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SCHEDULES

SCHEDULE 5

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

PART 13

CONSENT ORDERS AND MAINTENANCE AGREEMENTS

Consent orders for financial relief

- 66 (1) Regardless of anything in the preceding provisions of this Schedule, on an application for a consent order for financial relief, the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of such information supplied with the application as is required by rules of court.
- (2) Sub-paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this paragraph—
- “consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;
- “order for financial relief” means an order under any of Parts 1, 2, 3, 4 and 9.

Meaning of “maintenance agreement” and “financial arrangements”

- 67 (1) In this Part “maintenance agreement” means any agreement in writing between the civil partners in a civil partnership which—
- (a) is made during the continuance or after the dissolution or annulment of the civil partnership and contains financial arrangements, or
- (b) is a separation agreement which contains no financial arrangements but is made in a case where no other agreement in writing between the civil partners contains financial arrangements.
- (2) In this Part “financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the civil partners in a civil partnership (including a civil partnership which has been dissolved or annulled) in respect of—
- (a) the making or securing of payments, or
- (b) the disposition or use of any property,
- including such rights and liabilities with respect to the maintenance or education of a child (whether or not a child of the family).

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- (3) “Education” includes training.

Validity of maintenance agreements

- 68 If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements—
- (a) that provision is void, but
 - (b) any other financial arrangements contained in the agreement—
 - (i) are not void or unenforceable as a result, and
 - (ii) unless void or unenforceable for any other reason, are (subject to paragraphs 69 and 73) binding on the parties to the agreement.

Alteration of agreements by court during lives of parties

- 69 (1) Either party to a maintenance agreement may apply to the court or, subject to sub-paragraph (6), to a magistrates' court for an order under this paragraph if—
- (a) the maintenance agreement is for the time being subsisting, and
 - (b) each of the parties to the agreement is for the time being domiciled or resident in England and Wales.
- (2) The court may make an order under this paragraph if it is satisfied that—
- (a) because of a change in the circumstances in the light of which—
 - (i) any financial arrangements contained in the agreement were made, or
 - (ii) financial arrangements were omitted from it,
 the agreement should be altered so as to make different financial arrangements or so as to contain financial arrangements, or
 - (b) that the agreement does not contain proper financial arrangements with respect to any child of the family.
- (3) In sub-paragraph (2)(a) the reference to a change in the circumstances includes a change foreseen by the parties when making the agreement.
- (4) An order under this paragraph may make such alterations in the agreement—
- (a) by varying or revoking any financial arrangements contained in it, or
 - (b) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,
- as appear to the court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in paragraph 22(3).
- (5) The effect of the order is that the agreement is to be treated as if any alteration made by the order had been made by agreement between the partners and for valuable consideration.
- (6) The power to make an order under this paragraph is subject to paragraphs 70 and 71.

Restrictions on applications to and orders by magistrates' courts under paragraph 69

- 70 (1) A magistrates' court must not entertain an application under paragraph 69(1) unless—
- (a) both the parties to the agreement are resident in England and Wales, and

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- (b) the court acts in, or is authorised by the Lord Chancellor to act for, a local justice area in which at least one of the parties is resident.
- (2) A magistrates' court must not make any order on such an application other than—
 - (a) if the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of—
 - (i) the other party, or
 - (ii) any child of the family;
 - (b) if the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

Provisions relating to periodical and secured periodical payments: duration

- 71 (1) If a court decides to make an order under paragraph 69 altering an agreement—
- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party, or
 - (b) by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, it may specify such term as it thinks fit as the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the altered agreement, except that the term must not extend beyond the limits in sub-paragraphs (2) and (3).
- (2) The limits if the payments are not to be secured are—
- (a) the death of either of the parties to the agreement, or
 - (b) the formation of a subsequent civil partnership or marriage by the party to whom the payments are to be made.
- (3) The limits if the payments are to be secured are—
- (a) the death of the party to whom the payments are to be made, or
 - (b) the formation of a subsequent civil partnership or marriage by that party.
- (4) Sub-paragraph (5) applies if a court decides to make an order under paragraph 69 altering an agreement by—
- (a) inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family, or
 - (b) increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child.
- (5) The court, in deciding the term for which under the agreement as altered by the order—
- (a) the payments are to be made or secured for the benefit of the child, or
 - (b) the additional payments attributable to the increase are to be made or secured for the benefit of the child,
- must apply paragraph 49(2) to (5) (age limits) as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

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Saving

- 72 Nothing in paragraphs 68 to 71 affects—
- (a) any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Schedule) to make an order containing financial arrangements, or
 - (b) any right of either party to apply for such an order in such proceedings.

Alteration of agreements by court after death of one party

- 73 (1) This paragraph applies if—
- (a) a maintenance agreement provides for the continuation of payments under the agreement after the death of one of the parties, and
 - (b) that party (“A”) dies domiciled in England and Wales.
- (2) Subject to sub-paragraph (4), the surviving party or A’s personal representatives may apply to the High Court or a county court for an order under paragraph 69.
- (3) If a maintenance agreement is altered by a court on an application made under sub-paragraph (2), the same consequences follow as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (4) An application under this paragraph may not, without the leave of the High Court or a county court, be made after the end of 6 months from the date on which representation in regard to A’s estate is first taken out.
- (5) A’s personal representatives are not liable for having distributed any part of A’s estate after the end of the 6 month period on the ground that they ought to have taken into account the possibility that a court might allow an application by virtue of this paragraph to be made by the surviving party after that period.
- (6) Sub-paragraph (5) 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.
- (7) Paragraph 60(6) applies for the purposes of sub-paragraph (4) as it applies for the purposes of paragraph 60(3).

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