

SCHEDULES

SCHEDULE 7

FINANCIAL RELIEF IN ENGLAND AND WALES AFTER OVERSEAS DISSOLUTION ETC. OF A CIVIL PARTNERSHIP

PART 1

FINANCIAL RELIEF

Part applies where civil partnership has been dissolved etc. overseas

- 1 (1) This Part of this Schedule applies where—
 - (a) a civil partnership has been dissolved or annulled, or the civil partners have been legally separated, by means of judicial or other proceedings in an overseas country, and
 - (b) the dissolution, annulment or legal separation is entitled to be recognised as valid in England and Wales.
- (2) This Part of this Schedule applies even if the date of the dissolution, annulment or legal separation is earlier than the date on which the Part comes into force.
- (3) In this Schedule “overseas country” means a country or territory outside the British Islands.
- (4) In this Part of this Schedule “child of the family” means—
 - (a) a child of both of the civil partners, and
 - (b) any other child, other than a child placed with them as foster parents or by a local authority or voluntary organisation, who has been treated by both the civil partners as a child of their family.

Either civil partner may make application for financial relief

- 2 (1) Either of the civil partners may make an application to the court for an order under paragraph 9 or 13.
- (2) The rights conferred by sub-paragraph (1) are subject to—
 - (a) paragraph 3 (civil partner may not apply after forming subsequent civil partnership etc.), and
 - (b) paragraph 4 (application may not be made until leave to make it has been granted).
- (3) An application for an order under paragraph 9 or 13 must be made in a manner prescribed by rules of court.

No application after formation of subsequent civil partnership or marriage

- 3 (1) If—
- (a) the civil partnership has been dissolved or annulled, and
 - (b) after the dissolution or annulment, one of the civil partners forms a subsequent civil partnership or marriage,
- that civil partner shall not be entitled to make, in relation to the civil partnership, an application for an order under paragraph 9 or 13.
- (2) The reference in sub-paragraph (1) to the forming of a subsequent civil partnership or marriage includes a reference to the forming of a civil partnership or marriage which is by law void or voidable.

Leave of court required for making of application

- 4 (1) No application for an order under paragraph 9 or 13 shall be made unless the leave of the court has been obtained in accordance with rules of court.
- (2) The court shall not grant leave under this paragraph unless it considers that there is substantial ground for the making of an application for such an order.
- (3) The court may grant leave under this paragraph notwithstanding that an order has been made by a court in a country outside England and Wales requiring the other civil partner to make any payment, or transfer any property, to the applicant or to a child of the family.
- (4) Leave under this paragraph may be granted subject to such conditions as the court thinks fit.

Interim orders for maintenance

- 5 (1) Where—
- (a) leave is granted under paragraph 4, and
 - (b) it appears to the court that the civil partner who applied for leave, or any child of the family, is in immediate need of financial assistance,
- the court may, subject to sub-paragraph (4), make an interim order for maintenance.
- (2) An interim order for maintenance is one requiring the other civil partner to make—
- (a) to the applicant, or
 - (b) to the child,
- such periodical payments as the court thinks reasonable for such term as the court thinks reasonable.
- (3) The term must be one—
- (a) beginning not earlier than the date of the grant of leave, and
 - (b) ending with the date of the determination of the application made under the leave.
- (4) If it appears to the court that the court will, in the event of an application being made under the leave, have jurisdiction to entertain the application only under paragraph 7(4), the court shall not make an interim order under this paragraph.
- (5) An interim order under this paragraph may be made subject to such conditions as the court thinks fit.

Paragraphs 7 and 8 apply where application made for relief under paragraph 9 or 13

- 6 Paragraphs 7 and 8 apply where—
- (a) one of the civil partners has been granted leave under paragraph 4, and
 - (b) acting under the leave, that civil partner makes an application for an order under paragraph 9 or 13.

