

Cohabitation Bill [HL]

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TO

Provide certain protections for persons who live together as a couple or have lived together as a couple; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

INTRODUCTORY

1 Overview

- (1) This Act establishes a framework of rights and responsibilities for cohabitants, with a view to providing basic protections — 5
- (a) in the event of their ceasing to live together as a couple for a reason other than death,
 - (b) in the event of the death of one of them, and
 - (c) for the purpose of enabling the life of either of them to be insured by or for the benefit of the other or for the benefit of a relevant child. 10
- (2) The protections under this Act apply to “cohabitants” (within the meaning of section 2) and “former cohabitants” (within the meaning of section 3).

2 “Cohabitant”

- (1) For the purposes of this Act, references to the cohabitants in a relationship are to any two people (whether of the same sex or the opposite sex) who — 15
- (a) live together as a couple, and
 - (b) meet the first and second conditions specified in subsections (2) and (3).
- (2) The first condition is that any of the following apply to the two people (“A” and “B”) who live together as a couple —
- (a) A and B are each treated in law as being mother, father or parent of the same minor child, 20

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- (b) a joint residence order in favour of A and B is in force in respect of a minor child, or
- (c) A and B have lived together as a couple for a continuous period of two years or more.
- (3) The second condition is that A and B— 5
- (a) are neither married to each other nor civil partners of each other, and
- (b) are not within prohibited degrees of relationship in relation to each other.
- (4) For the purposes of subsection (2)(c), in determining the length of the continuous period during which two people have lived together as a couple— 10
- (a) any period of the relationship that fell before the commencement date is to be taken into account, but
- (b) any one or more periods (not exceeding six months in all) during which the parties ceased living together as a couple is to be disregarded.
- (5) The prohibited degrees of relationship which are referred to in subsection (3)(b) are set out in section 5. 15
- 3 “Former cohabitant”**
- Any reference in this Act to “former cohabitants” —
- (a) is to any two people who were cohabitants in a relationship but who have ceased living together as a couple, and 20
- (b) is to be taken —
- (i) as including any two people who, although they have ceased living together as a couple, continue to share accommodation (whether for financial or other reasons), but
- (ii) as not including any two people who have subsequently married or become civil partners of each other. 25
- 4 “Relevant child”**
- (1) Any reference in this Act to a “relevant child” —
- (a) in relation to cohabitants in a relationship, is to any minor child in respect of whom — 30
- (i) each of the cohabitants is treated in law as being mother, father or parent, or
- (ii) a joint residence order in favour of both cohabitants is in force;
- (b) in relation to former cohabitants, is to any minor child in respect of whom — 35
- (i) each of the former cohabitants is treated in law as being mother, father or parent, or
- (ii) a joint residence order in favour of the former cohabitants was in force during the period when the former cohabitants were living together as a couple. 40
- (2) “Relevant children” is to be read in accordance with subsection (1).

5 The prohibited degrees of relationship

- (1) For the purposes of this Act, two people are within prohibited degrees of relationship if one is the other’s parent, grandparent, sister, brother, aunt or uncle.
- (2) In subsection (1) references to relationships – 5
- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and
 - (b) include the relationship of a child with his adoptive, or former adoptive, parents, 10
- but do not include any other adoptive relationships.
- (3) For the purposes of this Act, two people (A and B) are within prohibited degrees of relationship if one of them falls within the list below in relation to the other – 15
- Child of former civil partner
 - Child of former spouse
 - Former civil partner of grandparent
 - Former spouse of grandparent
 - Former civil partner of parent
 - Former spouse of parent 20
 - Grandchild of former civil partner
 - Grandchild of former spouse.
- (4) But subsection (3) does not apply where –
- (a) A and B have both reached 21 when they start living together, and
 - (b) the younger (“A”) has not at any time before reaching 18 – 25
 - (i) lived in the same household as B, in circumstances where B was then in a relationship with a third person (“C”), and
 - (ii) been treated by B as a child of B’s relationship with C.

PART 2

FINANCIAL SETTLEMENT ORDERS 30

Application

6 Application of Part 2

- (1) This Part has effect to determine the financial rights and obligations of former cohabitants.
- (2) This Part does not apply to former cohabitants – 35
- (a) where the former cohabitants have ceased living as a couple together before the commencement date,
 - (b) to the extent specified in an opt-out agreement in force between former cohabitants which is made in accordance with section 12 and which was entered into on or after the commencement date, and 40
 - (c) in so far as a matter that would otherwise fall to be considered under this Part is already dealt with by a cohabitation agreement or a deed of

trust which is in force between former cohabitants and which was entered into before the commencement date.

