

Cohabitation Rights 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 as cohabitants; to make provision about the property of deceased persons who are survived by a cohabitant; 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;
- (b) there is in force in respect of a minor child either a joint residence order in favour of A and B or a child arrangements order stipulating arrangements by which a minor child is to live, spend time or otherwise have contact with both A and B; 5
- (c) A and B are the natural parents of a child en ventre sa mere at the date when A and B cease to live together as a couple (whether or not that child is subsequently born alive); or
- (d) A and B have lived together as a couple for a continuous period of three years or more. 10
- (3) The second condition is that A and B—
- (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. 15
- (4) For the purposes of subsection (2)(d), in determining the length of the continuous period during which two people have lived together as a couple—
- (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. 20
- (5) The prohibited degrees of relationship which are referred to in subsection (3)(b) are set out in section 5.
- 3 “Former cohabitant”**
- Any reference in this Act to “former cohabitants”— 25
- (a) is to any two people who were cohabitants in a relationship but who have ceased living together as a couple, and
- (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. 30
- 4 “Relevant child”**
- (1) Any reference in this Act to a “relevant child”— 35
- (a) in relation to cohabitants in a relationship, is to any minor child in respect of whom—
- (i) each of the cohabitants is treated in law as being mother, father or parent, or
- (ii) a child arrangements order in favour of both cohabitants is in force; 40
- (b) in relation to former cohabitants in a relationship, is to any minor child in respect of whom—
- (i) each of the former cohabitants is treated in law as being mother, father or parent, or 45

- (ii) there was in force during the period when the former cohabitants were living together as a couple a joint residence order in favour of both the former cohabitants or a child arrangements order stipulating arrangements by which the minor child was to live, spend time or otherwise have contact with both former cohabitants. 5
- (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. 10
- (2) In subsection (1) references to relationships –
- (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 15
- (b) include the relationship of a child with his adoptive, or former adoptive, parents, 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 – 20
- child of former civil partner;
child of former spouse;
former civil partner of grandparent;
former spouse of grandparent; 25
former civil partner of parent;
former spouse of parent;
grandchild of former civil partner; and
grandchild of former spouse.
- (4) But subsection (3) does not apply where – 30
- (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 –
- (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. 35

PART 2

FINANCIAL SETTLEMENT ORDERS

Application

6 Application of Part 2

- (1) This Part has effect to determine the financial rights and obligations of former cohabitants. 40

- (2) This Part does not apply to former cohabitants –
- (a) where the former cohabitants have ceased living together as a couple 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; or 5
 - (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. 10
- (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
 - (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. 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).

Financial settlement orders

- 7 Application to court for a financial settlement order 20**
- (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 –
- (a) the facts alleged by the former cohabitant who made the application (“the applicant”), and 25
 - (b) the facts alleged by the other former cohabitant (“the respondent”).
- (3) No application may be made under this section unless –
- (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 30
 - (b) the former cohabitant who proposes to make the application satisfies the court that exceptional circumstances would justify a late application being made.
- (4) No person may make more than one application under this section in relation to the same respondent unless since the first such application was determined the applicant and respondent have resumed living together as a couple and have lived together as a couple for a continuous period of two years since such resumption. 35
- 8 Power of the court to make a financial settlement order 40**
- (1) The court may make a financial settlement order if –
- (a) the court is satisfied that the applicant and the respondent have ceased living together as a couple;
 - (b) the court is satisfied either –

