

# Divorce (Financial Provision) Bill [HL]

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**B I L L**

TO

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

**B**E 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(2) 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 subsection 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
  - “2004 Act” means the Civil Partnerships Act 2004;
  - “2013 Act” means the Marriage (Same Sex Couples) Act 2013;
  - “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; 15
  - “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;
  - “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; and 20
  - “relevant financial order” means—
    - (a) an order for lump sum provision in favour of a party to a marriage under section 23(1)(c) of the 1973 Act,

- (b) a property adjustment order in favour of a party to a marriage under section 24(1) of that Act,
- (c) a pension sharing order under section 24B of that Act,
- (d) a pension compensation sharing order under section 24E of that Act,

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and also includes any order under the corresponding provisions of the 2004 Act and the 2013 Act.

## 2 Orders limited to matrimonial property

- (1) In this Act “matrimonial property” means all property and interests in property, including any pension rights, which could be the subject of a pension sharing order or a pension compensation sharing order, belonging to the parties or either of them at the date of the relevant financial order which—
- (a) was acquired—
    - (i) during the marriage; and
    - (ii) otherwise than by gift, inheritance or succession from a third party; and
  - (b) does not directly or indirectly represent property acquired by them or either of them before the marriage.
- (2) For the purposes of subsection (1)(b)—
- (a) any premises and household goods acquired before the marriage for use by them as or in their home shall be treated as acquired during the marriage;
  - (b) if any property that would otherwise fall within subsection (1)(b) is used and applied so as to increase the value of any matrimonial property the property so used or applied shall be treated as matrimonial property;
  - (c) if any matrimonial property belonging to one party is used or applied so as to increase the value of an asset which belongs to the other party, and is not matrimonial property, a proportionate share (by value) of that asset shall be treated as matrimonial property; and
  - (d) paragraph (c) shall also apply if by exceptional personal skill or effort a party to the marriage increases the value of an asset which belongs to the other party, and is not matrimonial property.
- (3) Subsection (2)(b) to (d) do not apply in relation to any asset if it appears that the costs of investigation and valuation required for the application of the relevant paragraph in subsection (2) would be likely to exceed one-fifth of the amount of the proportionate part or adjustment.
- (4) Except as provided in section 3 (pre-nuptial and post-nuptial agreements), no relevant financial order shall be made otherwise than in relation to matrimonial property.

## 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 in writing and signed by both parties to the marriage is to be treated as binding on them unless—
- (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

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- agreement is not binding on the parties insofar as it attempts to impose that obligation);
- (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; 5
  - (d) one or both parties failed to make proper disclosure of that party's assets before the agreement was made; or
  - (e) the agreement is unenforceable under any rule of law relating to the validity or enforceability of contracts generally. 10
- (2) Any non-compliance with subsection (1)(b) or (d) may be relied on only by the party disadvantaged by such non-compliance.
- (3) 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. 15
- (4) Where a pre-nuptial or post-nuptial agreement is to be treated as binding, the court may make a relevant financial order only to the extent to which the agreement does not deal with the matter. 20

#### 4 Matrimonial property

- (1) The net value of the matrimonial property is to be shared fairly between the parties to the marriage.
- (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 (5) applies. 25
- (3) The net value of the property is the value of the property at the date of the relevant financial order, after deduction of any debts incurred by one or both of the parties to the marriage –
- (a) before the marriage so far as they relate to the matrimonial property, or
  - (b) during the marriage;
- which are outstanding at that date. 30
- (4) The amount of any order for lump sum provision in favour of a party to a marriage shall be taken into account as part of the equal sharing of the matrimonial property (irrespective of what assets are actually resorted to by the other party in compliance with the order). 35
- (5) 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 –
- (a) the terms of any agreement between the parties relating to the ownership or division of any of the matrimonial property; 40
  - (b) any destruction, dissipation or alienation of matrimonial property by either party;
  - (c) the needs of any children of the family aged under 21; and
  - (d) actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce. 45

## 5 Periodical payments and lump sums

- (1) In deciding whether and in what terms to exercise its powers to make a periodical payments 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; 5
  - (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; and
  - (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 as is reasonable to enable that party to adjust to the loss of that support on divorce over a period of not more than five years from the date of the decree of divorce, such period not to be exceeded unless the court is satisfied that there is no other means of making provision for a party to the marriage and that that party would otherwise be likely to suffer serious financial hardship as a result. 10 15
- (2) In applying subsection (1)(a), the court must take into account—
- (a) any advantage or disadvantage whether incurred before or during the marriage, including any gain or loss in capital, income or earning capacity; 20
  - (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, 25
- and must consider the matters mentioned in subsection (3).
- (3) 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; 30
  - (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.
- (4) In deciding whether and in what terms to exercise its powers to make a periodical payments order in favour of one of the parties to the marriage, the court must also take into account—
- (a) the age, health and earning capacity of that party;
  - (b) the duration and extent of the dependence of that party prior to divorce; 40
  - (c) any intention of that party to undertake a course of education or training;
  - (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. 45
- (5) 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.

**6 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 –

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- (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.

**7 Extent, commencement and short title**

- (1) This Act extends to England and Wales only.
- (2) Sections 1 to 6 come into force at the end of the period of three months beginning with the day on which this Act is passed.
- (3) This section comes into force on the day on which this Act is passed.
- (4) This Act may be cited as the Divorce (Financial Provision) Act 2016.

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

*Baroness Deech*

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*Ordered to be Printed, 26th May 2016*

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