- (3) But, in relation to subsection (2) –
- (a) paragraph (b) is subject to any variation or revocation of an opt-out agreement which is made by the parties under section 13 or by the court under section 14, and 5
 - (b) paragraph (c) is subject to any variation or revocation of a cohabitation agreement or deed of trust which is made by the court under section 15.
- (4) In any case where this Part applies, it has effect in place of common law rules and equitable principles (including contract, estoppel and implied trusts). 10

Financial settlement orders

7 Application to court for a financial settlement order

- (1) A former cohabitant may apply to the court for an order under section 8 (“a financial settlement order”).
- (2) On an application under this section, the court must inquire, so far as it reasonably can, into – 15
- (a) the facts alleged by the former cohabitant who made the application (“the applicant”), and
 - (b) any facts alleged by the other former cohabitant (“the respondent”).
- (3) No application may be made under this section unless – 20
- (a) the application is made before the end of the period of 24 months starting with the date on which the former cohabitants ceased living together as a couple, or
 - (b) the former cohabitant who proposes to make the application satisfies the court that exceptional circumstances would justify a late application being made. 25
- (4) No person may make more than one application under this section in relation to the same respondent.

8 Circumstances in which a court may make a financial settlement order

- (1) The court may make a financial settlement order if – 30
- (a) the court is satisfied that the applicant and the respondent have ceased living together as a couple, and
 - (b) having regard to all the circumstances, the court considers that it is just and equitable to make an order.
- (2) In determining any application for a financial settlement order – 35
- (a) the court must have regard, in particular, to the matters specified in section 9,
 - (b) the matter specified in section 9(a) is to be given first consideration, and
 - (c) there is to be no presumption that the applicant and the respondent should share equally in property belonging to either or both of them. 40
- (3) In making a financial settlement order, the court must so far as practicable seek to ensure that effect is given to each of the following principles –

- (a) the applicant and the respondent should be self-supporting as soon as reasonably practicable, and
 - (b) any award made in favour of an applicant should not exceed the applicant’s reasonable needs.
- (4) If the court decides to make a financial settlement order, it may require either the applicant or the respondent to take such steps specified in section 10 as the court considers appropriate and specifies in the order. 5

9 Matters to be considered in determining an application

- In determining any application for a financial settlement order, the court must have regard to – 10
- (a) the welfare of any relevant child,
 - (b) the nature of the commitment between the applicant and the respondent (referred to in the following provisions of this section as “the parties”) when they were living together as a couple, including the degree of dependency or interdependency, 15
 - (c) the overall length of the period or periods during which the parties had been living together as a couple,
 - (d) the contributions (including by looking after the home or caring for any relevant child) which each of the parties – 20
 - (i) has made in the course of their living together as a couple, or
 - (ii) is likely to make in the foreseeable future in consequence of their having lived together as a couple,
 - (e) any economic advantage which, in consequence of their having lived together as a couple, each of the parties retains or is likely to retain in the foreseeable future, 25
 - (f) any economic disadvantage to which, in consequence of having lived together as a couple, each of the parties remains subject or is likely to remain subject in the foreseeable future,
 - (g) the income, property and other financial resources which each of the parties has, or is likely to have in the foreseeable future (including the rate of any pension, allowance or benefit paid to either party or the eligibility of either party for a pension, allowance or benefit), 30
 - (h) the financial needs and obligations which each of the parties has, or is likely to have in the foreseeable future,
 - (i) the physical or mental ability of each of the parties to obtain gainful employment, 35
 - (j) the availability and costs of appropriate child care to enable each of the parties to meet their respective responsibilities of caring for relevant children whilst maintaining gainful employment,
 - (k) any responsibility which either of the parties may have to support another person, 40
 - (l) any payments made in respect of the maintenance of a child or children in the care and control of either of the parties,
 - (m) the needs of any children who live with either of the parties but who do not fall within paragraph (a), 45
 - (n) any written agreement or declaration of trust relating to the parties or their property, and
 - (o) any other circumstances which the court considers relevant.

10 Financial settlement orders

- (1) A financial settlement order may require any one or more of the following –
- (a) payment of a lump sum (including payment by instalment, secured lump sums, lump sums paid by way of pension attachment and interim payments); 5
 - (b) periodical payments (including secured periodical payments);
 - (c) transfer of property;
 - (d) property settlements;
 - (e) sale of property;
 - (f) pension sharing. 10
- (2) A financial settlement order may include provision for payment by one person to the other in respect of such reasonable costs of child care for any relevant child as the court considers appropriate.
- (3) If a financial settlement order requires any former cohabitant (“A”) to make or secure periodical payments to the other former cohabitant (“B”), the term of the periodical payments must not exceed three years unless subsection (4) applies. 15
- (4) If the court considers it necessary to do so for the purpose of –
- (a) avoiding exceptional hardship to B that would otherwise arise in consequence of B having lived with A as a couple, or
 - (b) meeting the costs of appropriate child care to enable B to care for any relevant child whilst maintaining gainful employment, 20
- the court may require A to make periodical payments to B for such longer period as the court may specify.
- (5) Any provision of a financial settlement order which requires periodical payments, or secured periodical payments, to be made ceases to have effect – 25
- (a) on A or B’s death, or
 - (b) on the formation by B of a marriage or civil partnership.
- (6) On an application by A, the court must terminate any provision in a financial settlement order that requires A to make periodical payments if the court is satisfied that B is living with another person as a couple. 30

