

Status: Point in time view as at 31/12/2020.

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SCHEDULES

SCHEDULE 4

Section 71

WILLS, ADMINISTRATION OF ESTATES AND FAMILY PROVISION

PART 1

WILLS

- 1 Amend the Wills Act 1837 (c. 26) as follows.
- 2 After section 18A insert—

“18B Will to be revoked by civil partnership

- (1) Subject to subsections (2) to (6), a will is revoked by the formation of a civil partnership between the testator and another person.
- (2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator’s personal representatives.
- (3) If it appears from a will—
 - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
 - (b) that he intended that the will should not be revoked by the formation of the civil partnership,the will is not revoked by its formation.
- (4) Subsections (5) and (6) apply if it appears from a will—
 - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
 - (b) that he intended that a disposition in the will should not be revoked by the formation of the civil partnership.
- (5) The disposition takes effect despite the formation of the civil partnership.
- (6) Any other disposition in the will also takes effect, unless it appears from the will that the testator intended the disposition to be revoked by the formation of the civil partnership.

18C Effect of dissolution or annulment of civil partnership on wills

- (1) This section applies if, after a testator has made a will—
 - (a) a court of civil jurisdiction in England and Wales dissolves his civil partnership or makes a nullity order in respect of it, or

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- (b) his civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004.
- (2) Except in so far as a contrary intention appears by the will—
- (a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former civil partner, take effect as if the former civil partner had died on the date on which the civil partnership is dissolved or annulled, and
- (b) any property which, or an interest in which, is devised or bequeathed to the former civil partner shall pass as if the former civil partner had died on that date.
- (3) Subsection (2)(b) does not affect any right of the former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975.”
- 3 The following provisions—
- (a) section 15 of the Wills Act 1837 (c. 26) (avoidance of gifts to attesting witnesses and their spouses), and
- (b) section 1 of the Wills Act 1968 (c. 28) (restriction of operation of section 15),
- apply in relation to the attestation of a will by a person to whose civil partner there is given or made any such disposition as is described in section 15 of the 1837 Act as they apply in relation to a person to whose spouse there is given or made any such disposition.
- 4 In section 16 of the 1837 Act, after “wife or husband” insert “ or civil partner ”.
- 5 Except where a contrary intention is shown, it is presumed that if a testator—
- (a) devises or bequeaths property to his civil partner in terms which in themselves would give an absolute interest to the civil partner, but
- (b) by the same instrument purports to give his issue an interest in the same property,
- the gift to the civil partner is absolute despite the purported gift to the issue.

PART 2

ADMINISTRATION OF ESTATES AND FAMILY PROVISION

Public Trustee Act 1906 (c. 55)

- 6 In section 6(1), after “widower, widow” (in both places) insert “ , surviving civil partner ”.

Administration of Estates Act 1925 (c. 23)

- 7 In section 46 (succession to real and personal estate on intestacy), for “husband or wife” (in each place) substitute “ spouse or civil partner ”.
- 8 (1) Amend section 47(1) (meaning of “the statutory trusts”) as follows.

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- (2) In paragraph (i), after “or marry under that age” (in the first place) insert “ or form a civil partnership under that age ”.
 - (3) In that paragraph, after “or marry” (in the second place) insert “ , or form a civil partnership, ”.
 - (4) In paragraph (ii), after “marries” insert “ , or forms a civil partnership, ”.
- 9 In section 47A, in subsection (1) and in the proviso to subsection (5), for “husband or wife” substitute “ spouse or civil partner ”.
- 10 In section 48(2), for “husband or wife” (in each place) substitute “ spouse or civil partner ”.
- 11 In section 51(3) (devolution of certain estates vested in infant who dies without having married and without issue), after “without having been married” insert “ or having formed a civil partnership, ”.
- 12 In section 55(1)(xviii) (which defines “valuable consideration” as including marriage), after “includes marriage,” insert “ and formation of a civil partnership, ”.

Intestates' Estates Act 1952 (c. 64)

- 13 (1) Amend section 5 and Schedule 2 (rights of surviving spouse as respects the matrimonial home) as follows.
- (2) For “husband or wife” (in each place) substitute “ spouse or civil partner ”.
 - (3) In section 5, after “matrimonial” insert “ or civil partnership ”.
 - (4) In the heading of each—
 - (a) after “spouse” insert “ or civil partner ”, and
 - (b) after “matrimonial” insert “ or civil partnership ”.

Family Provision Act 1966 (c. 35)

- 14 In section 1(1) (fixed net sum payable to surviving spouse of person dying intestate), for “husband or wife” substitute “ spouse or civil partner ”.

Inheritance (Provision for Family and Dependants) Act 1975 (c. 63)

- 15 (1) Amend section 1 (application for financial provision from deceased person’s estate) as follows.
- (2) For subsection (1)(a) and (b) (application may be made by spouse or by former spouse who has not remarried) substitute—
 - “(a) the spouse or civil partner of the deceased;
 - (b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;”.
 - (3) In subsection (1)(ba) (application may be made by person living as husband or wife of the deceased), after “subsection (1A)” insert “ or (1B) ”.
 - (4) In subsection (1)(d) (application may be made by child of the family), after “marriage” (in each place) insert “ or civil partnership ”.