Jurisdiction of the court

- 7 (1) The court shall have jurisdiction to entertain the application only if one or more of the following jurisdictional requirements is satisfied.
- (2) The first requirement is that either of the civil partners—
- (a) was domiciled in England and Wales on the date when the leave was applied for, or
 - (b) was domiciled in England and Wales on the date when the dissolution, annulment or legal separation took effect in the overseas country in which it was obtained.
- (3) The second is that either of the civil partners—
- (a) was habitually resident in England and Wales throughout the period of one year ending with the date when the leave was applied for, or
 - (b) was habitually resident in England and Wales throughout the period of one year ending with the date on which the dissolution, annulment or legal separation took effect in the overseas country in which it was obtained.
- (4) The third is that either or both of the civil partners had, at the date when the leave was applied for, a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the civil partnership a civil partnership home of the civil partners.
- (5) In sub-paragraph (4) “possession” includes receipt of, or the right to receive, rents and profits, but here “rent” does not include mortgage interest.

Duty of the court to consider whether England and Wales is appropriate venue for application

- 8 (1) Before deciding the application, the court must consider whether in all the circumstances of the case it would be appropriate for an order of the kind applied for to be made by a court in England and Wales.
- (2) If the court is not satisfied that it would be appropriate, the court shall dismiss the application.
- (3) The court must, in particular, have regard to the following matters—
- (a) the connection which the civil partners have with England and Wales;
 - (b) the connection which the civil partners have with the country in which the civil partnership was dissolved or annulled or in which they were legally separated;
 - (c) the connection which the civil partners have with any other country outside England and Wales;
 - (d) any financial benefit which, in consequence of the dissolution, annulment or legal separation—
 - (i) the applicant, or

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- (ii) a child of the family,
has received, or is likely to receive, by virtue of any agreement or the operation of the law of a country outside England and Wales;
- (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other civil partner—
 - (i) to make any payment, or
 - (ii) to transfer any property,
 for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other civil partner under the law of any country outside England and Wales and, if the applicant has omitted to exercise that right, the reason for that omission;
- (g) the availability in England and Wales of any property in respect of which an order under this Schedule in favour of the applicant could be made;
- (h) the extent to which any order made under this Schedule is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the dissolution, annulment or legal separation.

Orders for financial provision, property adjustment and pension sharing

- 9 (1) Sub-paragraphs (2) and (3) apply where one of the civil partners has made an application for an order under this paragraph.
- (2) If the civil partnership has been dissolved or annulled, the court may on the application make any one or more of the orders which it could make under Part 1, 2 or 4 of Schedule 5 (financial provision, property adjustment and pension sharing) if a dissolution order or nullity order had been made in respect of the civil partnership under Chapter 2 of Part 2 of this Act.
- (3) If the civil partners have been legally separated, the court may on the application make any one or more of the orders which it could make under Part 1 or 2 of Schedule 5 (financial provision and property adjustment) if a separation order had been made in respect of the civil partners under Chapter 2 of Part 2 of this Act.
- (4) Where under sub-paragraph (2) or (3) the court makes—
- (a) an order which, if made under Schedule 5, would be a secured periodical payments order,
 - (b) an order for the payment of a lump sum, or
 - (c) an order which, if made under that Schedule, would be a property adjustment order,
- then, on making that order or at any time afterwards, the court may make any order which it could make under Part 3 of Schedule 5 (sale of property) if the order under sub-paragraph (2) or (3) had been made under that Schedule.
- (5) The powers under sub-paragraphs (2) to (4) are subject to paragraph 11.

