 - (c) if the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

Exercise of powers in relation to children

- 12 (1) This paragraph applies if the financial provision specified in an application under this Part—
- (a) includes, or
 - (b) consists of,
- provision in respect of a child of the family.
- (2) The court must not make an order under this Part unless it considers that the provision which the applicant or the respondent (as the case may be) has agreed to make in respect of the child provides for, or makes a proper contribution towards, the financial needs of the child.

Power to make alternative orders

- 13 (1) This paragraph applies if on an application under this Part the court decides—
- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
 - (b) that any financial provision which the applicant or the respondent (as the case may be) has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child.
- (2) If the court is of the opinion—
- (a) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
 - (b) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,
- then, if both the civil partners agree, the court may order that the applicant or the respondent (as the case may be) is to make that other financial provision.

Relationship between this Part and Part 1

- 14 (1) A civil partner who has applied for an order under Part 1 is not precluded at any time before the determination of the application from applying for an order under this Part.

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- (2) If—
- (a) an order is made under this Part on the application of either civil partner, and
 - (b) either of them has also made an application for a Part 1 order,
- the application for the Part 1 order is to be treated as if it had been withdrawn.

PART 3

ORDERS OF COURT WHERE CIVIL PARTNERS LIVING APART BY AGREEMENT

Powers of court where civil partners are living apart by agreement

- 15 (1) If—
- (a) the civil partners have been living apart for a continuous period exceeding 3 months, neither civil partner having deserted the other, and
 - (b) one of the civil partners has been making periodical payments for the benefit of the other civil partner or of a child of the family,
- the other civil partner may apply to a magistrates' court for an order under this Part.
- (2) An application made under sub-paragraph (1) must specify the total amount of the payments made by the respondent during the period of 3 months immediately preceding the date of the making of the application.
- (3) If on an application for an order under this Part the court is satisfied that the respondent has made the payments specified in the application, the court may make one or both of the orders set out in paragraph 16.
- (4) Sub-paragraph (3) is subject to the provisions of this Schedule.

The orders that may be made under this Part

- 16 (1) The orders are—
- (a) an order that the respondent is to make to the applicant such periodical payments for such term as may be specified;
 - (b) an order that the respondent is to 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.
- (2) “Specified” means specified in the order.

Restrictions on orders under this Part

- 17 The court in the exercise of its powers under this Part must not require—
- (a) the respondent to make payments whose total amount during any period of 3 months exceeds the total amount paid by him for the benefit of—
 - (i) the applicant, or
 - (ii) a child of the family,
 during the period of 3 months immediately preceding the date of the making of the application;

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- (b) the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under Part 1;
- (c) payments to be made to or for the benefit of a child of the family who is not the respondent's child, unless the court considers that it would have made an order in favour of that child on an application under Part 1.

Relationship with powers under Part 1

- 18 (1) Sub-paragraph (2) applies if on an application under this Part the court considers that the orders which it has the power to make under this Part—
- (a) would not provide reasonable maintenance for the applicant, or
 - (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards, reasonable maintenance for that child.
- (2) The court—
- (a) must refuse to make an order under this Part, but
 - (b) may treat the application as if it were an application for an order under Part 1.

Matters to be taken into consideration

- 19 Paragraphs 4 to 6 apply in relation to an application for an order under this Part as they apply in relation to an application for an order under Part 1, subject to the modification that for the reference in paragraph 5(2)(c) to the occurrence of the conduct which is alleged as the ground of the application substitute a reference to the living apart of the civil partners.

PART 4

INTERIM ORDERS

Circumstances in which interim orders may be made

- 20 (1) This paragraph applies if an application has been made for an order under Part 1, 2 or 3.
- (2) A magistrates' court may make an interim order—
- (a) at any time before making a final order on, or dismissing, the application, or
 - (b) on refusing (under paragraph 8) to make an order on the application.
- (3) The High Court may make an interim order on ordering the application to be reheard by a magistrates' court (either after the refusal of an order under paragraph 8 or on an appeal made by virtue of paragraph 46).
- (4) Not more than one interim order may be made with respect to an application for an order under Part 1, 2 or 3.
- (5) Sub-paragraph (4) does not affect the power of a court to make an interim order on a further application under Part 1, 2 or 3.