- (i) that the respondent has retained a benefit, or
 - (ii) that the applicant has an economic disadvantage,
 - as a result of qualifying contributions the applicant has made; and
 - (c) having regard to the discretionary factors, the court considers that it is just and equitable to make an order. 5
 - (2) For the purpose of subsection (1) –
 - (a) a “retained benefit” is a financial benefit which has been acquired, retained or enhanced by or for the respondent during the parties’ cohabitation or in contemplation of the parties’ cohabitation, whether in the form of capital assets of any kind, income, whether actual or potential, or earning capacity; 10
 - (b) an “economic disadvantage” is a past, present or future financial loss, burden or cost sustained by the applicant during the parties’ cohabitation or in contemplation of the parties’ cohabitation or likely to be sustained by the applicant following its breakdown; 15
 - (c) a “qualifying contribution” is any financial or other contribution made by the applicant to the parties’ shared lives or to the welfare of members of their families during the parties’ cohabitation or in contemplation of the parties’ cohabitation or likely to be made by the applicant following its breakdown; 20
 - (d) the “discretionary factors” are the factors listed in section 9.
 - (3) If the court determines to make a financial settlement order, it may by its order adjust any retained benefit, by reversing it in so far as it is reasonable and practicable to do so, having regard to the discretionary factors listed in section 9. 25
 - (4) If the court considers that after the reversal of any retained benefit in accordance with subsection (3) the applicant would still bear an economic disadvantage, the court may by its order ensure that the disadvantage shall be shared equally between the parties, in so far as it is reasonable and practicable to do so, having regard to the discretionary factors listed in section 9. 30
- 9 Discretionary factors to be considered in determining an application**
- (1) In deciding whether it considers that it is just and equitable to make a financial settlement order and, if it does so consider, in determining what order it should make, the court must have regard to the following discretionary factors –
 - (a) the welfare while a minor, of any child of both parties who has not attained the age of 18; 35
 - (b) the income, earning capacity, property and other financial resources which each of the parties has, or is likely to have in the foreseeable future (including any pension, allowance or benefit paid or to be paid to either party or the eligibility of either party for a pension, allowance or benefit); 40
 - (c) the financial needs and obligations which each of the parties has, or is likely to have in the foreseeable future;
 - (d) the welfare of any children who live with or might reasonably be expected to live with either party; 45
 - (e) the conduct of each party if, but only if, it is of such a nature that it would be inequitable to disregard it;
 - (f) the circumstances in which the applicant made any qualifying contribution, in particular if the respondent shows that the applicant

made such contribution despite the respondent’s express disagreement that it should be made.

- (2) In having regard to the discretionary factors mentioned in subsection (1), first consideration shall be given to the factor mentioned in subsection (1)(a).

10 Financial settlement orders 5

- (1) A financial settlement order may, in order to achieve the aims specified in section 8(3) and (4), require any one or more of the following –
- (a) payment of a lump sum (including payment by instalments, secured lump sums, lump sums paid by way of pension attachment and interim payments); 10
 - (b) transfer of property;
 - (c) property settlements;
 - (d) sale of property;
 - (e) pension sharing.
- (2) The court may include in a financial settlement order a 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 (powers of court to make orders), if it considers it just to do so. 15

11 Provision supplementary to section 10

- Schedule 1 to this Act makes further provision supplementing section 10 and this section, including provision – 20
- (a) for the purpose of securing compliance with any order made by the court in connection with such an application, and
 - (b) for the making of consent orders.

Opt-out agreements 25

12 Agreeing to opt-out of financial settlement orders

- (1) This section has effect for the purposes of section 6(2)(b).
- (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. 30
- (4) A person may not enter into an opt-out agreement unless he or she has attained the age of 16 years.
- (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 – 35
- (a) has separately received legal advice from a qualified practitioner as to the effect of the opt-out agreement and understands its effect;
 - (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 – 40
 - (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’s or B’s financial affairs or assets).
 - (7) An opt-out agreement must – 5
 - (a) be in writing;
 - (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 – 10
 - (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.
 - (8) Each signature by A and B under subsection (7)(b) must be witnessed by at least one person. 15
 - (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 – 20
 - “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**
- (1) Where A and B have entered into an opt-out agreement in accordance with section 12, A and B may by agreement vary or revoke the agreement at any time. 25
 - (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. 30
 - (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. 35
 - (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 – 40
 - (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.

*Cohabitation agreements or deeds of trust***15 Variation or revocation by the court of cohabitation agreements or deeds of trust**

- (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). 5
- (2) The court may vary or revoke the agreement or deed in such circumstances and to such extent as the court considers appropriate.

