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## SCHEDULES

### SCHEDULE 15

#### FINANCIAL RELIEF IN THE HIGH COURT OR A COUNTY COURT ETC.: NORTHERN IRELAND

##### **Modifications etc. (not altering text)**

- C1** Sch. 15: functions transferred (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(1), **Sch. 17 para. 21(b)** (with arts. 15(6), 28-31)

### PART 10

#### VARIATION, DISCHARGE ETC. OF CERTAIN ORDERS FOR FINANCIAL RELIEF

##### *Orders etc. to which this Part applies*

- 45 (1) This Part applies to the following orders—
- (a) a periodical payments order under Part 1 (financial provision on dissolution etc.) or Part 8 (failure to maintain);
  - (b) a secured periodical payments order under Part 1 or 8;
  - (c) an order under Part 7 (maintenance pending outcome of dissolution proceedings etc.);
  - (d) an interim order under Part 8;
  - (e) an order made under Part 1 by virtue of paragraph 3(3) or under Part 8 by virtue of paragraph 37(2) (lump sum by instalments);
  - (f) a deferred order made under Part 1 by virtue of paragraph 2(1)(c) (lump sum for civil partner) which includes provision made by virtue of—
    - (i) paragraph 20(2), or
    - (ii) paragraph 21,(provision in respect of pension rights);
  - (g) a property adjustment order made on or after the making of a separation order by virtue of paragraph 7(1)(b), (c) or (d) (order for settlement or variation of settlement);
  - (h) a pension sharing order made before the dissolution or nullity order has been made final.
- (2) If the court has made an order referred to in sub-paragraph (1)(f)(ii), this Part ceases to apply to the order on the death of either of the civil partners.
- (3) The powers exercisable by the court under this Part in relation to an order are also exercisable in relation to any instrument executed in pursuance of the order.

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*Powers to vary, discharge, suspend or revive order*

- 46 (1) If the court has made an order to which this Part applies, it may—
- (a) vary or discharge the order,
  - (b) suspend any provision of it temporarily, or
  - (c) revive the operation of any provision so suspended.
- (2) Sub-paragraph (1) is subject to the provisions of this Part and paragraph 42(5).

*Power to remit arrears*

- 47 (1) If the court has made an order referred to in paragraph 45(1)(a), (b), (c) or (d), it may remit the payment of any arrears due under the order or under any part of the order.
- (2) Sub-paragraph (1) is subject to the provisions of this Part.

*Variation etc. of periodical or secured periodical payments orders made in cases of failure to maintain*

- 48 (1) An application for the variation under paragraph 46 of a periodical payments order or secured periodical payments order made under Part 8 in favour of a child may, if the child has reached 16, be made by the child himself.
- (2) Sub-paragraph (3) applies if a periodical payments order made in favour of a child under Part 8 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 the child reaches 18.
- (3) If, on an application made to the court for an order under this sub-paragraph, it appears to the court that—
- (a) the child is, will be or, if an order were made under this sub-paragraph, would be—
    - (i) receiving instruction at an educational establishment, or
    - (ii) undergoing training for a trade, profession or vocation,
 whether or not the child also is, will be or would be 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 mentioned in sub-paragraph (2) from a date specified by it.
- (4) The date specified under sub-paragraph (3) must not be earlier than the date of the application under that sub-paragraph.
- (5) If under sub-paragraph (3) the court revives an order it may exercise its power under paragraph 46 in relation to the revived order.

*Variation etc. of property adjustment and pension sharing orders*

- 49 The court must not exercise the powers conferred by this Part in relation to a property adjustment order falling within paragraph 7(1)(b), (c) or (d) (order for settlement or for variation of settlement) except on an application made in proceedings—

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- (a) for the rescission of the separation order by reference to which the property adjustment order was made, or
  - (b) for a dissolution order in relation to the civil partnership.
- 50 (1) In relation to a pension sharing order which is made at a time before the dissolution or nullity order has been made final—
- (a) the powers conferred by this Part (by virtue of paragraph 45(1)(h)) may be exercised—
    - (i) only on an application made before the pension sharing order has or, but for paragraph (b), would have taken effect, and
    - (ii) only if, at the time when the application is made, the dissolution or nullity order has not been made final, and
  - (b) an application made in accordance with paragraph (a) prevents the pension sharing order from taking effect before the application has been dealt with.
- (2) No variation of a pension sharing order is to be made so as to take effect before the order is made final.
- (3) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.
- (4) The power to make regulations under sub-paragraph (3) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (5) Regulations under sub-paragraph (3) are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.

