

PART 3

APPLICATIONS FOR FINANCIAL PROVISION ETC.

**50. Financial provision: general**

This Part applies to any application for financial provision and to any application under section 9(2) of the Act (consideration of certain agreements).

**51. Right to be heard on financial questions**

A respondent may be heard on any question of financial provision without filing an answer and whether or not he has returned to the General Registry an acknowledgement of service stating his wish to be heard on that question.

**52. Application by applicant or respondent for financial provision**

(1) Subject to paragraph (2), any application by an applicant for a divorce order, annulment order or separation order, or by a respondent who files an answer claiming financial provision, for —

- (a) an order for maintenance pending suit,
- (b) a financial provision order,
- (c) a property adjustment order, or
- (d) a pension sharing order,

shall be made in the initial application or answer, as the case may be.

(2) An application for financial provision which should have been made in the initial application or answer may be made subsequently —

- (a) by leave of the Court, either in Form 12 or at the trial, or
- (b) where the parties are agreed upon the terms of the proposed order, without leave in Form 12.

(3) An application for financial provision, not being an application which is required to be made in the initial application or answer, shall be made in Form 12.

**53. Application by parent, guardian etc for financial provision in respect of children**

Any of the following persons —

- (a) a parent or guardian of any child of the family,
- (b) any person in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order,
- (c) any other person who is entitled to apply for a residence order with respect to a child,
- (d) the Department of Health and Social Security, where a child is in its care by virtue of an order made by any Court; and

(e) a child of the family who has been given leave to intervene in the proceedings for the purpose of applying for financial provision, may apply for an order for financial provision as respects that child in Form 12.

**54. Application in Form 12**

Where an application for financial provision is made in Form 12, the applicant shall serve a copy on the respondent to the application.

**55. Application for financial provision after order of court of summary jurisdiction**

Where an application for financial provision is made while there is in force an order of a court of summary jurisdiction for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

**56. Children to be separately represented on certain applications**

(1) Where an application is made to the Court for an order for a variation of settlement, the Court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any children concerned, direct that the children be separately represented on the application, and may appoint the Attorney General or other fit person to be guardian ad litem of the children for the purpose of the application.

(2) On any other application for financial provision the Court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).

(3) Before a person other than the Attorney General is appointed guardian ad litem under this rule there shall be filed a certificate by the Attorney General or the advocate acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

**57. General provisions as to evidence etc on application for financial provision**

(1) An applicant or respondent who has applied for financial provision in his initial application or answer and who intends to proceed with the application shall, subject to rule 65, deliver to the General Registry a notice in Form 13 in duplicate and serve a copy on the other party to the application.

(2) Where an application is made for financial provision, not being an application to which rule 60 applies, the application in Form 12 or notice in Form 13, as the case may be, shall unless otherwise directed be supported by an affidavit by the applicant containing full particulars of his property and income, and stating the facts relied on in support of the application.

(3) Within 28 days after the service of an affidavit under paragraph (2) or within such other time as the Court may fix, the respondent to the application, other than an application for a variation order, shall file an affidavit in answer containing full particulars of his property and income.

**58. Evidence on application for property adjustment or avoidance of disposition order**

(1) Where an application is made for a property adjustment order or an avoidance of disposition order, the affidavit in support shall contain, so far as known to the applicant, full particulars —

- (a) in the case of an application for a transfer or settlement of property —
  - (i) of the property in respect of which the application is made,
  - (ii) of the property to which the party against whom the application is made is entitled either in possession or reversion;
- (b) in the case of an application for an order for a variation of settlement —
  - (i) of all settlements, whether ante-nuptial or post-nuptial, made on the spouses, and
  - (ii) of the funds brought into settlement by each spouse;
- (c) in the case of an application for an avoidance of disposition order —
  - (i) of the property to which the disposition relates,
  - (ii) of the person in whose favour the disposition is alleged to have been made and in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.

(2) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the application in Form 12 or notice in Form 13, as the case may be, shall identify the land and —

- (a) state whether the title to the land is registered or unregistered and, if registered, the Land Registry title number; and
- (b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

(3) A copy of Form 12 or 13, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application —

- (a) in the case of an application for an order for variation of a settlement, the trustees of the settlement and the settlor if living;
- (b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made;

and such other persons, if any, as the Court may direct.

(4) In the case of an application to which paragraph (2) refers, a copy of Form 12 or 13 shall be served on any mortgagee of whom particulars are given pursuant to that paragraph; and any person so served may apply to the Court in writing, within 14 days after service, for a copy of the applicant's affidavit.