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Meaning of interim order

- 21 (1) An interim order is an order requiring the respondent to make such periodical payments as the court thinks reasonable—
- (a) to the applicant,
 - (b) to any child of the family who is under 18, or
 - (c) to the applicant for the benefit of such a child.
- (2) In relation to an interim order in respect of an application for an order under Part 2 by the civil partner who has agreed to make the financial provision specified in the application, sub-paragraph (1) applies as if—
- (a) the reference to the respondent were a reference to the applicant, and
 - (b) the references to the applicant were references to the respondent.

When interim order may start

- 22 (1) An interim order may provide for payments to be made from such date as the court may specify, except that the date must not be earlier than the date of the making of the application for an order under Part 1, 2 or 3.
- (2) Sub-paragraph (1) is subject to paragraph 27(7) and (8).

Payments which can be treated as having been paid on account

- 23 (1) If an interim order made by the High Court on an appeal made by virtue of paragraph 46 provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by a magistrates' court are to be treated, to such extent and in such manner as may be provided by the interim order, as having been paid on account of any payment provided for by the interim order.
- (2) In relation to an interim order in respect of an application for an order under Part 2 by the civil partner who has agreed to make the financial provision specified in the application, sub-paragraph (1) applies as if the reference to the respondent were a reference to the applicant.

When interim order ceases to have effect

- 24 (1) Subject to sub-paragraphs (2) and (3), an interim order made on an application for an order under Part 1, 2 or 3 ceases to have effect on the earliest of the following dates—
- (a) the date, if any, specified for the purpose in the interim order;
 - (b) the date on which the period of 3 months beginning with the date of the making of the interim order ends;
 - (c) the date on which a magistrates' court either makes a final order on, or dismisses, the application.
- (2) If an interim order made under this Part would, but for this sub-paragraph, cease to have effect under sub-paragraph (1)(a) or (b)—
- (a) the magistrates' court which made the order, or
 - (b) in the case of an interim order made by the High Court, the magistrates' court by which the application for an order under Part 1, 2 or 3 is to be reheard,
- may by order provide that the interim order is to continue in force for a further period.

- (3) An order continued in force under sub-paragraph (2) ceases to have effect on the earliest of the following dates—
- (a) the date, if any, specified for the purpose in the order continuing it;
 - (b) the date on which ends the period of 3 months beginning with—
 - (i) the date of the making of the order continuing it, or
 - (ii) if more than one such order has been made with respect to the application, the date of the making of the first such order;
 - (c) the date on which the court either makes a final order on, or dismisses, the application.

Supplementary

- 25 (1) An interim order made by the High Court under paragraph 20(3) on ordering an application to be reheard by a magistrates' court is to be treated for the purposes of—
- (a) its enforcement, and
 - (b) Part 6 (variation etc. of orders),
- as if it were an order of that magistrates' court (and not of the High Court).
- (2) No appeal lies from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim order.

PART 5

COMMENCEMENT AND DURATION OF ORDERS UNDER PARTS 1, 2 AND 3

Duration of periodical payments order for a civil partner

- 26 (1) The court may specify in a periodical payments order made under paragraph 2(1)(a) or Part 3 in favour of a civil partner such term as it thinks fit, except that the term must not—
- (a) begin before the date of the making of the application for the order, or
 - (b) extend beyond the death of either of the civil partners.
- (2) If—
- (a) a periodical payments order is made under paragraph 2(1)(a) or Part 3 in favour of one of the civil partners, and
 - (b) the civil partnership is subsequently dissolved or annulled but the order continues in force,
- the periodical payments order ceases to have effect (regardless of anything in it) on the formation of a subsequent civil partnership or marriage by that civil partner, except in relation to any arrears due under the order on the date of that event.