PART 3

PROVISIONS CONNECTED WITH INSURANCE AND WITH THE DEATH AND INTESTACY OF COHABITANTS 10

*Insurance***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 (no insurance to be made on lives, etc, by persons having no interest etc) to have an interest in the life of the other cohabitant in the relationship. 15
- (2) For the purposes of section 3 of that Act (how much may be recovered where the insured hath interest in lives), there is no limit on the amount of value of the interest. 20

17 Assurance policy for benefit of other cohabitant

Section 11 of the Married Women's Property Act 1882 (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 25
- (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. 30

*Registration of death***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 was a cohabitant in a relationship with another person ("A"). 35

- (2) For the purposes of Part 2 of the Births and Deaths Registration Act 1953 (registration of deaths) –
- (a) A is to be treated as if A were a relative of B, and
 - (b) A must provide information about B’s death in accordance with the provisions of Part 2 of that Act.

5

Intestacy of cohabitant

19 Succession to estate on intestacy

- (1) Section 46 of the Administration of Estates Act 1925 (succession to real and personal estate on intestacy) is amended as follows.

- (2) In subsection (1)(i) (cases where the intestate leaves a spouse or civil partner) – 10

(a) in the words before the Table, for “or civil partner,” substitute “, civil partner or qualifying cohabitant,” and

(b) in the Table –

(i) for “the surviving spouse or civil partner”, where first occurring, substitute “the surviving spouse, civil partner or qualifying cohabitant (“the survivor””, and 15

(ii) for each subsequent occurrence of “the surviving spouse or civil partner” substitute “the survivor”.

- (3) In subsections (1)(ii) to (v) and (2A) to (4) (which make further provision about the rights of spouses, civil partners and others on intestacy) for “or civil partner” (in each place) substitute “civil partner or qualifying cohabitant”. 20

- (4) After subsection (2A) insert –

“(2B) Where an intestate and the intestate’s spouse or civil partner have died in circumstances rendering it uncertain which of them survived the other, this section has effect as if the intestate did not leave any qualifying cohabitant.” 25

- (5) After subsection (4) insert –

“(4A) A person is a qualifying cohabitant in relation to an intestate only if –

(a) the intestate was neither married nor in a civil partnership immediately before death, and 30

(b) the person was immediately before the death of the intestate a cohabitant in a relationship with the intestate within the meaning of section 2 of the Cohabitation Rights Act 2017 (“cohabitant”).”

20 Intestacy: rights as respects the home 35

- (1) Schedule 2 to the Intestates’ Estates Act 1952 (rights of surviving spouse or civil partner as respects the matrimonial or civil partnership home) is amended as follows.

- (2) Before paragraph 1 insert –

“A1 (1) This Schedule applies where a person dies intestate and leaves a spouse, civil partner or qualifying cohabitant. 40

(2) In this Schedule –

- “qualifying cohabitant” has the meaning given by section 46(4A) of the principal Act;
 “the survivor” means the surviving spouse, civil partner or qualifying cohabitant.”
- (3) In paragraphs 1 to 6, for “the surviving spouse or civil partner” (in each place) substitute “the survivor”. 5
- (4) In paragraph 6(2) for “a surviving spouse or civil partner” substitute “a surviving spouse, civil partner or qualifying cohabitant”.
- (5) For the title substitute –
- “RIGHTS OF SURVIVING SPOUSE, CIVIL PARTNER OR QUALIFYING COHABITANT AS RESPECTS THE HOME”. 10

Financial provisions for cohabitant from deceased’s estate

21 Application for financial provision from deceased’s estate

In section 1 of the Inheritance (Provision for Family and Dependents) Act 1975 for subsections (1A) and (1B) (application for financial provision from deceased’s estate) there is substituted – 15

“(1A) This subsection applies to any person who was immediately before the death of the deceased a cohabitant in a relationship with the deceased within the meaning of section 2 of the Cohabitation Rights Act 2017 (“cohabitant”).” 20

22 Further provision in connection with the death of a cohabitant

- (1) Schedule 2 to this Act contains additional 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, 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, 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

