

**Status:** Point in time view as at 15/04/2005. This version of this part contains provisions that are not valid for this point in time.

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## SCHEDULES

### SCHEDULE 5 **E+W**

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

### PART 11 **E+W**

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

VALID FROM 05/12/2005

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

- 50 (1) This Part applies to the following orders—
- (a) a periodical payments order under Part 1 (financial provision on dissolution etc.) or Part 9 (failure to maintain);
  - (b) a secured periodical payments order under Part 1 or 9;
  - (c) an order under Part 8 (maintenance pending outcome of dissolution proceedings etc.);
  - (d) an interim order under Part 9;
  - (e) an order made under Part 1 by virtue of paragraph 3(3) or under Part 9 by virtue of paragraph 42(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 25(2), or
    - (ii) paragraph 26,(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 sale of property order;
  - (i) 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*

- 51 (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 47(5).

VALID FROM 05/12/2005

*Power to remit arrears*

- 52 (1) If the court has made an order referred to in paragraph 50(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.

VALID FROM 05/12/2005

*Additional powers on discharging or varying a periodical or secured periodical payments order after dissolution of civil partnership*

- 53 (1) Sub-paragraph (2) applies if, after the dissolution of a civil partnership, the court—
- (a) discharges a periodical payments order or secured periodical payments order made in favour of a civil partner, or
  - (b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.
- (2) The court may make supplemental provision consisting of any of the following—
- (a) an order for the payment of a lump sum in favour of one of the civil partners;
  - (b) one or more property adjustment orders in favour of one of the civil partners;
  - (c) one or more pension sharing orders;
  - (d) a direction that the civil partner in whose favour the original order discharged or varied was made is not entitled to make any further application for—
    - (i) a periodical payments or secured periodical payments order, or
    - (ii) an extension of the period to which the original order is limited by any variation made by the court.
- (3) The power under sub-paragraph (2) is in addition to any power the court has apart from that sub-paragraph.

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- 54 (1) An order for the payment of a lump sum under paragraph 53 may—
- (a) provide for the payment of it by instalments of such amount as may be specified, and
  - (b) require the payment of the instalments to be secured to the satisfaction of the court.
- (2) Sub-paragraphs (5) and (6) of paragraph 3 (interest on deferred instalments) apply where the court makes an order for the payment of a lump sum under paragraph 53 as they apply where it makes such an order under Part 1.
- (3) If under paragraph 53 the court makes more than one property adjustment order in favour of the same civil partner, each of those orders must fall within a different paragraph of paragraph 7(1) (types of property adjustment orders).
- (4) Part 3 (orders for the sale of property) and paragraph 76 (direction for settlement of instrument) apply where the court makes a property adjustment order under paragraph 53 as they apply where it makes any other property adjustment order.
- (5) Paragraph 18 (restrictions on making of pension sharing order) applies in relation to a pension sharing order under paragraph 53 as it applies in relation to any other pension sharing order.

VALID FROM 05/12/2005

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

- 55 (1) An application for the variation under paragraph 51 of a periodical payments order or secured periodical payments order made under Part 9 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 9 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 such date as it may specify.

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- (4) A 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 51 in relation to the revived order.

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

VALID FROM 05/12/2005

- 56 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—
- (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.

- 57 (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 50(1)(i)) 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 instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

- II** Sch. 5 para. 57 wholly in force at 5.12.2005; Sch. 5 para. 57 not in force at Royal Assent see s. 263; Sch. 5 para. 57(3)(4) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and Sch. 5 para. 57 in force otherwise at 5.12.2005 by S.I. 2005/3175, art. 2(1), Sch. 1

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- 58 (1) Sub-paragraphs (2) and (3)—
- (a) are subject to paragraphs 53 and 54, and
  - (b) do not affect any power exercisable by virtue of paragraph 50(e), (f), (g) or (i) or otherwise than by virtue of this Part.
- (2) 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.
- (3) 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 9).

VALID FROM 05/12/2005

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

- 59 (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.
- (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) In considering what further period will be sufficient, the court must, if the civil partnership has been dissolved, take into account any proposed exercise by it of its powers under paragraph 53.
- (6) 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.

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

- 60 (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 (and to any sale of property order which requires the proceeds of sale of property to be used for securing those payments) 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) a grant limited to settled land or to trust property is to be disregarded, and
  - (b) a grant limited to real estate or to personal 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.

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

- 61 (1) If the court, in exercise of its powers under this Part, decides—
- (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 in the order.
- (2) Sub-paragraph (1) is subject to paragraph 47(1) and (6).
- 62 (1) If—
- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force,

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- (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 section 10(1) of the Child Support Act 1991 (c. 48) 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 section 10 of the 1991 Act.
- (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.
- (5) In this paragraph “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.

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

- C1** Sch. 5 para. 62(1)-(5) applied (with modifications) (5.12.2005) (temp.) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 2(5), [Sch. 5 para. 2\(3\)](#)

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