Matters to which court is to have regard in exercising its powers under paragraph 9

- 10 (1) The court, in deciding—

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- (a) whether to exercise its powers under paragraph 9, and
 - (b) if so, in what way,must act in accordance with this paragraph.
- (2) 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.
- (3) The court, in exercising its powers under paragraph 9 in relation to one of the civil partners—
 - (a) must in particular have regard to the matters mentioned in paragraph 21(2) of Schedule 5, and
 - (b) shall be under duties corresponding to those imposed by sub-paragraphs (2) and (3) of paragraph 23 of that Schedule (duties to consider termination of financial obligations) where it decides to exercise under paragraph 9 powers corresponding to the powers referred to in those sub-paragraphs.
- (4) The matters to which the court is to have regard under sub-paragraph (3)(a), so far as relating to paragraph 21(2)(a) of Schedule 5 (regard to be had to financial resources), include—
 - (a) any benefits under a pension arrangement which either of the civil partners has or is likely to have, and
 - (b) any PPF compensation to which a civil partner is or is likely to be entitled, (whether or not in the foreseeable future).
- (5) The matters to which the court is to have regard under sub-paragraph (3)(a), so far as relating to paragraph 21(2)(h) of Schedule 5 (regard to be had to benefits that cease to be acquirable), include—
 - (a) any benefits under a pension arrangement which, because of the dissolution or annulment of the civil partnership, one of the civil partners will lose the chance of acquiring, and
 - (b) any PPF compensation which, because of the making of the dissolution or nullity order, a civil partner will lose the chance of acquiring entitlement to.
- (6) The court, in exercising its powers under paragraph 9 in relation to a child of the family, must in particular have regard to the matters mentioned in paragraph 22(2) of Schedule 5.
- (7) The court, in exercising its powers under paragraph 9 against a civil partner (“A”) in favour of a child of the family who is not A’s child, must also have regard to the matters mentioned in paragraph 22(3) of Schedule 5.
- (8) Where an order has been made by a court outside England and Wales for—
 - (a) the making of payments, or
 - (b) the transfer of property,by one of the civil partners, the court in considering in accordance with this paragraph the financial resources of the other civil partner, or of a child of the family, shall have regard to the extent to which that order has been complied with or is likely to be complied with.
- (9) In this paragraph—
 - (a) “pension arrangement” has the same meaning as in Part 4 of Schedule 5,

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- (b) references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not, and
- (c) “PPF compensation” has the same meaning as in Part 7 of Schedule 5.

Restriction of powers under paragraph 9 where jurisdiction depends on civil partnership home in England or Wales

- 11 (1) Sub-paragraphs (2) to (4) apply where the court has jurisdiction to entertain an application for an order under paragraph 9 only because a dwelling-house which was a civil partnership home of the civil partners is situated in England or Wales.
- (2) The court may make under paragraph 9 any one or more of the following orders (but no other)—
- (a) an order that one of the civil partners shall pay to the other a specified lump sum;
 - (b) an order that one of the civil partners shall pay to a child of the family, or to a specified person for the benefit of a child of the family, a specified lump sum;
 - (c) an order that one of the civil partners shall transfer that civil partner’s interest in the dwelling-house, or a specified part of that interest—
 - (i) to the other,
 - (ii) to a child of the family, or
 - (iii) to a specified person for the benefit of a child of the family;
 - (d) an order that a settlement of the interest of one of the civil partners in the dwelling-house, or a specified part of that interest, be made to the satisfaction of the court for the benefit of any one or more of—
 - (i) the other civil partner and the children of the family, or
 - (ii) either or any of them;
 - (e) an order varying for the benefit of any one or more of—
 - (i) the civil partners and the children of the family, or
 - (ii) either or any of them,
 a relevant settlement so far as that settlement relates to an interest in the dwelling-house;
 - (f) an order extinguishing or reducing the interest of either of the civil partners under a relevant settlement so far as that interest is an interest in the dwelling-house;
 - (g) an order for the sale of the interest of one of the civil partners in the dwelling-house.
- (3) Where under paragraph 9 the court makes just one order for the payment of a lump sum by one of the civil partners, the amount of the lump sum must not exceed the amount specified in sub-paragraph (5).
- (4) Where under paragraph 9 the court makes two or more orders each of which is an order for the payment of a lump sum by the same civil partner, the total of the amounts of the lump sums must not exceed the amount specified in sub-paragraph (5).
- (5) That amount is—
- (a) if the interest of the paying civil partner in the dwelling-house is sold in pursuance of an order made under sub-paragraph (2)(g), the amount of the proceeds of sale of that interest after deducting from those proceeds any costs incurred in the sale of that interest;

