

Divorce (Financial Provision) Bill [HL]

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TO

Amend the Matrimonial Causes Act 1973 and make provision in connection with financial settlements following divorce.

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:—

1 Amendment of the Matrimonial Causes Act 1973

- (1) Section 25 of the Matrimonial Causes Act 1973 (matters to which the court is to have regard in deciding how to exercise its powers under ss. 23, 24, 24A, 24B and 24E) ceases to have effect in relation to the making of orders for financial provision between the parties to a marriage. 5
- (2) This Act replaces that section with provisions about the principles to be applied in determining applications for such orders, including provision about the effect of pre-nuptial and post-nuptial agreements.
- (3) In this Act—
- “1973 Act” means the Matrimonial Causes Act 1973; 10
 - “child of the family” has the same meaning as in the Children Act 1989;
 - “divorce” includes dissolution of a civil partnership;
 - “marriage” includes civil partnership;
 - “pre-nuptial agreement” means an agreement entered into in contemplation of marriage for the purpose of regulating the affairs of the parties should their marriage break down; and 15
 - “post-nuptial agreement” means an agreement entered into after marriage, by the parties to the marriage, for the purpose of regulating their affairs should the marriage break down.

2 Applications for court orders 20

- (1) In proceedings for divorce, either party may apply to the court for any of the following orders for the benefit of that party—
- (a) an order for payment of a lump sum to that party by the other party to the marriage;

- (b) an order for the transfer of property to that party by the other party to the marriage;
 - (c) an order for the making of periodical payments to that party by the other party to the marriage;
 - (d) a pension-sharing order. 5
- (2) Subject to the provisions of section 4(6), the court is to exercise the powers in subsection (1)(a), (b) and (d) only in relation to matrimonial property.
- (3) Sections 3 to 7 apply to the determination of an application –
- (a) for an order mentioned in subsection (1);
 - (b) for an order under section 23, 24, 24A, 24B or 24E of the 1973 Act, or under the corresponding provisions of the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013, for the benefit of a party to the marriage. 10

3 Pre-nuptial and post-nuptial agreements

- (1) For the purposes of any proceedings to which this section applies, a pre-nuptial or post-nuptial agreement is to be treated as binding on the parties and is to be given effect unless – 15
- (a) the agreement attempts to impose an obligation on a third party who has not agreed in advance to be bound by it (in which case the agreement is not binding on the parties insofar as it attempts to impose that obligation); 20
 - (b) a party neither received independent legal advice, nor had an adequate opportunity to do so, before the agreement was made;
 - (c) in the case of a pre-nuptial agreement, the agreement was made less than 21 days before the marriage; 25
 - (d) there was no full disclosure of assets as between the parties before it was made; or
 - (e) the agreement is unenforceable under the applicable rules of law relating to the validity or enforceability of contracts generally.
- (2) For the purposes of subsection (1)(b), where a person authorised to carry out reserved legal activities (within the meaning of the Legal Services Act 2007) has given a party independent legal advice about the proposed entry into a pre-nuptial or post-nuptial agreement, the certificate of that person to that effect is to be treated as conclusive evidence of the giving of that advice. 30
- (3) The Lord Chancellor may by regulations made by statutory instrument make provision about the requirements of full disclosure of assets for the purposes of subsection (1)(d); and an instrument containing such regulations must be laid before each House of Parliament and is subject to annulment by resolution of either House. 35
- (4) Where a pre-nuptial or post-nuptial agreement is to be treated as binding, the court may consider the making of an order of a kind mentioned in section 2(2) only to the extent to which the agreement does not deal with the matter. 40

4 Matrimonial property

- (1) The net value of the matrimonial property is to be shared fairly between the parties to the marriage. 45

- (2) In applying the principle set out in subsection (1), the net value of the matrimonial property shall be taken to be shared fairly between the parties when it is shared equally, unless subsection (7) applies.
- (3) The net value of the property is the value of the property at the relevant date, after deduction of any debts incurred by one or both of the parties to the marriage – 5
 (a) before the marriage so far as they relate to the matrimonial property, or
 (b) during the marriage;
 which are outstanding at that date.
- (4) In this section the “relevant date” means the date on which – 10
 (a) the parties ceased to cohabit, or
 (b) the petition for divorce is served,
 whichever is the earlier.
- (5) In this section “matrimonial property” means all the property, including any pension, or interest in a pension, which could be the subject of a pension-sharing order, belonging to the parties or either of them at the relevant date which was acquired by them or one of them otherwise than by way of gift or succession from a third party – 15
 (a) before the marriage for use by the parties as a family home or as furniture or fittings for such home; or 20
 (b) during the marriage but before the relevant date,
 and includes property which is matrimonial property as a result of subsection (6).
- (6) The following provisions apply to property belonging to either party which is not otherwise matrimonial property – 25
 (a) if an increase in the value of the property, or any income or gain derived from the property, is attributable, wholly or partly, to the application of matrimonial property, the increase in value, or the income or gain, are matrimonial property;
 (b) if an increase in the value of the property, or any income or gain derived from the property, is attributable, wholly or partly, and directly or indirectly, to actions of the other party, then the increase in value, or the income or gain, are matrimonial property but the share of each party in that matrimonial property is to be determined in accordance with the contribution of each party to the increase in value or the income or gain; 35
 (c) property, the proceeds of any disposition of property, and any increase in the value of, or any income or gain derived from property, are each matrimonial property if that property, those proceeds, the increase in value or the income or gain are used for the acquisition or improvement of, or to increase the value of, or the amount of any interest of either party in, any matrimonial property, and are so used with the consent, express or implied, of the party who owns, receives, or is entitled to them. 40
- (7) The court may make an order involving an unequal sharing of the net value of the matrimonial property to the extent to which it is satisfied that to do so would be fair, having regard to any of the following matters – 45
 (a) the terms of any agreement between the parties relating to the ownership or division of any of the matrimonial property;