11 Provision supplementary to section 10

- (1) Where the court has made a financial settlement order, either party to it (“A” or “B”) may apply to the court for –
- (a) variation or revocation of the order,
 - (b) suspension of one or more terms of it, and 35
 - (c) revision of any suspended term.
- (2) In determining an application under subsection (1) –
- (a) the court must have regard to all the circumstances and, in particular, to any change in any of the matters specified in section 9, and
 - (b) the matter specified in section 9(a) is to be given first consideration. 40
- (3) On an application by either A or B, the court may include in a financial settlement order provision which prohibits the other from applying, on the death of the applicant, for an order under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63).

- (4) Schedule 1 to this Act makes further provision supplementing section 10 and this section, including provision –
 - (a) for the making of orders for interim payments pending determination of an application for a financial settlement order,
 - (b) for the purpose of securing compliance with any order made by the court in connection with such an application, and
 - (c) for the making of consent orders.

Opt-out agreements

12 Agreeing to opt out of financial settlement orders

- (1) This section has effect for the purposes of section 6(2)(b). 10
- (2) An opt-out agreement is an agreement between two people which complies with the requirements of the following provisions of this section.
- (3) An opt-out agreement may be entered into on or after the commencement date.
- (4) A person may not enter into an opt-out agreement unless he or she has attained the age of 16 years. 15
- (5) Any opt-out agreement entered into in contravention of subsection (4) is void.
- (6) An opt-out agreement must contain a statement by each of the persons entering into it (“A” and “B”) to the effect that each of them –
 - (a) has separately received legal advice from a qualified practitioner as to the effect of the opt-out agreement and understands its effect, 20
 - (b) agrees that a financial settlement order should not be available in the event that A and B cease living together as a couple, and
 - (c) specifies that the statement in paragraph (b) is to apply either –
 - (i) in all circumstances, or
 - (ii) only to such extent, or in such circumstances, as may be specified in the agreement (for example, only in relation to any one or more specified parts of A or B’s financial affairs or assets). 25
- (7) An opt-out agreement must –
 - (a) be in writing, 30
 - (b) be signed and dated by A and by B, and
 - (c) in respect of each of A and B, be accompanied by a certificate by a qualified practitioner that the practitioner has given legal advice –
 - (i) as to the terms and effect of the proposed opt-out agreement, and
 - (ii) in particular, as to its effect on any rights of action the person signing the agreement may have in the event of them ceasing to live together as a couple. 35
- (8) Each signature by A and by B under subsection (7)(b) must be witnessed by at least one person. 40
- (9) An opt-out agreement which is made in the prescribed form is to be taken to comply with the requirements of this section.
- (10) In this section –

“prescribed” means prescribed by regulations made by the Lord Chancellor;

“qualified practitioner” means a solicitor or barrister qualified in England and Wales.

- 13 Variation or revocation by the parties of opt-out agreements** 5
- (1) Where A and B have entered into an opt-out agreement in accordance with section 12, A and B may vary or revoke the agreement at any time.
 - (2) The requirements of section 12(6)(a), (7) and (8) apply to varying or revoking an opt-out agreement as those requirements apply to entering into such an agreement. 10
 - (3) For the purposes of subsection (2), any reference to the opt-out agreement is to be read as a reference to the variation or revocation.
- 14 Variation or revocation by the court of opt-out agreements**
- (1) Where A and B have entered into an opt-out agreement in accordance with section 12, either of them may apply to the court for an order under subsection (2) where one of them makes an application for a financial settlement order. 15
 - (2) The court may vary or revoke the opt-out agreement only if the court determines that the agreement is manifestly unfair to the applicant because of—
 - (a) the circumstances in which the agreement was entered into or varied, or
 - (b) any change in the circumstances of either party which was unforeseen at the time the agreement was entered into or varied. 20

Cohabitation agreements or deeds of trust

- 15 Variation or revocation by the court of cohabitation agreements or deeds of trust** 25
- (1) Where one of the parties to a cohabitation agreement or deed of trust referred to in section 6(2)(c) makes an application for a financial settlement order, either party may apply to the court for an order under subsection (2).
 - (2) The court may vary or revoke the agreement or deed in such circumstances, and to such extent, as the court considers appropriate. 30

PART 3

PROTECTIONS CONNECTED WITH INSURANCE AND DEATH

- 16 Insurable interest in the life of the other cohabitant**
- (1) Each cohabitant in a relationship is to be presumed for the purposes of section 1 of the Life Assurance Act 1774 (c. 48) to have an interest in the life of the other cohabitant in the relationship. 35
 - (2) For the purposes of section 3 of that Act, there is no limit on the amount of value of the interest.