Age limit on making orders for financial provision for children and duration of such orders

- 27 (1) Subject to sub-paragraph (5), no order is to be made under paragraph 2(1)(c) or (d) or Part 3 in favour of a child who has reached 18.
- (2) The term to be specified in a periodical payments order made under paragraph 2(1)(c) or Part 3 in favour of a child may begin with—
- (a) the date of the making of an application for the order or a later date, or

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- (b) a date ascertained in accordance with sub-paragraph (7) or (8).
- (3) The term to be specified in such an order—
- (a) must not in the first instance extend beyond the date of the birthday of the child next following his reaching the upper limit of the compulsory school age unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date, and
 - (b) must not in any event, subject to sub-paragraph (5), extend beyond the date of the child's 18th birthday.
- (4) Sub-paragraph (3)(a) must be read with section 8 of the Education Act 1996 (c. 56) (which applies to determine for the purposes of any enactment whether a person is of compulsory school age).
- (5) Sub-paragraphs (1) and (3)(b) do not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be, or, if such an order were made without complying with either or both of those provisions, would be—
 - (i) receiving instruction at an educational establishment, or
 - (ii) undergoing training for a trade, profession or vocation,
 whether or not also the child is, will be or would be, in gainful employment, or
 - (b) there are special circumstances which justify the making of the order without complying with either or both of sub-paragraphs (1) and (3)(b).
- (6) Any order made under paragraph 2(1)(c) or Part 3 in favour of a child, regardless of anything in the order, ceases to have effect on the death of the person liable to make payments under the order.
- (7) If—
- (a) a maintenance calculation (“current calculation”) is in force with respect to a child, and
 - (b) an application is made for an order under paragraph 2(1)(c) or Part 3—
 - (i) in accordance with section 8 of the Child Support Act 1991 (c. 48), and
 - (ii) before the end of 6 months beginning with the making of the current calculation,
 the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (8) “The earliest permitted date” is whichever is the later of—
- (a) the date 6 months before the application is made, or
 - (b) the date on which the current calculation took effect or, where successive maintenance calculations have been continuously in force with respect to a child, on which the first of those calculations took effect.
- (9) If—
- (a) a maintenance calculation ceases to have effect by or under any provision of the 1991 Act, and
 - (b) an application is made, before the end of 6 months beginning with the relevant date, for a periodical payments order under paragraph 2(1)(c) or Part

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3 in favour of a child with respect to whom that maintenance calculation was in force immediately before it ceased to have effect,
the term to be specified in any such order, or in any interim order under Part 4, made on that application, may begin with the date on which that maintenance calculation ceased to have effect or any later date.

- (10) “The relevant date” means the date on which the maintenance calculation ceased to have effect.
- (11) In this Schedule “maintenance calculation” has the same meaning as it has in the 1991 Act by virtue of section 54 of the 1991 Act as read with any regulations in force under that section.

Application of paragraphs 26 and 27 to Part 2 orders

- 28 (1) Subject to sub-paragraph (3), paragraph 26 applies in relation to an order under Part 2 which requires periodical payments to be made to a civil partner for his own benefit as it applies in relation to an order under paragraph 2(1)(a).
- (2) Subject to sub-paragraph (3), paragraph 27 applies in relation to an order under Part 2 for the making of financial provision in respect of a child of the family as it applies in relation to an order under paragraph 2(1)(c) or (d).
- (3) If—
- (a) the court makes an order under Part 2 which contains provision for the making of periodical payments, and
 - (b) by virtue of paragraph 14, an application for an order under Part 1 is treated as if it had been withdrawn,
- the term which may be specified under Part 2 as the term for which the payments are to be made may begin with the date of the making of the application for the order under Part 1 or any later date.

Effect on certain orders of parties living together

- 29 (1) Sub-paragraph (2) applies if periodical payments are required to be made to a civil partner (whether for the civil partner’s own benefit or for the benefit of a child of the family)—
- (a) by an order made under Part 1 or 2, or
 - (b) by an interim order made under Part 4 (otherwise than on an application under Part 3).
- (2) The order is enforceable even though—
- (a) the civil partners are living with each other at the date of the making of the order, or
 - (b) if they are not living with each other at that date, they subsequently resume living with each other;
- but the order ceases to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding 6 months.
- (3) Sub-paragraph (4) applies if—
- (a) an order is made under Part 1 or 2 which requires periodical payments to be made to a child of the family, or

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- (b) an interim order is made under Part 4 (otherwise than on an application under Part 3) which requires periodical payments to be made to a child of the family.
- (4) Unless the court otherwise directs, the order continues to have effect and is enforceable even if—
 - (a) the civil partners are living with each other at the date of the making of the order, or
 - (b) if they are not living with each other at that date, they subsequently resume living with each other.
- (5) An order made under Part 3, and any interim order made on an application for an order under that Part, ceases to have effect if the civil partners resume living with each other.
- (6) If an order made under this Schedule ceases to have effect under—
 - (a) sub-paragraph (2) or (5), or
 - (b) a direction given under sub-paragraph (4),
 a magistrates' court may, on an application made by either civil partner, make an order declaring that the order ceased to have effect from such date as the court may specify.

