

Status: Point in time view as at 05/12/2005.

Changes to legislation: Civil Partnership Act 2004, SCHEDULE 11 is up to date with all changes known to be in force on or before 12 August 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)

SCHEDULES

SCHEDULE 11 **S**

Section 125

FINANCIAL PROVISION IN SCOTLAND AFTER OVERSEAS PROCEEDINGS

PART 1 **S**

INTRODUCTORY

- 1 (1) This Schedule applies where—
 - (a) a civil partnership has been dissolved or annulled in a country or territory outside the British Islands by means of judicial or other proceedings (here the “overseas proceedings”), and
 - (b) the dissolution or annulment (here the “overseas determination”) is entitled to be recognised as valid in Scotland.
- (2) This Schedule applies even if the date of the overseas determination is earlier than the date on which this Schedule comes into force.

PART 2 **S**

CIRCUMSTANCES IN WHICH COURT MAY ENTERTAIN APPLICATION FOR FINANCIAL PROVISION

- 2 (1) Subject to sub-paragraph (4), if the jurisdictional requirements and the conditions set out in sub-paragraphs (2) and (3), respectively, are satisfied, the court may entertain an application by one of the former civil partners or former ostensible civil partners, (here “A”) for an order for financial provision.
- (2) The jurisdictional requirements are—
 - (a) that A is domiciled or habitually resident in Scotland when the application is made,
 - (b) that the other former civil partner, or former ostensible civil partner, (here “B”)—
 - (i) is domiciled or habitually resident in Scotland when the application is made,
 - (ii) was domiciled or habitually resident in Scotland when A and B last lived together in civil partnership, or
 - (iii) when the application is made is an owner or tenant of, or has a beneficial interest in, property in Scotland which has at some time been a family home of A and B, and
 - (c) where the court is the sheriff, that when the application is made either—
 - (i) A or B is habitually resident in the sheriffdom, or

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- (ii) property mentioned in sub-paragraph (2)(b)(iii) is wholly or partially in the sheriffdom.
- (3) The conditions are that—
- (a) B initiated the overseas proceedings,
 - (b) the application is made within 5 years after the overseas determination takes effect,
 - (c) the civil partnership (or ostensible civil partnership) had a substantial connection with Scotland,
 - (d) A and B are alive when the application is made, and
 - (e) (taking Part 3 of this Act to have been in force) a court in Scotland would have had jurisdiction to entertain an action for dissolution or annulment of the civil partnership, if such an action had been brought immediately before the overseas determination took effect.
- (4) Where the jurisdiction of the court to entertain proceedings under this Schedule would fall to be determined by reference to the jurisdictional requirements imposed by virtue of Part 1 of the Civil Jurisdiction and Judgments Act 1982 (c. 27) (implementation of certain European conventions) or by virtue of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, then—
- (a) satisfaction of the jurisdictional requirements set out in sub-paragraph (2) does not obviate the need to satisfy those so imposed, and
 - (b) satisfaction of those so imposed obviates the need to satisfy those set out in sub-paragraph (2).

PART 3 S

DISPOSAL OF APPLICATIONS

- 3 (1) Subject to sub-paragraphs (2) to (5), Scots law applies in relation to an application made under paragraph 2 as it would apply were the application made in an action in Scotland for, as the case may be, dissolution or annulment of a civil partnership.
- (2) In disposing of an application made under paragraph 2 the court must exercise its powers so as to place A and B, in so far as it is reasonable and practicable to do so, in the financial position in which they would have been had that application been disposed of, in such an action in Scotland, on the date when the overseas determination took effect.
- (3) In determining what is reasonable and practicable for the purposes of sub-paragraph (2), the court must have regard in particular to—
- (a) A and B's respective resources, both present and foreseeable, at the date the application is disposed of,
 - (b) any order made by a foreign court in or in connection with the overseas proceedings, being an order—
 - (i) for the making of financial provision, in whatever form, by A for B or by B for A, or
 - (ii) for the transfer of property from A to B or from B to A.
- (4) Subject to sub-paragraph (5), the court may make an order for an interim award of a periodical allowance where—

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- (a) it appears from A’s averments that in the disposal of the application an order for financial provision is likely to be made, and
 - (b) the court considers that such an interim award is necessary to avoid hardship to A.
- (5) Where but for paragraph 2(2)(b)(iii) the court would not have jurisdiction to entertain the application, the court may make no order for financial provision other than an order—
- (a) relating to the former family home or its furniture and plenishings, or
 - (b) that B must pay A a capital sum not exceeding the value of B’s interest in the former family home and its furniture and plenishings.

PART 4 **S**

THE EXPRESSION “ORDER FOR FINANCIAL PROVISION”

- 4 In this Schedule, “order for financial provision” means any one or more of the orders specified in section 8(1) of the Family Law (Scotland) Act 1985 (c. 37) or an order under section 111.

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