- (5) Any person who —
  - (a) is served with an affidavit pursuant to paragraph (3), or

- (b) receives an affidavit following an application made in accordance with paragraph (4),

may, within 14 days after service or receipt, as the case may be, file an affidavit in answer.

**59. Service of affidavit in answer or reply**

(1) A person who files an affidavit for use on an application under rule 57 or 58 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of adultery or of an improper association with a named person, then, if the Court so directs, it shall be endorsed with a notice in Form 14 and a copy of the affidavit or of such part of it as the Court may direct, so endorsed, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 61(5) within 14 days of service of the affidavit on him.

(2) Rule 35(3) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

**60. Information on application for consent order for financial relief**

(1) Subject to paragraphs (2) and (3), there shall be filed with every application for a consent order under any of sections 28, 29 or 30 of the Act —

- (a) 2 copies of a draft of the order in the terms sought, one of which shall be endorsed with a statement signed by the respondent to the application signifying his agreement, and
- (b) a statement of information (which may be made in more than one document) which shall include —
  - (i) the duration of the marriage, the age of each party and of any minor or dependent child of the family;
  - (ii) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;
  - (iii) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;
  - (iv) whether either party has remarried or has any present intention to marry or to cohabit with another person;
  - (v) where an order includes provision to be made under section 31 (pension sharing) of the Act, a statement confirming that the person responsible for the pension arrangement in question has been served with the documents required by rule 67(11) and that no objection to such an order has been made by that person within 14 days from such service;
  - (vi) where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee of that property has been served with notice of the application and that no objection

to such a transfer has been made by the mortgagee within 14 days from such service; and

(vii) any other especially significant matters.

(2) Where an application is made for a consent order varying an order for periodical payments paragraph (1) is sufficiently complied with if the statement of information required to be filed with the application includes only the information in respect of net income mentioned in paragraph (1)(b), and an application for a consent order for interim periodical payments pending the determination of an application for financial provision may be made in like manner.

(3) Where all or any of the parties attend the hearing of an application for financial relief the Court may dispense with the filing of a statement of information in accordance with paragraph (1) and give directions for the information which would otherwise be required to be given in such a statement to be given in such a manner as it sees fit.

## **61. Investigation of application for financial provision**

(1) On or after the filing of an application in Form 12 or a notice in Form 13 an appointment shall be fixed for the hearing of the application by a Deemster.

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

(3) Notice of the appointment, unless given in Form 12 or 13, shall be given by the applicant to every party to the application.

(4) At the hearing of an application for financial provision the Deemster

(a) shall, subject to rule 64, investigate the allegations made in support of and in answer to the application;

(b) may take evidence orally; and

(c) may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined and order the discovery and production of any document or require further affidavits.

(5) The Deemster may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

(6) Where any party to such an application intends on the day appointed for the hearing to apply for directions, he shall file and serve on every other party a notice to that effect.

(7) Any party may apply to the Court for an order that any person attend an appointment (a "production appointment") before the Court and produce any documents to be specified or described in the order, the production of which appears to the Court to be necessary for disposing fairly of the application for financial provision or for saving costs.

(8) No person shall be compelled by an order under paragraph (7) to produce any document at a production appointment which he could not be compelled to produce at the hearing of the application for financial provision.

(9) The Court shall permit any person attending a production appointment pursuant to an order under paragraph (7) to be represented at the appointment.

(10) The hearing shall, unless the Court otherwise directs, take place in chambers.

**62. Open proposals**

(1) Not less than 14 days before the date fixed for the final hearing of an application for financial provision, the applicant shall (unless the Court otherwise directs) file and serve on the respondent an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the Court to make.

(2) Not more than 7 days after service of a statement under paragraph (1), the respondent shall file and serve on the applicant an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the Court to make.

**63. Request for further information etc.**

Any party to an application for financial provision may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the Court for directions.

**64. Order on application for financial provision**

(1) The Deemster shall, after completing his investigation under rule 61, make such order as he thinks just.

(2) Pending the final determination of the application, a Deemster may make an interim order upon such terms as he thinks just.

(3) Where the Court considers it expedient to give effect to an order under section 30 (orders for sale of property) of the Act or any other order for financial provision relating to any property, it may —

- (a) grant execution in respect of the property, or
- (b) make an order compelling any person in receipt of the rents and profits thereof to deliver them up to such person as the Court may direct.