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- (b) if that interest is not so sold, the amount which in the opinion of the court represents the value of that interest.
- (6) Where the interest of one of the civil partners in the dwelling-house is held jointly or in common with any other person or persons—
- (a) the reference in sub-paragraph (2)(g) to the interest of one of the civil partners shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
 - (b) the reference in sub-paragraph (5)(a) to the amount of the proceeds of a sale ordered under sub-paragraph (2)(g) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that civil partner in the dwelling-house.
- (7) In sub-paragraph (2)—
- “relevant settlement” means a settlement made, during the subsistence of the civil partnership or in anticipation of its formation, on the civil partners, including one made by will or codicil;
 - “specified” means specified in the order.

Consent orders under paragraph 9

- 12 (1) On an application for a consent order under paragraph 9, the court may make an order in the terms agreed on the basis only of the prescribed information furnished with the application.
- (2) Sub-paragraph (1) does not apply if the court has reason to think that there are other circumstances into which it ought to inquire.
- (3) Sub-paragraph (1) applies to an application for a consent order varying or discharging an order under paragraph 9 as it applies to an application for such an order.
- (4) Sub-paragraph (1) applies despite paragraph 10.
- (5) 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;
 - “prescribed” means prescribed by rules of court.

Orders for transfers of tenancies of dwelling-houses

- 13 (1) This paragraph applies if—
- (a) an application is made by one of the civil partners for an order under this paragraph, and
 - (b) one of the civil partners is entitled, either in his own right or jointly with the other civil partner, to occupy a dwelling-house in England or Wales by virtue of a tenancy which is a relevant tenancy within the meaning of Schedule 7 to the Family Law Act 1996 (c. 27).
- (2) The court may make in relation to that dwelling-house any order which it could make under Part 2 of that Schedule (order transferring tenancy or switching statutory tenants) if it had power to make a property adjustment order under Part 2 of Schedule 5 to this Act with respect to the civil partnership.

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- (3) The provisions of paragraphs 10, 11 and 14(1) of Schedule 7 to the Family Law Act 1996 (payments by transferee, pre-transfer liabilities and right of landlord to be heard) apply in relation to any order under this paragraph as they apply to any order under Part 2 of that Schedule.

Application to orders under paragraphs 5 and 9 of provisions of Schedule 5

- 14 (1) The following provisions of Schedule 5 apply in relation to an order made under paragraph 5 or 9 of this Schedule as they apply in relation to a like order made under that Schedule—
- (a) paragraph 3(1) to (3) and (7) (lump sums);
 - (b) paragraph 11(2) to (4), 12(2), 13 and 14 (orders for sale);
 - (c) paragraphs 17, 18 and 19(2) and (3) (pension sharing);
 - (d) paragraphs 25 and 26 (orders under Part 1 relating to pensions);
 - (e) paragraphs 31 to 37 (orders under Part 1 relating to pensions where Board has assumed responsibility for scheme);
 - (f) paragraphs 47(1) to (4) and (6) and 49 (duration of orders);
 - (g) paragraphs 50 to 54 and 57 to 62, except paragraph 50(1)(g) (variation etc. of orders);
 - (h) paragraphs 63 to 65 (arrears and repayments);
 - (i) paragraphs 76 to 79 (drafting of instruments, bankruptcy, mental disorder, and pension-sharing appeals).
- (2) Sub-paragraph (1)(d) does not apply where the court has jurisdiction to entertain an application for an order under paragraph 9 only because a dwelling-house which was a civil partnership home of the civil partners is situated in England or Wales.
- (3) Paragraph 27 of Schedule 5 (change of pension arrangement under which rights are shared) applies in relation to an order made under paragraph 9 of this Schedule by virtue of sub-paragraph (1)(d) above as it applies to an order made under Part 1 of Schedule 5 by virtue of paragraph 25 or 26 of that Schedule.
- (4) The Lord Chancellor may by regulations make for the purposes of this Schedule provision corresponding to any provision which may be made by him under paragraph 28(1) to (3) of Schedule 5 (supplementary provision about orders relating to pensions under Part 1 of that Schedule).
- (5) The power to make regulations under this paragraph is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