PART 6

VARIATION ETC. OF ORDERS

Power to vary, revoke, suspend or revive order

- 30 (1) If a magistrates' court has made an order for the making of periodical payments under Part 1, 2 or 3, the court may, on an application made under this Part—
- (a) vary or revoke the order,
 - (b) suspend any provision of it temporarily, or
 - (c) revive any provision so suspended.
- (2) If a magistrates' court has made an interim order under Part 4, the court may, on an application made under this Part—
- (a) vary or revoke the order,
 - (b) suspend any provision of it temporarily, or
 - (c) revive any provision so suspended,
- except that it may not by virtue of this sub-paragraph extend the period for which the order is in force.

Powers to order lump sum on variation

- 31 (1) If a magistrates' court has made an order under paragraph 2(1)(a) or (c) for the making of periodical payments, the court may, on an application made under this Part, make an order for the payment of a lump sum under paragraph 2(1)(b) or (d).
- (2) If a magistrates' court has made an order under Part 2 for the making of periodical payments by a civil partner the court may, on an application made under this Part, make an order for the payment of a lump sum by that civil partner—
- (a) to the other civil partner, or

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- (b) to a child of the family or to that other civil partner for the benefit of that child.
- (3) Where the court has power by virtue of this paragraph to make an order for the payment of a lump sum—
- (a) the amount of the lump sum must not exceed the maximum amount that may at that time be required to be paid under Part 1, but
 - (b) the court may make an order for the payment of a lump sum not exceeding that amount even if the person required to pay it was required to pay a lump sum by a previous order under this Schedule.
- (4) Where—
- (a) the court has power by virtue of this paragraph to make an order for the payment of a lump sum, and
 - (b) the respondent or the applicant (as the case may be) has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under Part 1,
- the court may, regardless of sub-paragraph (3), make an order for the payment of a lump sum of that amount.

Power to specify when order as varied is to take effect

32 An order made under this Part which varies an order for the making of periodical payments may provide that the payments as so varied are to be made from such date as the court may specify, except that, subject to paragraph 33, the date must not be earlier than the date of the making of the application under this Part.

- 33 (1) If—
- (a) there is in force an order (“the order”)—
 - (i) under paragraph 2(1)(c),
 - (ii) under Part 2 making provision of a kind set out in paragraph 10(1)(c) (regardless of whether it makes provision of any other kind mentioned in paragraph 10(1)(c)),
 - (iii) under paragraph 16(1)(b), or
 - (iv) which is an interim order under Part 4 under which the payments are to be made to a child or to the applicant for the benefit of a child,
 - (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them,
 - (c) a maintenance calculation (“the calculation”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made, and
 - (d) an application is made, before the end of 6 months beginning with the date on which the calculation was made, for the variation or revocation of the order,
- the court may, in exercise of its powers under this Part to vary or revoke the order, direct that the variation or revocation is to take effect from the date on which the calculation took effect or any later date.
- (2) If—
- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a maintenance calculation,

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- (b) on the date on which the child order became so affected there was in force an order (“the civil partner’s order”)—
 - (i) under paragraph 2(1)(a),
 - (ii) under Part 2 making provision of a kind set out in paragraph 10(1)(a) (regardless of whether it makes provision of any other kind mentioned in paragraph 10(1)(a)),
 - (iii) under paragraph 16(1)(a), or
 - (iv) which is an interim order under Part 4 under which the payments are to be made to the applicant (otherwise than for the benefit of a child), and
- (c) an application is made, before the end of 6 months beginning with the date on which the maintenance calculation was made, for the civil partner’s order to be varied or revoked,

the court may, in exercise of its powers under this Part to vary or revoke the civil partner’s order, direct that the variation or revocation is to take effect from the date on which the child order became so affected or any later date.

- (3) For the purposes of sub-paragraph (2), an order is affected if it ceases to have effect or is modified by or under section 10 of the 1991 Act.