**65. Request for periodical payments order at same rate as order for maintenance pending suit**

(1) Where at or after the date of a final divorce order or annulment order an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his initial application or answer, request the Court in writing to make such an order providing for payments at the same rate as those provided for by the order for maintenance pending suit.

(2) Where such a request is made, the applicant shall serve on the other spouse a notice in Form 15 requiring him, if he objects to the making of a

corresponding order, to give notice to that effect to the Court and to the applicant within 14 days after service of the notice on Form 15.

(3) If the other spouse does not give notice of objection within the time aforesaid, the Court may make an order providing for payments at the same rate as those provided for by the order for maintenance pending suit without further notice to that spouse and without requiring the attendance of the applicant or his advocate, and shall in that case serve a copy of the order on the applicant as well as on the other spouse.

#### **66. Application for order under section 52(2)(a) of Act**

An application under section 52(2)(a) of the Act for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim may be made to a Deemster.

#### **67. Pensions**

(1) This rule applies where —

- (a) an application for financial provision has been made, and
- (b) the applicant or respondent has or is likely to have any benefits under a pension arrangement.

(2) Within 7 days of giving or receiving notice in Form 12, the party with pension rights shall request the person responsible for each pension arrangement under which he has or is likely to have benefits to furnish the information referred to in regulation 2(2) and (3)(b) to (f) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000<sup>13</sup>.

(3) Within 7 days of receiving information under paragraph (2) the party with pension rights shall send a copy of it to the other party, together with the name and address of the person responsible for each pension arrangement.

(4) A request under paragraph (2) need not be made where the party with pension rights is in possession of, or has requested, a relevant valuation of the pension rights or benefits accrued under the pension arrangement in question.

(5) In this rule a "relevant valuation" means a valuation of pension rights or benefits as at a date not more than 12 months earlier than the date of giving or receiving notice in Form 12, which has been furnished or requested pursuant to any of the following provisions —

- (a) the Pensions on Divorce etc. (Provision of Information) Regulations 2000;
- (b) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996<sup>14</sup>;
- (c) section 94(1)(a) of the Pension Schemes Act 1993;
- (d) section 94(1)(b) of the Pension Schemes Act 1993 or paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987<sup>15</sup>.

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<sup>13</sup> SI 2000/1048

<sup>14</sup> SI 1996/1655

(6) Upon making or giving notice of intention to proceed with an application for financial provision including provision to be made under section 31 (pension sharing) of the Act, or upon adding a request for such provision to an existing application for financial provision, the applicant shall send to the person responsible for the pension arrangement concerned a copy of Form 12.

(7) Upon making or giving notice of intention to proceed with an application for financial provision including provision to be made under section 34 or 35 (pension earmarking) of the Act, or upon adding a request for such provision to an existing application for financial provision, the applicant shall send to the person responsible for the pension arrangement concerned —

- (a) a copy of Form 12;
- (b) an address to which any notice which the person responsible is required to serve on the applicant under the Matrimonial Proceedings (Pensions) Regulations 2001<sup>16</sup> is to be sent;
- (c) an address to which any payment which the person responsible is required to make to the applicant is to be sent; and
- (d) where the address in sub-paragraph (c) is that of a bank, a building society or National Savings and Investments, sufficient details to enable payment to be made into the account of the applicant.

(8) A person responsible for a pension arrangement on whom a copy of a notice under paragraph (7) is served may, within 21 days after service, require the applicant to provide him with a copy of the affidavit supporting his application.

(9) A person responsible for a pension arrangement who receives a copy of an affidavit as required by paragraph (8) may within 21 days after receipt file an affidavit in answer.

(10) A person responsible for a pension arrangement who files an affidavit in answer pursuant to paragraph (9) may file therewith a notice to the Chief Registrar requiring an appointment to be fixed; and where such a notice is filed —

- (a) the Chief Registrar shall fix the appointment for the hearing or further hearing of the application and give not less than 14 days' notice of that appointment to the applicant, the respondent and the person responsible for the pension arrangement; and
- (b) the person responsible for the pension arrangement shall be entitled to be represented at any such hearing.

(11) Where the parties have agreed on the terms of an order including provision under section 34 or 35 of the Act, then unless service has already been effected under paragraph (7), they shall serve on the person responsible for the pension arrangement concerned —

- (a) the notice in Form 12 under rule 52(2)(b);
- (b) a draft of the proposed order, complying with paragraph (13); and
- (c) the particulars set out in paragraph (7)(b), (c) and (d).