17 Assurance policy for benefit of other cohabitant

Section 11 of the Married Women’s Property Act 1882 (c. 75) (money payable under policy of assurance not to form part of the estate of the insured) applies in relation to a policy of assurance –

- (a) effected by a cohabitant in a relationship (“A”) on A’s own life, and 5
- (b) expressed to be for the benefit –
 - (i) of the other cohabitant (“B”),
 - (ii) of any child of A and B, or
 - (iii) of B and all such children, or any of them,

as it applies in relation to a policy of assurance effected by a husband and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or of any of them. 10

18 Registering the death of a cohabitant

- (1) Subsection (2) applies in any case where a person (“B”) dies and, immediately before B’s death, B is a cohabitant in a relationship with another person (“A”). 15
- (2) For the purposes of Part 2 (registration of deaths) of the Births and Deaths Registration Act 1953 (c. 20) –
 - (a) A is to be treated as if A were a relative of B, and
 - (b) must provide information about B’s death in accordance with the provisions of Part 2 of that Act. 20

19 Further provision in connection with the death of a cohabitant

- (1) Schedule 2 to this Act contains provision –
 - (a) to align with this Act certain existing statutory protections that are available to a surviving cohabitant on the death of the other cohabitant, and 25
 - (b) to extend to the surviving cohabitant certain connected provisions.
- (2) Part 1 of Schedule 2 –
 - (a) amends the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), and
 - (b) includes provision setting out circumstances in which a former cohabitant who receives no reasonable financial provision from the deceased’s estate may apply to the court. 30
- (3) Part 2 of Schedule 2 –
 - (a) amends the Fatal Accidents Act 1976 (c. 30), and
 - (b) includes provision for the court to consider a claim for bereavement damages which is made by a surviving cohabitant. 35

PART 4

MISCELLANEOUS AND GENERAL

20 General interpretation

In this Act, except where the context otherwise requires – 40

- “the applicant” and “the respondent”, in relation to an application for a financial settlement order, have the meaning given in section 7(2);
- “cohabitant” has the meaning given in section 2;
- “the court” has the meaning given in section 21;
- “the commencement date”, in relation to any provision of this Act, means the date of the coming into force of that provision; 5
- “financial settlement order” means an order under section 8;
- “former cohabitant” has the meaning given in section 3;
- “relevant child” has the meaning given in section 4;
- “residence order” has the same meaning as in the Children Act 1989 (c. 41). 10

21 Jurisdiction of the courts

- (1) For the purposes of this Act, the court means –
- (a) the High Court, or
 - (b) where a county court has jurisdiction by virtue of an order made under this section, a county court. 15
- (2) The Lord Chancellor may by order specify proceedings under this Act which may only be commenced in –
- (a) a specified level of court,
 - (b) a court which falls within a specified class of court, or 20
 - (c) a particular court determined in accordance with, or specified in, the order.
- (3) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Part may only be commenced in –
- (a) a specified level of court, 25
 - (b) a court which falls within a specified class of court, or
 - (c) a particular court determined in accordance with, or specified in, the order.
- (4) For the purposes of subsections (2) and (3) the levels of the court are –
- (a) the High Court, and 30
 - (b) a county court.

22 Power to make transitional and consequential provisions

- (1) The Secretary of State may by order make –
- (a) any incidental, consequential or supplemental provision, and
 - (b) any transitional or saving provision, 35
- that the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) The power under this section is not restricted by any other provision of this Act.
- (3) An order under this section may amend, repeal or revoke any provision of – 40
- (a) an Act passed before or in the same session as this Act, or
 - (b) subordinate legislation made before the passing of this Act.

- (4) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

23 Regulations and orders

- (1) Orders and regulations made under this Act are to be made by statutory instrument. 5
- (2) Any statutory instrument made under this Act may –
- (a) make different provision for different cases,
 - (b) contain such incidental, consequential, transitional or supplemental provision as the person making it considers appropriate.
- (3) No order is to be made under – 10
- (a) section 22, or
 - (b) paragraph 17 of Schedule 1 to this Act,
- unless a draft of the order has been laid before, and approved by, a resolution of each House of Parliament.
- (4) Any other such statutory instrument made under this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 15

24 Extent

This Act extends to England and Wales only.