- (b) the source of the funds or assets used to acquire any of the matrimonial property where those funds or assets were not derived from the income or efforts of the parties during the marriage;
- (c) any destruction, dissipation or alienation of matrimonial property by either party; 5
- (d) the nature and use of the matrimonial property, including the question whether and to what extent the property is used for business purposes rather than as a family home, and the extent to which it is reasonable to expect it to be realised or divided or used as security;
- (e) the needs of any children of the family aged under 21; and 10
- (f) actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce.

5 Periodical payments and lump sums

- (1) An order for periodical payments to which this section applies must specify the period during which the periodical payments are to be made; and that period may not exceed three years beginning with the day on which the first payment is to be made. 15
- (2) The court must not make an order for periodical payments or a lump sum unless it is satisfied that an order for transfer of property would be insufficient, having regard to the matters set out in subsections (3) and (6), to satisfy the requirements of this section or would be otherwise inappropriate. 20
- (3) In deciding whether and in what terms to exercise its powers to make a periodical payments or lump sum order in favour of one of the parties to the marriage, the court must take into account –
 - (a) any economic advantage derived by either party from contributions by the other, and any economic disadvantage suffered by either party in the interests of the other party or of their family; 25
 - (b) the fair sharing between the parties of any economic burden of caring after divorce for a child of the family under the age of 16 years;
 - (c) that a party who has been dependent to a substantial degree on the financial support of the other party should be awarded such periodical payments or lump sum as is reasonable to enable that party to adjust to the loss of that support on divorce over a period of not more than three years from the date of the decree of divorce; and 30
 - (d) that a party who at the time of the divorce is likely to suffer serious financial hardship as a result of the divorce should be awarded such periodical payments or lump sum as is reasonable to relieve that party of such hardship over a period of three years or such shorter period as the court considers reasonable. 35
- (4) In applying subsection (3)(a), the court must take into account – 40
 - (a) any advantage or disadvantage whether incurred before or during the marriage, including any gain or loss in capital, income or earning capacity;
 - (b) contributions made before or during the marriage, including indirect and non-financial contributions, such as a contribution made by looking after the family home or caring for the family, and supporting the family financially, 45

and must consider the matters mentioned in subsection (5).

- (5) The matters are –
- (a) the extent to which any economic advantage or disadvantage incurred by either party is balanced by any economic advantage or disadvantage incurred by the other party;
 - (b) the extent to which any imbalance of advantage and disadvantage has been, or would be, corrected, including correction by the making of an order in relation to the sharing of the value of the matrimonial property. 5
- (6) In deciding whether and in what terms to exercise its powers to make a periodical payments or lump sum order in favour of one of the parties to the marriage, the court must also take into account – 10
- (a) the age, health and earning capacity of that party;
 - (b) the duration and extent of the dependence of that party prior to divorce;
 - (c) any intention of that party to undertake a course of education or training; 15
 - (d) any support available to that party from a third party;
 - (e) the needs and resources of the parties; and
 - (f) all the other circumstances of the case.
- (7) An order to which this section applies ceases to have effect on the marriage or death of the receiving party, except in relation to any arrears due under it. 20
- 6 Children of the family**
- In determining an application to which section 4 or 5 applies in a case where there is a child of the family the court must have regard to –
- (a) any order for support for the child; 25
 - (b) the need to provide suitable accommodation for the child;
 - (c) the age and health of the child;
 - (d) the educational, financial and other circumstances of the child;
 - (e) the availability and cost of suitable childcare facilities; and
 - (f) the needs and resources of the parties. 30
- 7 Conduct**
- In determining an application to which section 4 or 5 applies, the court must not take into account the conduct of either party to the marriage, except to the extent to which the matters to which those sections require the court to have regard include such conduct, unless – 35
- (a) the conduct has adversely affected the financial resources of a party which are relevant to the determination; or
 - (b) it would be manifestly inequitable to leave the conduct out of account.
- 8 Short title, commencement and extent**
- (1) This Act may be cited as the Divorce (Financial Provision) Act 2014. 40
 - (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.
 - (3) This Act extends to England and Wales only.

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Baroness Deech

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