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<sup>15</sup> SI 1987/1110

<sup>16</sup> SD 828/01

- (12) No consent order under paragraph (11) shall be made unless either —
- (a) the person responsible has not made any objection within 21 days after the service on him of such notice; or
  - (b) the court has considered any such objection;

and for the purpose of considering any objection the court may make such direction as it sees fit for the person responsible to attend before it or to furnish written details of his objection.

(13) An order for financial provision, whether by consent or not, including provision under section 31, 34 or 35 of the Act, shall —

- (a) in the body of the order, state that there is to be provision by way of pension sharing or pension attachment in accordance with the annex or annexes to the order; and
- (b) be accompanied by an annex containing the information set out in paragraph (14) or paragraph (15) as the case may require; and if provision is made in relation to more than one pension arrangement there shall be one annex for each pension arrangement.

(14) Where provision is made under section 31 of the Act, the annex shall state —

- (a) the case number and the title of the proceedings;
- (b) that it is a pension sharing order made under Part 2 of the Act;
- (c) the names of the transferor and the transferee;
- (d) the national insurance number of the transferor;
- (e) sufficient details to identify the pension arrangement concerned and the transferor's rights or benefits from it (for example a policy reference number);
- (f) the specified percentage, or where appropriate the specified amount, required in order to calculate the appropriate amount for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (an Act of Parliament) (creation of pension debits and credits);
- (g) how the pension sharing charges are to be apportioned between the parties or alternatively that they are to be paid in full by the transferor;
- (h) that the person responsible for the pension arrangement has furnished the information required by regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 and that it appears from that information that there is power to make an order including provision under section 6 (pension sharing) of the 2001 Act;
- (i) the day on which the order or provision takes effect; and
- (j) that the person responsible for the pension arrangement concerned must discharge his liability in respect of the pension credit within a period of 4 months beginning with the day on which the order or provision takes effect or, if later, with the first day on which the person responsible for the pension arrangement concerned is in receipt of —

- (i) the order for financial provision, including the annex;
- (ii) the divorce order or annulment order; and
- (iii) the information prescribed by regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000;

provided that if the court knows that the implementation period is different from that stated in sub-paragraph (j) by reason of regulations under section 34(4) or 41(2)(a) of the Welfare Reform and Pensions Act 1999 (an Act of Parliament), the annex shall contain details of the implementation period as determined by those regulations instead of the statement in sub-paragraph (j).

(15) Where provision is made under section 34 or 35 of the Act, the annex shall state —

- (a) the case number and the title of the proceedings;
- (b) that it is an order making provision under section 34 or 35, as the case may be, of the Act;
- (c) the names of the party with pension rights and the other party;
- (d) the national insurance number of the party with pension rights;
- (e) sufficient details to identify the pension arrangement concerned and the rights or benefits from it to which the party with pension rights is or may become entitled (for example a policy reference number);
- (f) in the case of an order including provision under section 34(4) of the Act, what percentage of any payment due to the party with pension rights is to be paid for the benefit of the other party;
- (g) in the case of an order including any other provision under section 34 or 35 of the Act, what the person responsible for the pension arrangement is required to do;
- (h) the address to which any notice which the person responsible for the pension arrangement is required to serve on the other party under the Matrimonial Proceedings (Pensions) Regulations 2001 is to be sent, if not notified under paragraph (7)(b);
- (i) an address to which any payment which the person responsible for the pension arrangement is required to make to the other party is to be sent, if not notified under paragraph (7)(c);
- (j) where the address in sub-paragraph (i) is that of a bank, a building society or National Savings and Investments, sufficient details to enable payment to be made into the account of the other party, if not notified under paragraph (7)(d); and
- (k) where the order is made by consent, that no objection has been made by the person responsible for the pension arrangement, or that an objection has been received and considered by the court, as the case may be.

(16) Where the court makes, varies or revokes an order including provision under section 31, 34 or 35 of the Act, the applicant for the order, variation or

revocation (or, if it is made otherwise than on an application, the court) shall send to the person responsible for the pension arrangement concerned —

- (a) a copy of the final divorce order, final annulment order or separation order; and
- (b) a copy of that order, or as the case may be of the order varying or discharging that order, including any annex to that order relating to that pension arrangement but no other annex to that order.

(17) The documents referred to in paragraph (16) shall be sent within 7 days after the making of the relevant order, or within 7 days after the final divorce order, final annulment order or separation order, whichever is the later.

(18) In this rule —

- (a) all words and phrases defined in section 36(6) of the Act have the meanings there given;
- (b) all words and phrases defined in section 46 of the Welfare Reform and Pensions Act 1999 (an Act of Parliament) have the meanings given by that section.