25 Commencement

- (1) The following provisions of this Act come into force on the passing of this Act – 20
- (a) this Part,
 - (b) sections 12 and 13, and
 - (c) any other provision of this Act so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make orders or regulations that is conferred by the provision. 25
- (2) The other provisions of this Act come into force in accordance with provision made by order by the Lord Chancellor.

26 Short title

This Act may be cited as the Cohabitation Act 2009. 30

SCHEDULES

SCHEDULE 1

Section 11(4)

FINANCIAL SETTLEMENT ON CEASING TO LIVE TOGETHER

PART 1

FINANCIAL SETTLEMENT ORDERS AND INTERIM PAYMENTS

5

Introductory

- 1 In this Part of the Schedule, “specified”, in relation to a step which a financial settlement order requires to be taken, means specified in the order.
- 2 If the court decides to grant an application for a financial settlement order –
- (a) it may require either the applicant or the respondent to take such of the steps set out in paragraphs 3 to 6 as may be specified in the order, and
 - (b) it may vary or revoke the terms of the order at any time afterwards.

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Orders requiring periodical and secured periodical payments and lump sums

- 3 (1) In a financial settlement order, the court may require that either the applicant or the respondent –
- (a) must make to the other such periodical payments for such term as may be specified;
 - (b) must secure to the other, to the satisfaction of the court, such periodical payments for such term as may be specified;
 - (c) must pay to the other such lump sum or sums as may be specified;
 - (d) if the court decides under section 10(2) to require payment of reasonable costs of child care, must make or secure to a specified person such periodical payments, lump sum or lump sums as may be specified.
- (2) The power to require in a financial settlement order that periodical payments be made to any person is subject to the three year limit specified in section 10(3) (but this is subject to section 10(4)).
- (3) Where a financial settlement order requires the payment of a lump sum, the order may –
- (a) provide for payment of the sum by installations of a specified amount, and
 - (b) require the payment of instalments to be secured to the satisfaction of the court,
- but this does not restrict the powers of the court to impose requirements under sub-paragraph (1)(c).

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- (4) If the court –
- (a) makes a financial settlement order requiring the payment of a lump sum, and
 - (b) directs that –
 - (i) payment of the sum or any part of it is to be deferred, or 5
 - (ii) the sum or any part of it is to be paid by instalments,
 the court may provide for the deferred amount or the instalments to carry interest at a specified rate from a specified date until the date when payment of it is due.
- (5) A date specified under sub-paragraph (4) must not be earlier than the date of the financial settlement order. 10

Orders requiring adjustments to property

- 4 (1) In a financial settlement order, the court may require –
- (a) that the applicant or the respondent must transfer specified property to which he or she is entitled to the other of them; 15
 - (b) that a settlement of a specified property to which the applicant or the respondent is entitled be made to the satisfaction of the court for the benefit of the other of them;
 - (c) that a relevant settlement be varied for the benefit of the applicant or the respondent, or both of them; 20
 - (d) that the interest of either the applicant or the respondent under a relevant settlement be extinguished or reduced.
- (2) In sub-paragraph (1) –
- “entitled” means entitled in possession or reversion;
 - “relevant settlement”, in relation to the applicant and the respondent means a settlement made on them whilst they were living together as a couple or in anticipation of them living together as a couple, and – 25
 - (a) it includes a settlement made by will or codicil, but
 - (b) it does not include a settlement in the form of a pension arrangement (within the meaning of paragraph 6(3)(d)). 30

Orders requiring sale of property

- 5 (1) This paragraph applies in any case where the court proposes to include in a financial settlement order a requirement under –
- (a) paragraph 3(1)(b) to make a secured periodical payment, 35
 - (b) paragraph 3(1)(c) to make a lump sum payment, or
 - (c) paragraph 4(1) to make an adjustment to property.
- (2) In the same financial settlement order or by way of subsequent variation, the court may require the sale of specified property in which, or in the proceeds of sale of which, either the applicant or the respondent (or both) has or have a beneficial interest, either in possession or reversion. 40
- (3) Where –
- (a) the court is considering whether to require the sale of a property, and
 - (b) another person (“C”) also has a beneficial interest in the property or the proceeds, 45

the court must give C an opportunity to make representations with respect to the proposed sale and, in determining whether to require the sale, it must have regard to any representations made by C.