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

- 34 (1) In exercising the powers conferred by this Part the court must, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the civil partners in relation to the application.
- (2) If—
 - (a) there is no such agreement, or
 - (b) if the court decides not to give effect to the agreement,
 the court 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.
- (3) Those circumstances include any change in any of the matters—
 - (a) to which the court was required to have regard when making the order to which the application relates, or
 - (b) in the case of an application for the variation or revocation of an order made under Part 2 or on an appeal made by virtue of paragraph 46, to which the court would have been required to have regard if that order had been made under Part 1.

Variation of orders for periodical payments: further provisions

- 35 (1) The power of the court under paragraphs 30 to 34 to vary an order for the making of periodical payments includes power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under section 59(3)(a) to (d) of the Magistrates' Courts Act 1980 (c. 43).
- (2) Sub-paragraph (1) is subject to paragraph 37.
- 36 (1) If—

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- (a) a magistrates' court has made an order under this Schedule for the making of periodical payments, and
 - (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the 1980 Act (standing order, etc.),an application may be made under this sub-paragraph to the court for the order to be varied as mentioned in sub-paragraph (2).
- (2) Subject to sub-paragraph (4), if an application is made under sub-paragraph (1), a justices' clerk, after—
 - (a) giving written notice (by post or otherwise) of the application to the respondent, and
 - (b) allowing the respondent, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations,may vary the order to provide that payments under the order are to be made to the designated officer for the court.
- (3) The clerk may proceed with an application under sub-paragraph (1) even if the respondent has not received written notice of the application.
- (4) If an application has been made under sub-paragraph (1), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (2), refer the matter to the court which, subject to paragraph 37, may vary the order by exercising one of its powers under section 59(3)(a) to (d) of the 1980 Act.
- 37 (1) Before varying the order by exercising one of its powers under section 59(3)(a) to (d) of the 1980 Act, the court must have regard to any representations made by the parties to the application.
- (2) If the court does not propose to exercise its power under section 59(3)(c), (cc) or (d) of the 1980 Act, the court must, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under section 59(3)(b).
- 38 (1) Section 59(4) of the 1980 Act (power of court to order that account be opened) applies for the purposes of paragraphs 35 and 36(4) as it applies for the purposes of section 59.
- (2) None of the powers of the court, or of a justices' clerk, conferred by paragraphs 35 to 37 and sub-paragraph (1) is exercisable in relation to an order under this Schedule for the making of periodical payments which is not a qualifying maintenance order (within the meaning of section 59 of the 1980 Act).

Persons who may apply under this Part

- 39 An application under paragraph 30, 31 or 36 may be made—
 - (a) if it is for the variation or revocation of an order under Part 1, 2, 3 or 4 for periodical payments, by either civil partner, and
 - (b) if it is for the variation of an order under paragraph 2(1)(c) or Part 2 or 3 for periodical payments to or in respect of a child, also by the child himself, if he has reached 16.

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Revival of orders for periodical payments

- 40 (1) If an order made by a magistrates' court under this Schedule for the making of periodical payments to or in respect of a child (other than an interim order) ceases to have effect—
- (a) on the date on which the child reaches 16, or
 - (b) at any time after that date but before or on the date on which he reaches 18,
- the child may apply to the court which made the order for an order for its revival.
- (2) If on such an application it appears to the court that—
- (a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment, or
 - (b) there are special circumstances which justify the making of an order under this sub-paragraph,
- the court may by order revive the order from such date as the court may specify, not being earlier than the date of the making of the application.
- (3) Any order revived under this paragraph may be varied or revoked under paragraphs 30 to 34 in the same way as it could have been varied or revoked had it continued in being.

Variation of instalments of lump sum

- 41 If in the exercise of its powers under section 75 of the 1980 Act a magistrates' court orders that a lump sum required to be paid under this Schedule is to be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, may vary that order by varying—
- (a) the number of instalments payable,
 - (b) the amount of any instalment payable, and
 - (c) the date on which any instalment becomes payable.

Supplementary provisions with respect to variation and revocation of orders

- 42 None of the following powers apply in relation to an order made under this Schedule—
- (a) the powers of a magistrates' court to revoke, revive or vary an order for the periodical payment of money and the power of a justices' clerk to vary such an order under section 60 of the 1980 Act;
 - (b) the power of a magistrates' court to suspend or rescind certain other orders under section 63(2) of the 1980 Act.

