
Changes to legislation: Civil Partnership Act 2004, Cross Heading: Orders in respect of legal services is up to date with all changes known to be in force on or before 11 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 5

[^{F1}FINANCIAL RELIEF: PROVISION CORRESPONDING TO PROVISION MADE BY PART 2 OF THE MATRIMONIAL CAUSES ACT 1973]

Textual Amendments

- F1** Sch. 5 title substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 177](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

PART 8

MAINTENANCE [^{F1}AND OTHER PAYMENTS] PENDING OUTCOME OF DISSOLUTION, NULLITY OR SEPARATION PROCEEDINGS

Textual Amendments

- F1** Words in Sch. 5 Pt. 8 heading inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 52\(2\)](#), 151(1); [S.I. 2013/773](#), art. 2

[^{F1}Orders in respect of legal services

Textual Amendments

- F1** Sch. 5 para. 38A and cross-heading inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 52\(5\)](#), 151(1); [S.I. 2013/773](#), art. 2

- 38A (1) In proceedings for a dissolution, nullity or separation order, the court may make an order or orders requiring one civil partner to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- (2) The court may also make such an order or orders in proceedings under this Schedule for financial relief in connection with proceedings for a dissolution, nullity or separation order.
- (3) The court must not make an order under this paragraph unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- (4) For the purposes of sub-paragraph (3), the court must be satisfied, in particular, that—
- (a) the applicant is not reasonably able to secure a loan to pay for the services, and

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- (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
- (5) An order under this paragraph may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.
- (6) An order under this paragraph may—
- (a) provide for the payment of all or part of the amount by instalments of specified amounts, and
 - (b) require the instalments to be secured to the satisfaction of the court.
- (7) An order under this paragraph may direct that payment of all or part of the amount is to be deferred.
- (8) The court may at any time in the proceedings vary an order made under this paragraph if it considers that there has been a material change of circumstances since the order was made.
- (9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings.
- (10) In this paragraph “legal services”, in relation to proceedings, means the following types of services—
- (a) providing advice as to how the law applies in the particular circumstances,
 - (b) providing advice and assistance in relation to the proceedings,
 - (c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
 - (d) providing advice and assistance in relation to the enforcement of decisions in the proceedings or as part of the settlement or resolution of the dispute,
- and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.
- (11) In sub-paragraphs (5) and (6) “specified” means specified in the order concerned.]
- [^{F2}38B(1) When considering whether to make or vary an order under paragraph 38A, the court must have regard to—
- (a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (c) the subject matter of the proceedings, including the matters in issue in them,
 - (d) whether the paying party is legally represented in the proceedings,
 - (e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
 - (f) the applicant's conduct in relation to the proceedings,
 - (g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and
 - (h) the effect of the order or variation on the paying party.

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- (2) In sub-paragraph (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.
- (3) For the purposes of sub-paragraph (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—
 - (a) cause undue hardship to the paying party, or
 - (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.
- (4) The Lord Chancellor may by order amend this paragraph by adding to, omitting or varying the matters mentioned in sub-paragraphs (1) to (3).
- (5) An order under sub-paragraph (4) must be made by statutory instrument.
- (6) A statutory instrument containing an order under sub-paragraph (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this paragraph “legal services” has the same meaning as in paragraph 38A.]

Textual Amendments

- F2** Sch. 5 para. 38B inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 53, 151\(1\)](#); [S.I. 2013/773](#), art. 2

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 103(10) inserted by [2023 asp 3 s. 56\(5\)](#)
- s. 108(5) inserted by [2023 asp 3 s. 56\(8\)](#)
- s. 213(1A) inserted by [2013 c. 30 Sch. 2 para. 5\(2\)](#)