- (4) Any financial settlement order requiring a sale of property may contain such consequential or supplementary provisions as the court considers appropriate. 5
- (5) Such provision may, in particular –
- (a) require the making of a payment out of the proceeds of sale of the property to which the financial settlement order relates, and
 - (b) require any property to which the order relates to be offered for sale to a specified person, or class of persons. 10

Orders requiring pension sharing

- 6 (1) In a financial settlement order, the court may require that the applicant or the respondent’s –
- (a) shareable rights under a specified pension arrangement, or 15
 - (b) shareable state scheme rights,
- are to be subject to pension sharing for the benefit of the other and, if the court imposes such a requirement, it must specify the percentage value to be transferred.
- (2) If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the applicant and the respondent of any charge under section 41 of the 1999 Act (charges in respect of pension sharing costs). 20
- (3) In this paragraph –
- (a) “the 1999 Act” means the Welfare Reform and Pensions Act 1999 (c. 30); 25
 - (b) references to shareable rights under a pension arrangement are to rights in relation to which pension sharing is available under Chapter 1 of Part 4 of the 1999 Act;
 - (c) references to shareable state scheme rights are to rights in relation to which pension sharing is available under Chapter 2 of Part 4 of the 1999 Act; and 30
 - (d) “pension arrangement” means any of the following –
 - (i) an occupational pension scheme,
 - (ii) a personal pension scheme, 35
 - (iii) a retirement annuity contract,
 - (iv) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
 - (v) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the 1999 Act. 40
- (4) In sub-paragraph (3)(d) –
- “personal pension scheme” and “occupational pension scheme” have the same meaning as in the Pension Schemes Act 1993 (c. 48); 45

“retirement annuity contract” means a contract or scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988 (c. 1).

Requirement to make interim payments

- 7 At any time before determining an application for a financial settlement order, the court may require the applicant or the respondent to make to the other for the other’s maintenance such periodical payments for such term – 5
- (a) beginning no earlier than the date on which the application was made, and
- (b) ending with the date on which the application is determined, 10
as the court considers reasonable.

PART 2

CONSENT ORDERS

Making a consent order

- 8 Regardless of anything in Part 1 of this Schedule, on an application for a consent order under this paragraph, 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. 15

Interpretation 20

- 9 (1) In this Part of this Schedule –
- “consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;
- “relevant agreement” means any agreement in writing between former cohabitants which is made after they have ceased living together as a couple and contains financial arrangements. 25
- (2) For these purposes, “financial arrangements” means –
- (a) provisions governing the rights and liabilities towards one another, once former cohabitants have ceased living together as a couple in respect of – 30
- (i) the making or securing of payments, or
- (ii) the disposition or use of any property, and
- (b) includes such rights and liabilities with respect to the maintenance or education of a relevant child.
- (3) In sub-paragraph (2)(b), “education” includes training. 35

Validity of relevant agreements

- 10 (1) If a relevant 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 relevant agreement – 40
- (i) are not void or unenforceable as a result, and

- (ii) unless void or unenforceable for any other reason, are binding on the parties to the agreement (but this is subject to any alteration made under paragraph 11).
- (2) Nothing in sub-paragraph (1)(a) affects the validity of any opt-out agreement entered into in accordance with section 12. 5

Alteration of relevant agreements by court during lives of the parties

- 11 (1) Either party to a relevant agreement may apply to the court for an order under this paragraph if –
- (a) the relevant agreement is for the time being subsisting, and
 - (b) each of the parties to it is for the time being domiciled or resident in England and Wales. 10
- (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 relevant agreement were made, or 15
 - (ii) financial arrangements were omitted from it, the relevant agreement should be altered so as to make different financial arrangements or so as to contain financial arrangements, or
 - (b) that the relevant agreement does not contain proper financial arrangements with respect to any relevant child. 20
- (3) In sub-paragraph (2)(a), the reference to a change in the circumstances includes a change foreseen by the parties when making the relevant agreement.
- (4) An order under this paragraph may make such alterations in the relevant agreement – 25
- (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 relevant agreement or of a relevant child,
- as appear to the court to be just and equitable having regard to all the circumstances. 30
- (5) The effect of the order is that the relevant agreement is to be treated as if any alteration made by the order had been made by agreement between the former cohabitants and for valuable consideration.

Provisions relating to periodical and secured periodical payments: duration

- 12 (1) If a court decides to make an order under paragraph 11 altering a relevant agreement – 35
- (a) by inserting provision for the making or securing by one of the parties to the relevant agreement of periodical payments for the maintenance of the other party, or
 - (b) by varying the rate of the periodical payments which the relevant agreement provides is to be made by one of the parties for the maintenance of the other, 40
- 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 variation are to be made under the altered agreement. 45

- (2) For the purposes of sub-paragraph (1) –
- (a) the power conferred by that sub-paragraph is subject to the three year limit specified in section 10(3) (but this is subject to section 10(4)), and
 - (b) the requirements specified in section 10(5) and (6) as to the termination of any requirement to make periodical payments also apply. 5

Saving

- 13 Nothing in this Part of this Schedule affects –
- (a) any power of a court before which any proceedings between the parties to a relevant agreement are brought under any other enactment (including a provision of this Schedule) to make an order containing financial arrangements, or 10
 - (b) any right of either party to apply for such an order in such proceedings. 15

