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## SCHEDULES

### SCHEDULE 5

#### [<sup>F1</sup>FINANCIAL RELIEF: PROVISION CORRESPONDING TO PROVISION MADE BY PART 2 OF THE MATRIMONIAL CAUSES ACT 1973]

##### Textual Amendments

- F1** Sch. 5 title substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 177](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

### PART 9

#### FAILURE TO MAINTAIN: FINANCIAL PROVISION (AND INTERIM ORDERS)

##### *Circumstances in which orders under this Part may be made*

- 39 (1) Either civil partner in a subsisting civil partnership may apply to the court for an order under this Part on the ground that the other civil partner (“the respondent”)—
- (a) has failed to provide reasonable maintenance for the applicant, or
  - (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.
- [<sup>F1</sup>(2) The court must not entertain an application under this paragraph unless—
- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application,
  - (b) the applicant has been habitually resident there throughout the period of 1 year ending with that date, or
  - (c) the respondent is resident there on that date.]

[<sup>F2</sup>(2A) If the application or part of it relates to a matter to which Article 18 of the 2007 Hague Convention applies, the court must not entertain the application or that part of it except where permitted by Article 18.]

(3) If, on an application under this paragraph, it appears to the court that—

    - (a) the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but
    - (b) it is not yet possible to determine what order, if any, should be made on the application,

the court may make an interim order.

(4) If, on an application under this paragraph, the applicant satisfies the court of a ground mentioned in sub-paragraph (1), the court may make one or more of the orders set out in paragraph 41.

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[<sup>F3</sup>(5) In this paragraph, [<sup>F4</sup>“the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague].]

#### Textual Amendments

- F1** Sch. 5 para. 39(2) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 25(3)(a)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Sch. 5 para. 39(2A) inserted (31.12.2020) by [S.I. 2019/519](#), reg. 1(1), **Sch. para. 25(3)(b)** (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(j)(ii)**)
- F3** Sch. 5 para. 39(5) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, **Sch. 7 para. 16(3)(b)**
- F4** Words in Sch. 5 para. 39(5) substituted (31.12.2020) by [S.I. 2019/519](#), reg. 1(1), **Sch. para. 25(3)(c)** (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(j)(ii)**)

#### *Interim orders*

- 40 An interim order is an order requiring the respondent to make to the applicant, until the determination of the application, such periodical payments as the court thinks reasonable.

#### *Orders that may be made where failure to maintain established*

- 41 (1) The orders are—
- (a) an order that the respondent must make to the applicant such periodical payments for such term as may be specified;
  - (b) an order that the respondent must secure to the applicant, to the satisfaction of the court, such periodical payments for such term as may be specified;
  - (c) an order that the respondent must pay to the applicant such lump sum as may be specified;
  - (d) an order that the respondent must make such periodical payments for such term as may be specified—
    - (i) to such person as may be specified, for the benefit of the child to whom the application relates, or
    - (ii) to the child to whom the application relates;
  - (e) an order that the respondent must secure—
    - (i) to such person as may be specified for the benefit of the child to whom the application relates, or
    - (ii) to the child to whom the application relates,
 to the satisfaction of the court, such periodical payments for such term as may be specified;
  - (f) an order that the respondent must pay such lump sum as may be specified—
    - (i) to such person as may be specified for the benefit of the child to whom the application relates, or
    - (ii) to the child to whom the application relates.

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(2) In this Part “specified” means specified in the order.

*Particular provision that may be made by lump sum orders*

- 42 (1) An order under this Part for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met.
- (2) An order under this Part for the payment of a lump sum may—
- (a) provide for its payment 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.
- (3) Sub-paragraphs (1) and (2) do not restrict the power to make an order by virtue of paragraph 41(1)(c) or (f).

*Matters to which the court is to have regard on application under paragraph 39(1)(a)*

- 43 (1) This paragraph applies if an application under paragraph 39 is made on the ground mentioned in paragraph 39(1)(a).
- (2) In deciding—
- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
  - (b) what order, if any, to make under this Part in favour of the applicant,
- the court must have regard to all the circumstances of the case including the matters mentioned in paragraph 21(2).
- (3) If an application is also made under paragraph 39 in respect of a child of the family who has not reached 18, the court must give first consideration to the welfare of the child while under 18.
- (4) Paragraph 21(2)(c) has effect as if for the reference in it to the breakdown of the civil partnership there were substituted a reference to the failure to provide reasonable maintenance for the applicant.

*Matters to which the court is to have regard on application under paragraph 39(1)(b)*

- 44 (1) This paragraph applies if an application under paragraph 39 is made on the ground mentioned in paragraph 39(1)(b).
- (2) In deciding—
- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
  - (b) what order, if any, to make under this Part in favour of the child,
- the court must have regard to all the circumstances of the case.
- (3) Those circumstances include—
- (a) the matters mentioned in paragraph 22(2)(a) to (e), and

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- (b) if the child of the family to whom the application relates is not the child of the respondent, the matters mentioned in paragraph 22(3).
- (4) Paragraph 21(2)(c) (as it applies by virtue of paragraph 22(2)(e)) has effect as if for the reference in it to the breakdown of the civil partnership there were substituted a reference to—
- (a) the failure to provide, or
  - (b) the failure to make a proper contribution towards,
- reasonable maintenance for the child of the family to whom the application relates.

*Restrictions on making orders under this Part*

- 45 The power to make an order under paragraph 41(1)(d), (e) or (f) is subject to paragraph 49(1) and (5) (restrictions on orders in favour of children who have reached 18).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 103(10) inserted by [2023 asp 3 s. 56\(5\)](#)
- s. 108(5) inserted by [2023 asp 3 s. 56\(8\)](#)
- s. 213(1A) inserted by [2013 c. 30 Sch. 2 para. 5\(2\)](#)