- 23 General interpretation** 5
- In this Act, except where the context otherwise requires –
- “the applicant” and “the respondent”, in relation to an application for a financial settlement order, have the meaning given in section 7(2);
 - “child arrangements order” has the same meaning as in the Children and Families Act 2014;
 - “cohabitant” has the meaning given in section 2;
 - “the court” has the meaning given in section 24; 10
 - “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.
- 24 Jurisdiction of the courts** 15
- (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 regulations made under this section, a county court.
 - (2) The Lord Chancellor may by regulations specify proceedings under this Act which may only be commenced in – 20
 - (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the regulations. 25
 - (3) The Lord Chancellor may by regulations specify circumstances in which specified proceedings under this Act may only be commenced in –
 - (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the regulations. 30
 - (4) For the purposes of subsections (2) and (3), the levels of the court are –
 - (a) the High Court, and
 - (b) a county court.
- 25 Power to make transitional and consequential provisions** 35
- (1) The Lord Chancellor may by regulations make –
 - (a) any incidental, consequential or supplemental provision, and
 - (b) any transitional or saving provision,that the Lord Chancellor considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act. 40

- (2) The power under this section is not restricted by any other provision of this Act.
- (3) Regulations under this section may amend, repeal or revoke any provision of –
 - (a) an Act passed before or in the same session as this Act, or 5
 - (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.

26 Regulations and orders

- (1) Regulations made under this Act are to be made by statutory instrument. 10
- (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 Lord Chancellor considers appropriate.
- (3) No regulations are to be made under – 15
 - (a) section 25(3), or
 - (b) paragraph 13 of Schedule 1 to this Act,
 unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument made under this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 20

27 Extent

This Act extends to England and Wales only.

28 Application

Part 3 of this Act applies only in relation to deaths occurring after the coming into force of this Part of this Act. 25

29 Commencement

- (1) The following provisions of this Act come into force on the passing of this Act –
 - (a) this Part and 30
 - (b) sections 12, 13 and 14.
- (2) The other provisions of this Act come into force on such a day as the Lord Chancellor may by regulations made by statutory instrument appoint.
- (3) Regulations under subsection (2) may appoint different days for different purposes. 35

30 Short title

This Act may be cited as the Cohabitation Rights Act 2017.

SCHEDULES

SCHEDULE 1

Section 11

FINANCIAL SETTLEMENT ON CEASING TO LIVE TOGETHER

PART 1

FINANCIAL SETTLEMENT ORDERS

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 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. 10

Orders requiring lump sums

- 3 (1) In a financial settlement order, the court may require that either the applicant or the respondent must pay to the other such lump sum or sums as may be specified. 15
- (2) Where a financial settlement order requires the payment of a lump sum, the order may –
- (a) provide for payment of the sum by instalments of a specified amount, and
 - (b) require the payment of instalments to be secured to the satisfaction of the court, 20
- but this does not restrict the powers of the court to impose requirements under sub-paragraph (1).
- (3) If the court –
- (a) makes a financial settlement order requiring the payment of a lump sum, and
 - (b) directs that – 25
 - (i) payment of the sum or any part of it is to be deferred, or
 - (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. 30
- (4) A date specified under sub-paragraph (3) must not be earlier than the date of the financial settlement order.

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;
 - (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; 5
 - (c) that a relevant settlement be varied for the benefit of the applicant or the respondent, or both of them;
 - (d) that the interest of either the applicant or the respondent under a relevant settlement be extinguished or reduced. 10
- (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 – 15
 - (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)). 20

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) to make a lump sum payment, or
 - (b) paragraph 4(1) to make an adjustment to property. 25
- (2) In the same financial settlement order, 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.
- (3) Where – 30
- (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,
- 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. 35
- (4) Any financial settlement order requiring a sale of property may contain such consequential or supplementary provisions as the court considers appropriate.
- (5) Such provision may, in particular – 40
- (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.

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
 - (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. 5
- (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). 10
- (3) In this paragraph—
- (a) “the 1999 Act” means the Welfare Reform and Pensions Act 1999;
 - (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; 15
 - (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 20
 - (d) “pension arrangement” means any of the following—
 - (i) an occupational pension scheme;
 - (ii) a personal pension scheme;
 - (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 25
 - (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 (creation of pension debits and credits). 30
- (4) In sub-paragraph (3)(d) —
- “personal pension scheme” and “occupational pension scheme” have the same meaning as in the Pension Schemes Act 1993;
 - “retirement annuity contract” means a contract or scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988. 35

PART 2

CONSENT ORDERS

Making a consent order 40

- 7 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. 45

Interpretation

- 8 (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. 5
- (2) For these purposes, “financial arrangements” means provisions governing the rights and liabilities towards one another, once former cohabitants have ceased living together as a couple in respect of – 10
- (a) the making or securing of payments, or
 - (b) the disposition or use of any property.