PART 3

MISCELLANEOUS

Avoidance of transactions intended to prevent or reduce financial relief

- 14 (1) This paragraph applies in proceedings brought by one person (“A”) against another (“B”) for the purpose of obtaining any financial relief by virtue of a financial settlement order. 20
- (2) If the court is satisfied, on an application by A, that B is, with the intention of defeating A’s claim for financial relief, about to –
- (a) make any disposition, or
 - (b) transfer out of the jurisdiction or otherwise deal with any property, 25
- it may make such order as it thinks appropriate for restraining B from doing so or otherwise for protecting the claim.
- (3) If the court is satisfied, on an application by A –
- (a) that B has, with the intention of defeating A’s claim for financial relief, made a reviewable disposition, and 30
 - (b) that if the disposition were set aside, financial relief or different financial relief would be granted to A,
- the court may make an order setting aside the disposition.
- (4) If the court is satisfied, on an application by A in a case where a financial settlement order has been obtained by A against B, that B has, with the intention of defeating A’s claim for financial relief, made a reviewable disposition, it may make an order setting aside the disposition. 35
- (5) An application for the purposes of sub-paragraph (3) must be made in the proceedings for the financial relief in question.
- (6) If the court makes an order under sub-paragraph (3) or (4) setting aside a disposition it must give such consequential directions as it thinks appropriate for giving effect to the order (including directions requiring the making of any payments or the disposal of any property). 40

Provision supplementary to paragraph 14

- 15 (1) Any reference to paragraph 14 to defeating A’s claim for financial relief is to –
- (a) preventing financial relief from being granted to A,
 - (b) reducing the amount of any financial relief which might be so granted, or 5
 - (c) frustrating or impeding the enforcement of any financial settlement order which might be or has been made at A’s instance.
- (2) In paragraph 14 and this paragraph “disposition” –
- (a) does not include any provision contained in a will or codicil, but 10
 - (b) subject to paragraph (a), includes any conveyance, assurance or gift of property of any description (whether made by an instrument or otherwise).
- (3) Any disposition made by B (whether before or after the commencement of the proceedings for financial relief) is a reviewable disposition for the purposes of paragraphs 14(3) and (4) unless it was made –
- (a) for valuable consideration (other than marriage), and
 - (b) 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 B’s part to defeat A’s claim for financial relief. 20
- (4) If an application is made under paragraph 14 with respect to a disposition which took place less than 3 years before the date of the application, or with respect to a disposition or other dealing with property which is about to take place, and the court is satisfied –
- (a) in a case falling within paragraph 14(2) or (3), that the disposition or other dealing would (apart from paragraph 14) have the consequence of defeating A’s claim for financial relief, or 25
 - (b) in a case falling within paragraph 14(4), that the disposition has had the consequence of defeating A’s claim for financial relief,
- it is presumed, unless the contrary is shown, that the person who disposed of or 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 A’s claim for financial relief. 30

Arrears

- 16 (1) This paragraph applies if – 35
- (a) arrears are due under any financial settlement order or any other made under, or by virtue of, this Schedule, and
 - (b) 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 any county court the payment of the arrears without the leave of that court. 40
- (3) The court hearing an application for the grant of the 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 the court considers 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. 5

Power to make consequential and supplemental provision

- 17 (1) The Lord Chancellor may by order make such further provision as the Lord Chancellor considers appropriate for the purposes of, in consequence of, or for giving full effect to sections 10 and 11 and this Schedule. 10
- (2) An order under sub-paragraph (1) may include provision for or in connection with, in particular –
- (a) the making of financial settlement orders having regard to pension benefits,
 - (b) the assumption of responsibility for payments required by financial settlement orders in cases where compensation is payable under Chapter 3 of Part 2 of the Pensions Act 2004 (c. 35) (pension protection), 15
 - (c) the circumstances in which financial settlement orders may be varied or be revoked, 20
 - (d) the circumstances in which arrears are to be unenforceable without the leave of the court,
 - (e) orders for repayment where periodical payments have continued after they have ceased to be required, and
 - (f) the alteration after the death of the parties of relevant agreements in respect of which a consent order has been made under Part 2 of this Schedule. 25

SCHEDULE 2

Section 19

AMENDMENTS: FINANCIAL PROVISION ON A COHABITANT'S DEATH

PART 1 30

AMENDMENTS OF INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

- 1 In this Part of this Schedule “the 1975 Act” means the Inheritance (Provision for Family and Dependants) Act 1975 (c. 63).
- 2 In section 1 of the 1975 Act (application for financial provision from the deceased's estate) – 35
- (a) in subsection (1)(ba) omit “or 1B”;
 - (b) for subsection (1A) substitute –
- “(1A) This subsection applies to a person if, immediately before the deceased died, the person and the deceased were cohabitants within the meaning of the Cohabitation Act 2009. 40