Avoidance of transactions designed to defeat claims under paragraphs 5 and 9

- 15 (1) Sub-paragraphs (2) and (3) apply where one of the civil partners (“A”) is granted leave under paragraph 4 to make an application for an order under paragraph 9.
- (2) If the court is satisfied, on application by A, that the other civil partner (“B”) is, with the intention of defeating a claim by A, about to—
- (a) make any disposition, or
 - (b) transfer out of the jurisdiction, or otherwise deal with, any property,
- it may make such order as it thinks fit for restraining B from doing so or otherwise for protecting the claim.

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- (3) If the court is satisfied, on application by A—
- (a) that the other civil partner (“B”) has, with the intention of defeating a claim by A, made a reviewable disposition, and
 - (b) that, if the disposition were set aside—
 - (i) financial relief under paragraph 5 or 9, or
 - (ii) different financial relief under paragraph 5 or 9,would be granted to A,
- it may make an order setting aside the disposition.
- (4) If—
- (a) an order under paragraph 5 or 9 has been made by the court at the instance of one of the civil partners (“A”), and
 - (b) the court is satisfied, on application by A, that the other civil partner (“B”) has, with the intention of defeating a claim by A, made a reviewable disposition,
- the court may make an order setting aside the disposition.
- (5) Where the court has jurisdiction to entertain an application for an order under paragraph 9 only under paragraph 7(4), it shall not make any order under sub-paragraph (2), (3) or (4) in respect of any property other than the dwelling-house concerned.
- (6) Where the court makes an order under sub-paragraph (3) or (4) setting aside a disposition, it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).
- (7) For the purposes of sub-paragraphs (3) and (4), but subject to sub-paragraph (8), any disposition made by B is a “reviewable disposition” (whether made before or after the commencement of A’s application under that sub-paragraph).
- (8) A disposition made by B is not a reviewable disposition for those purposes if made for valuable consideration (other than formation of a civil partnership) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of B to defeat A’s claim.
- (9) A reference in this paragraph to defeating a claim by one of the civil partners is a reference to—
- (a) preventing financial relief being granted, or reducing the amount of financial relief which might be granted, under paragraph 5 or 9 at the instance of that civil partner, or
 - (b) frustrating or impeding the enforcement of any order which might be, or has been, made under paragraph 5 or 9 at the instance of that civil partner.

Presumptions for the purposes of paragraph 15

- 16 (1) Sub-paragraph (3) applies where—
- (a) an application is made under paragraph 15(2) or (3) by one of the civil partners with respect to—
 - (i) a disposition which took place less than 3 years before the date of the application, or

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- (ii) a disposition or other dealing with property which is about to take place, and
 - (b) the court is satisfied that the disposition or other dealing would (apart from paragraph 15 and this paragraph of this Schedule) have the consequence of defeating a claim by the applicant.
- (2) Sub-paragraph (3) also applies where—
 - (a) an application is made under paragraph 15(4) by one of the civil partners with respect to a disposition which took place less than 3 years before the date of the application, and
 - (b) the court is satisfied that the disposition has had the consequence of defeating a claim by the applicant.
- (3) It shall be presumed, unless the contrary is shown, that the person who—
 - (a) disposed of, or
 - (b) is about to dispose of or deal with the property,did so, or (as the case may be) is about to do so, with the intention of defeating the applicant's claim.
- (4) A reference in this paragraph to defeating a claim by one of the civil partners has the meaning given by paragraph 15(9).