PART 7

ARREARS AND REPAYMENTS

Enforcement etc. of orders for payment of money

- 43 Section 32 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22) applies in relation to orders under this Schedule as it applies in relation to orders under Part 1 of that Act.

Orders for repayment after cessation of order because of subsequent civil partnership etc.

- 44 (1) Sub-paragraphs (3) and (4) apply if—
- (a) an order made under paragraph 2(1)(a) or Part 2 or 3 has, under paragraph 26(2), ceased to have effect because of the formation of a subsequent civil partnership or marriage by the party (“R”) in whose favour it was made, and
 - (b) the person liable to make payments under the order (“P”) made payments in accordance with it in respect of a relevant period in the mistaken belief that the order was still subsisting.
- (2) “Relevant period” means a period after the date of the formation of the subsequent civil partnership or marriage.
- (3) No proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraph (1)(a) and (b) is maintainable by P (or P’s personal representatives) against R (or R’s personal representatives).
- (4) But on an application made under this paragraph by P (or P’s personal representatives) against R (or R’s personal representatives) the court—
- (a) may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the relevant period, or
 - (b) if it appears to the court that it would be unjust to make that order, may—
 - (i) order the respondent to pay to the applicant such lesser sum as it thinks fit, or
 - (ii) dismiss the application.
- (5) An order under this paragraph for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) An application under this paragraph—
- (a) may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, the payment of arrears under an order made under paragraph 2(1)(a) or Part 2 or 3, but
 - (b) if not made in such proceedings, must be made to a county court, and accordingly references in this paragraph to the court are references to the High Court or a county court, as the circumstances require.
- (7) The jurisdiction conferred on a county court by this paragraph is exercisable by a county court even though, because of the amount claimed in an application under this paragraph, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.
- (8) Subject to sub-paragraph (9)—

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- (a) the designated officer for a magistrates' court to whom any payments under an order made under paragraph 2(1)(a), or Part 2 or 3, are required to be made is not liable for any act done by him in pursuance of the order after the date on which that order ceased to have effect because of the formation of a subsequent civil partnership or marriage by the person entitled to payments under it, and
 - (b) the collecting officer under an attachment of earnings order made to secure payments under the order under paragraph 2(1)(a), or Part 2 or 3, is not liable for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with.
- (9) Sub-paragraph (8) applies if (but only if) the act—
- (a) was one which he would have been under a duty to do had the order under paragraph 2(1)(a) or Part 2 or 3 not ceased to have effect, and
 - (b) was done before notice in writing of the formation of the subsequent civil partnership or marriage was given to him by or on behalf of—
 - (i) the person entitled to payments under the order,
 - (ii) the person liable to make payments under it, or
 - (iii) the personal representatives of either of them.
- (10) In this paragraph “collecting officer”, in relation to an attachment of earnings order, means—
- (a) the officer of the High Court, or
 - (b) the officer designated by the Lord Chancellor,
- to whom a person makes payments in compliance with the order.

PART 8

SUPPLEMENTARY

Restrictions on making of orders under this Schedule: welfare of children

- 45 If—
- (a) an application is made by a civil partner for an order under Part 1, 2 or 3, and
 - (b) there is a child of the family who is under 18,
- the court must not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under the Children Act 1989 (c. 41) with respect to the child.

Constitution of courts, powers of High Court and county court in relation to orders and appeals

- 46 The following provisions of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22) apply in relation to an order under this Schedule relating to a civil partnership as they apply in relation to an order under Part 1 of that Act relating to a marriage—
- (a) section 28 (powers of the High Court and a county court in relation to certain orders),
 - (b) section 29 (appeals), and

- (c) section 31 (constitution of courts).

Provisions as to jurisdiction and procedure

- 47 (1) Subject to section 2 of the Family Law Act 1986 (c. 55) and section 70 of the Magistrates' Courts Act 1980 (c. 43) and any determination of the Lord Chancellor, a magistrates' court has jurisdiction to hear an application for an order under this Schedule if it acts in, or is authorised by the Lord Chancellor to act for, a local justice area in which either the applicant or the respondent ordinarily resides at the date of the making of the application.
- (2) Any jurisdiction conferred on a magistrates' court by this Schedule is exercisable even if any party to the proceedings is not domiciled in England and Wales.

Meaning of “child of the family”

- 48 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.