#### Commencement Information

- II** Sch. 15 para. 50 wholly in force at 5.12.2005; Sch. 15 para. 50 not in force at Royal Assent see s. 263; Sch. 15 para. 50(3)(4)(5) in force for certain purposes at 5.9.2005 by [S.I. 2005/2399](#), [art. 2](#), [Sch.](#) and Sch. 15 para. 50 in force otherwise at 5.12.2005 by [S.I. 2005/3255](#), [art. 2\(1\)](#), [Sch.](#)

- 51 (1) No property adjustment order or pension sharing order may be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a civil partner or in favour of a child of the family) under Part 1.
- (2) No order for the payment of a lump sum may be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a civil partner (whether made under Part 1 or 8).

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

- 52 (1) In exercising the powers conferred by this Part 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.

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- (2) The circumstances of the case include, in particular, any change in any of the matters to which the court was required to have regard when making the order to which the application relates.
- (3) Sub-paragraph (4) applies in the case of—
  - (a) a periodical payments order, or
  - (b) a secured periodical payments order,
 made on or after the making of a dissolution or nullity order.
- (4) The court must consider whether in all the circumstances, and after having regard to any such change, it would be appropriate to vary the order so that payments under the order are required—
  - (a) to be made, or
  - (b) to be secured,
 only for such further period as will in the opinion of the court be sufficient to enable the civil partner in whose favour the order was made to adjust without undue hardship to the termination of those payments.
- (5) If the civil partner against whom the order was made has died, the circumstances of the case also include the changed circumstances resulting from that civil partner's death.

*Variation of secured periodical payments order where person liable has died*

- 53 (1) This paragraph applies if the person liable to make payments under a secured periodical payments order has died.
- (2) Subject to sub-paragraph (3), an application under this Part relating to the order may be made by—
  - (a) the person entitled to payments under the periodical payments order, or
  - (b) the personal representatives of the deceased person.
- (3) No such application may be made without the leave of the court after the end of 6 months from the date on which representation in regard to the estate of that person is first taken out.
- (4) The personal representatives of the person who has died are not liable for having distributed any part of the estate of the deceased after the end of the 6 month period on the ground that they ought to have taken into account the possibility that the court might allow an application under this paragraph to be made after that period by the person entitled to payments under the order.
- (5) Sub-paragraph (4) does not affect any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this paragraph.
- (6) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out a grant limited to part of the estate is to be disregarded unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

*Power to direct when variation etc. is to take effect*

- 54 (1) If the court, in exercise of its powers under this Part, decides—

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- (a) to vary, or
- (b) to discharge,

a periodical payments or secured periodical payments order, it may direct that the variation or discharge is not to take effect until the end of such period as may be specified.

(2) Sub-paragraph (1) is subject to paragraph 42(1) and (6).

55 (1) If—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force,
- (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 the period of 6 months beginning with the date on which the calculation was made, for the variation or discharge of the order,

the court may, in exercise of its powers under this Part to vary or discharge the order, direct that the variation or discharge 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 Article 12(1) of the Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)) is affected by a maintenance calculation,
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the civil partner’s order”) in favour of a civil partner having the care of the child in whose favour the child order was made, and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance calculation was made, for the civil partner’s order to be varied or discharged,

the court may, in exercise of its powers under this Part to vary or discharge the civil partner’s order, direct that the variation or discharge 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 Article 12 of the 1991 Order.

(4) Sub-paragraphs (1) and (2) do not affect any other power of the court to direct that the variation or discharge of an order under this Part is to take effect from a date earlier than that on which the order for variation or discharge was made.

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