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SCHEDULES

SCHEDULE 5 **E+W**

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

PART 12 **E+W**

ARREARS AND REPAYMENTS

Payment of certain arrears unenforceable without the leave of the court

PROSPECTIVE

- 63 (1) This paragraph applies if any arrears are due under—
- (a) an order under Part 1 (financial provision on dissolution etc.),
 - (b) an order under Part 8 (maintenance pending outcome of dissolution, nullity or separation proceedings), or
 - (c) an order under Part 9 (failure to maintain),
- and the arrears became due more than 12 months before proceedings to enforce the payment of them are begun.
- (2) A person is not entitled to enforce through the High Court or ^{[F1}the family court] the payment of the arrears without the leave of that court.
- (3) The court hearing an application for the grant of leave under this paragraph may—
- (a) refuse leave,
 - (b) grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or
 - (c) remit the payment of the arrears or of any part of them.
- (4) An application for the grant of leave under this paragraph must be made in such manner as may be prescribed by rules of court.

Textual Amendments

- F1** Words in Sch. 5 para. 63(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 11 para. 170](#); [S.I. 2014/954, art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

Orders for repayment in certain cases of sums paid under certain orders

- 64 (1) This paragraph applies if—

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- (a) a person (“R”) is entitled to receive payments under an order listed in sub-paragraph (2), and
 - (b) R’s circumstances or the circumstances of the person (“P”) liable to make payments under the order have changed since the order was made, or the circumstances have changed as a result of P’s death.
- (2) The orders are—
- (a) any order under Part 8 (maintenance pending outcome of dissolution, nullity or separation proceedings);
 - (b) any interim order under Part 9;
 - (c) any periodical payments order;
 - (d) any secured periodical payments order.
- (3) P or P’s personal representatives may (subject to sub-paragraph (7)) apply for an order under this paragraph against R or R’s personal representatives.
- (4) If it appears to the court that, because of the changed circumstances or P’s death, the amount received by R in respect of a relevant period exceeds the amount which P or P’s personal representatives should have been required to pay, it may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as it thinks just.
- (5) “Relevant period” means a period after the circumstances changed or (as the case may be) after P’s death.
- (6) An order under this paragraph for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (7) An application under this paragraph—
- (a) may be made in proceedings in the High Court or a county court for—
 - (i) the variation or discharge of the order listed in sub-paragraph (2), or
 - (ii) leave to enforce, or the enforcement of, the payment of arrears under that order, but
 - (b) if not made in such proceedings, must be made to a county court; and accordingly references in this paragraph to the court are references to the High Court or a county court, as the circumstances require.
- (8) The jurisdiction conferred on a county court by this paragraph is exercisable even though, because of the amount claimed in the application, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.

Orders for repayment after cessation of order because of subsequent civil partnership etc.

- 65 (1) Sub-paragraphs (3) and (4) apply if—
- (a) a periodical payments or secured periodical payments order in favour of a civil partner (“R”) has ceased to have effect because of the formation of a subsequent civil partnership or marriage by R, and
 - (b) the person liable to make payments under the order (“P”) (or P’s personal representatives) has made payments in accordance with it in respect of a relevant period in the mistaken belief that the order was still subsisting.
- (2) “Relevant period” means a period after the date of the formation of the subsequent civil partnership or marriage.

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- (3) P (or P’s personal representatives) is not entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraph (1)(a) and (b) against R (or R’s personal representatives).
- (4) But, on an application under this paragraph by P (or P’s personal representatives) against R (or R’s personal representatives), the court—
 - (a) may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the relevant period, or
 - (b) if it appears to the court that it would be unjust to make that order, may—
 - (i) order the respondent to pay to the applicant such lesser sum as it thinks fit, or
 - (ii) dismiss the application.
- (5) An order under this paragraph for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) An application under this paragraph—
 - (a) may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but
 - (b) if not made in such proceedings, must be made to a county court;and accordingly references in this paragraph to the court are references to the High Court or a county court, as the circumstances require.
- (7) The jurisdiction conferred on a county court by this paragraph is exercisable even though, because of the amount claimed in the application, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.
- (8) Subject to sub-paragraph (9)—
 - (a) the designated officer for a magistrates' court to whom any payments under a payments order are required to be made is not liable for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect because of the formation of a subsequent civil partnership or marriage by the person entitled to payments under it, and
 - (b) the collecting officer under an attachment of earnings order made to secure payments under a payments order is not liable for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with.
- (9) Sub-paragraph (8) applies if (and only if) the act—
 - (a) was one which the officer would have been under a duty to do had the payments order not ceased to have effect, and
 - (b) was done before notice in writing of the formation of the subsequent civil partnership or marriage was given to him by or on behalf of—
 - (i) the person entitled to payments under the payments order,
 - (ii) the person liable to make payments under it, or
 - (iii) the personal representatives of either of them.
- (10) In sub-paragraphs (8) and (9) “payments order” means a periodical payments order or secured periodical payments order and “collecting officer”, in relation to an attachment of earnings order, means—

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- (a) the officer of the High Court,
 - (b) the district judge of a county court, or
 - (c) the designated officer for a magistrates' court,
- to whom a person makes payments in compliance with the order.

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