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- (5) After subsection (1A) insert—
- “(1B) This subsection applies to a person if for the whole of the period of two years ending immediately before the date when the deceased died the person was living—
- (a) in the same household as the deceased, and
- (b) as the civil partner of the deceased.”
- (6) In subsection (2) (meaning of “reasonable financial provision”), after paragraph (a) insert—
- “(aa) in the case of an application made by virtue of subsection (1)(a) above by the civil partner of the deceased (except where, at the date of death, a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force in relation to the civil partnership and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a civil partner to receive, whether or not that provision is required for his or her maintenance;”.
- 16 In section 2(1) (orders which may be made on an application), after paragraph (f) insert—
- “(g) an order varying any settlement made—
- (i) during the subsistence of a civil partnership formed by the deceased, or
- (ii) in anticipation of the formation of a civil partnership by the deceased,
- on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.”
- 17 (1) Amend section 3(2) (application by spouse or former spouse: matters to which court is to have regard) as follows.
- (2) For the words from the beginning to “1(1)(b) of this Act” substitute— “ This subsection applies, without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(a) or (b) of this Act. ”
- (3) The words from “the court shall, in addition” to the end of paragraph (b) shall become a second sentence of the subsection and, in paragraph (a) of the sentence so formed, after “duration of the marriage” insert “ or civil partnership ”.
- (4) The words from “in the case of an application by the wife or husband” to the end shall become a third sentence of the subsection.
- (5) At the end insert the following sentence— “ In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order. ”

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- 18 In section 3(2A) (application by person living as husband or wife of deceased: matters to which court is to have regard), in paragraph (a), after “wife” insert “ or civil partner ”.
- 19 In section 6(3) and (10) (variation etc. of orders which cease on occurrence of specified event other than remarriage of former spouse), for “(other than the remarriage of a former wife or former husband)” substitute “ (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner) ”.
- 20 After section 14 insert—

“14A Provision as to cases where no financial relief was granted in proceedings for the dissolution etc. of a civil partnership

- (1) Subsection (2) below applies where—
- (a) a dissolution order, nullity order, separation order or presumption of death order has been made under Chapter 2 of Part 2 of the Civil Partnership Act 2004 in relation to a civil partnership,
 - (b) one of the civil partners dies within twelve months from the date on which the order is made, and
 - (c) either—
 - (i) an application for a financial provision order under Part 1 of Schedule 5 to that Act or a property adjustment order under Part 2 of that Schedule has not been made by the other civil partner, or
 - (ii) such an application has been made but the proceedings on the application have not been determined at the time of the death of the deceased.
- (2) If an application for an order under section 2 of this Act is made by the surviving civil partner, the court shall, notwithstanding anything in section 1 or section 3 of this Act, have power, if it thinks it just to do so, to treat the surviving civil partner as if the order mentioned in subsection (1)(a) above had not been made.
- (3) This section shall not apply in relation to a separation order unless at the date of the death of the deceased the separation order was in force and the separation was continuing.”

- 21 After section 15 insert—

“15ZA Restriction imposed in proceedings for the dissolution etc. of a civil partnership on application under this Act

- (1) On making a dissolution order, nullity order, separation order or presumption of death order under Chapter 2 of Part 2 of the Civil Partnership Act 2004, or at any time after making such an order, the court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.

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- (2) In subsection (1) above “the court” means the High Court or, where a county court has jurisdiction by virtue of Part 5 of the Matrimonial and Family Proceedings Act 1984, a county court.
- (3) In the case of a dissolution order, nullity order or presumption of death order (“the main order”) an order may be made under subsection (1) above before (as well as after) the main order is made final, but if made before the main order is made final it shall not take effect unless the main order is made final.
- (4) Where an order under subsection (1) above made in connection with a dissolution order, nullity order or presumption of death order has come into force with respect to a civil partner, then, on the death of the other civil partner, the court shall not entertain any application for an order under section 2 of this Act made by the surviving civil partner.
- (5) Where an order under subsection (1) above made in connection with a separation order has come into force with respect to a civil partner, then, if the other civil partner dies while the separation order is in force and the separation is continuing, the court shall not entertain any application for an order under section 2 of this Act made by the surviving civil partner.”

22 After section 15A insert—

“15B Restriction imposed in proceedings under Schedule 7 to the Civil Partnership Act 2004 on application under this Act

- (1) On making an order under paragraph 9 of Schedule 7 to the Civil Partnership Act 2004 (orders for financial provision, property adjustment and pension-sharing following overseas dissolution etc. of civil partnership) the court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.
- (2) In subsection (1) above “the court” means the High Court or, where a county court has jurisdiction by virtue of Part 5 of the Matrimonial and Family Proceedings Act 1984, a county court.
- (3) Where an order under subsection (1) above has been made with respect to one of the civil partners in a case where a civil partnership has been dissolved or annulled, then, on the death of the other civil partner, the court shall not entertain an application under section 2 of this Act made by the surviving civil partner.
- (4) Where an order under subsection (1) above has been made with respect to one of the civil partners in a case where civil partners have been legally separated, then, if the other civil partner dies while the legal separation is in force, the court shall not entertain an application under section 2 of this Act made by the surviving civil partner.”