- (Section 14B of this Act also sets out limited circumstances in which a former cohabitant may apply for an order under section 2 of this Act).”;
- (c) omit subsection (1B);
- (d) after subsection (2)(aa), insert – 5
 “(ab) in the case of an application made by virtue of subsection (1)(ba), means such financial provision as it would be reasonable in all the circumstances of the case for the surviving cohabitant to receive, whether or not that provision is required for his or her maintenance;” and 10
- (e) in subsection (2)(b), after “by virtue of subsection (1) above” insert “or section 14B below”.
- 3 In section 2 of the 1975 Act (power of the court to make orders), after subsection (1)(g), insert – 15
 “(h) an order varying any settlement, including a settlement made by will –
 (i) made on two persons, one of whom was the deceased, who immediately before the deceased died were cohabitants within the meaning of the Cohabitation Act 2009, and 20
 (ii) made at any time when they were cohabitants, when they were living together as a couple but before becoming cohabitants within the meaning of that Act or in anticipation of them living together as a couple, 25
 the variation being for the benefit of the surviving cohabitant, or any relevant child.”
- 4 In section 3 of the 1975 Act (matters to which the court is to have regard in exercising powers under section 2), for subsection (2A) substitute –
 “(2A) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an applicant for an order under section 2 of this Act is made by virtue of section 1(1)(ba) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to – 30
 (a) the age of the applicant and the length of the period during which the applicant and the deceased lived together as a couple; 35
 (b) the contribution (including any contribution made by looking after the home or caring for any relevant child) which the applicant made whilst the applicant and the deceased were living together as a couple; 40
 (c) any additional matter which, if the application were treated as if it had been made under Part 2 of the Cohabitation Act 2009 (financial settlement orders), the court considers it would be relevant in determining the application.” 45
- 5 After section 14A of the 1975 Act insert –
 “14B Provision as to cases where no financial settlement order was made after cohabitants ceased living together as a couple
 (1) Subsection (2) below applies where –

- (a) the cohabitants have ceased living together as a couple and, within twenty four months of ceasing to do so, one of them dies, and
- (b) either –
- (i) no application for a financial settlement order has been made under section 7 of the Cohabitation Act 2009 by one of the former cohabitants, or
- (ii) if such an application has been made, the proceedings on the application have not been determined at the time of death of the deceased.
- (2) The former cohabitant who survives may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased’s estate by his or her will or the law relating to intestacy, or the combination of the will and that law, is not such as to make reasonable financial provision for the applicant.
- (3) In subsection (2) “reasonable financial provision” means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his or her maintenance.”.
- 6 After section 15ZA of the 1975 Act insert –
- “15ZB Restriction on making an application under this Act imposed in proceedings for a financial settlement order under section 8 of the Cohabitation Act 2009**
- (1) On making a financial settlement order under section 8 of the Cohabitation Act 2009, or at any time after making such an order, the court, if it considers it just to do so, may, on the application of either of the former cohabitants, order that the other shall not on the death of the applicant be entitled to apply for an order under section 2 of this Act.
- (2) In subsection (1) above “the court” has the same meaning as in the Cohabitation Act 2009.
- (3) Where an order under subsection (1) above made in connection with a financial settlement order has been made with respect to a former cohabitant, then, on the death of the other former cohabitant, the court shall not entertain any application for an order under section 2 of this Act made by the former cohabitant who survives.”.
- 7 In section 25 go the 1975 Act (interpretation), insert each of the following definitions at the appropriate place –
- (a) ““cohabitants” and “former cohabitants” have the same meaning as in the Cohabitation Act 2009;”;
- (b) ““relevant child”, in relation to cohabitants in a relationship, has the same meaning as in the Cohabitation Act 2009;”.

PART 2

AMENDMENTS OF FATAL ACCIDENTS ACT 1976

- 8 In this Part of this Schedule “the 1976 Act” means the Fatal Accidents Act 1976 (c. 30).

- 9 In section 1 of the 1976 Act (right of action for wrongful act causing death), for subsection (3)(b) substitute –
 “(b) any person who, immediately before the date of the death, was a cohabitant (within the meaning of the Cohabitation Act 2009) in a relationship with the deceased;” 5
- 10 In section 1A of the 1976 Act (persons for whose benefit claims for bereavement damages may be made) –
 (a) omit “and” at the end of paragraph (a);
 (b) after paragraph (a) insert –
 “(aa) of the person who, immediately before the date of the death, was a cohabitant (within the meaning of the Cohabitation Act 2009) in a relationship with the deceased; and” 10
- 11 In section 3 of the 1976 Act (assessment of damages), omit subsection (4).

Cohabitation Bill [HL]

A

B I L L

To provide certain protections for persons who live together as a couple or have lived together as a couple; and for connected purposes.

Lord Lester of Herne Hill

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