23 In section 16(1) (power to vary secured periodical payments orders)—

- (a) after “the Matrimonial Causes Act 1973” insert “ or Schedule 5 to the Civil Partnership Act 2004 ”, and
- (b) after “that Act” insert “ of 1973 or Part 11 of that Schedule ”.

24 In section 17(4) (meaning of “maintenance agreement”)—

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- (a) for “entered into a marriage” substitute “ formed a marriage or civil partnership ”,
- (b) after “of the parties to that marriage” insert “ or of the civil partners ”, and
- (c) after “marriage” (in the third and fourth places) insert “ or civil partnership ”.

25 After section 18 insert—

“18A Availability of court’s powers under this Act in applications under paragraphs 60 and 73 of Schedule 5 to the Civil Partnership Act 2004

(1) Where—

- (a) a person against whom a secured periodical payments order was made under Schedule 5 to the Civil Partnership Act 2004 has died and an application is made under paragraph 60 of that Schedule for the variation or discharge of that order or for the revival of the operation of any suspended provision of the order, or
- (b) a party to a maintenance agreement within the meaning of Part 13 of that Schedule has died, the agreement being one which provides for the continuation of payments under the agreement after the death of one of the parties, and an application is made under paragraph 73 of that Schedule for the alteration of the agreement under paragraph 69 of that Schedule,

the court shall have power to direct that the application made under paragraph 60 or 73 of that Schedule shall be deemed to have been accompanied by an application for an order under section 2 of this Act.

(2) Where the court gives a direction under subsection (1) above it shall have power, in the proceedings on the application under paragraph 60 or 73 of that Schedule, to make any order which the court would have had power to make under the provisions of this Act if the application under that paragraph had been made jointly with an application for an order under section 2 of this Act; and the court shall have power to give such consequential directions as may be necessary for enabling the court to exercise any of the powers available to the court under this Act in the case of an application for an order under section 2.

(3) Where an order made under section 15ZA(1) of this Act is in force with respect to a civil partner, the court shall not give a direction under subsection (1) above with respect to any application made under paragraph 60 or 73 of that Schedule by that civil partner on the death of the other civil partner.”

26 (1) Amend section 19 (effect, duration and form of orders) as follows.

(2) In subsection (2)(a), for “former husband or former wife” substitute “ former spouse or former civil partner ”.

(3) In subsection (2), after paragraph (b) insert “or

- (c) an applicant who was the civil partner of the deceased in a case where, at the date of death, a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force in relation to their civil partnership and the separation was continuing.”.

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- (4) In that subsection, in the words after paragraph (b), for “on the remarriage of the applicant” onwards substitute “ on the formation by the applicant of a subsequent marriage or civil partnership, except in relation to any arrears due under the order on the date of the formation of the subsequent marriage or civil partnership. ”
- (5) In subsection (3), after “section 15(1)” insert “ or 15ZA(1) ”.
- 27 (1) Amend section 25 (interpretation) as follows.
- (2) In subsection (1), in the definition of “former wife” and “former husband”, for “former wife” or “former husband” substitute “ “former spouse” ”.
- (3) In that subsection, before that definition insert—
- ““former civil partner” means a person whose civil partnership with the deceased was during the lifetime of the deceased either—
- (a) dissolved or annulled by an order made under the law of any part of the British Islands, or
- (b) dissolved or annulled in any country or territory outside the British Islands by a dissolution or annulment which is entitled to be recognised as valid by the law of England and Wales;”.
- (4) In subsection (4)—
- (a) before “wife” insert “ spouse, ” and
- (b) in paragraph (b), for “entered into a later marriage” substitute “ formed a subsequent marriage or civil partnership ”.
- (5) For subsection (5) substitute—
- “(4A) For the purposes of this Act any reference to a civil partner shall be treated as including a reference to a person who in good faith formed a void civil partnership with the deceased unless either—
- (a) the civil partnership between the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of England and Wales, or
- (b) that person has during the lifetime of the deceased formed a subsequent civil partnership or marriage.
- (5) Any reference in this Act to the formation of, or to a person who has formed, a subsequent marriage or civil partnership includes (as the case may be) a reference to the formation of, or to a person who has formed, a marriage or civil partnership which is by law void or voidable.
- (5A) The formation of a marriage or civil partnership shall be treated for the purposes of this Act as the formation of a subsequent marriage or civil partnership, in relation to either of the spouses or civil partners, notwithstanding that the previous marriage or civil partnership of that spouse or civil partner was void or voidable.”
- (6) After subsection (6) insert—
- “(6A) Any reference in this Act to an order made under, or under any provision of, the Civil Partnership Act 2004 shall be construed as including a reference to

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anything which is deemed to be an order made (as the case may be) under that Act or provision.”

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