Validity of relevant agreements

- 9 (1) If a relevant agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements – 15
- (a) that provision is void, but
 - (b) any other financial arrangements contained in the relevant agreement –
 - (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). 20
- (2) Nothing in sub-paragraph (1)(a) affects the validity of any opt-out agreement entered into in accordance with section 12.

Saving 25

- 10 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 30
 - (b) any right of either party to apply for such an order in such proceedings.

PART 3

MISCELLANEOUS

Avoidance of transactions intended to prevent or reduce financial relief 35

- 11 (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.
- (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 – 40
- (a) make any disposition, or
 - (b) transfer out of the jurisdiction or otherwise deal with any property,

it may make such order as it thinks 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 5
 - (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. 10
- (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). 15

Provision supplementary to paragraph 11

- 12 (1) Any reference in paragraph 11 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
 - (c) frustrating or impeding the enforcement of any financial settlement order which might be or has been made at A’s instance. 25
- (2) In paragraph 11 and this paragraph “disposition” –
 - (a) does not include any provision contained in a will or codicil, but
 - (b) subject to paragraph (a), includes any conveyance, assurance or gift of property of any description (whether made by an instrument or otherwise). 30
- (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 paragraph 11(3) and (4) unless it was made –
 - (a) for valuable consideration (other than marriage), and 35
 - (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.
- (4) If an application is made under paragraph 11 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 11(2) or (3), that the disposition or other dealing would (apart from paragraph 11) have the consequence of defeating A’s claim for financial relief, or 45

- (b) in a case falling within paragraph 11(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. 5

Power to make consequential and supplemental provision

- 13 (1) The Lord Chancellor may by regulations 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) Regulations 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 (pension protection); 15
- (c) 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. 20

SCHEDULE 2

Section 22

AMENDMENTS: FINANCIAL PROVISION ON A COHABITANT’S DEATH

PART 1

AMENDMENTS OF ADMINISTRATION OF ESTATES ACT 1925

- 1 (1) The Administration of Estates Act 1925 is amended as follows. 25
- (2) In section 48(2) (powers of personal representative in respect of interests of surviving spouse or civil partner) in paragraph (a), for “or civil partner” substitute “, civil partner or qualifying cohabitant”.
- (3) In section 55(1) (definitions), after paragraph (xviii) insert – 30
- “(xviiiia) “qualifying cohabitant” has the meaning given by section 46(4A)”.

PART 2

AMENDMENTS OF INTESTATES’ ESTATES ACT 1952

- 2 In the Intestates’ Estates Act 1952, for section 5 (rights of surviving spouse or civil partner as respects the matrimonial home) substitute – 35
- “5 Rights of surviving spouse, civil partner or qualifying cohabitant as respects the home**
- The Second Schedule to this Act (rights of surviving spouse, civil partner or qualifying cohabitant as respects the home) has effect.”

PART 3

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

- 3 In this Part of this Schedule “the 1975 Act” means the Inheritance (Provision for Family and Dependants) Act 1975.
- 4 In section 1 of the 1975 Act (application for financial provision from the deceased’s estate) – 5
- (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 Rights Act 2017.”; 10
- (c) for subsection (1B) substitute –
- “(1B) Section 14B of this Act sets out the circumstances in which a former cohabitant may apply for an order under section 2 of this Act.”; 15
- (d) after subsection (2)(aa) insert –
- “(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 20
- (e) in subsection (2)(b), after “by virtue of subsection (1) above” insert “or section 14B below”.
- 5 In section 2 of the 1975 Act (power of the court to make orders), after subsection (1)(g), insert – 25
- “(ga) 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 Rights Act 2017, and 30
- (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, the variation being for the benefit of the surviving cohabitant, or any relevant child.” 35
- 6 In section 3 of the 1975 Act (matters to which court is to have regard in exercising powers under s. 2), for subsection (2A) substitute – 40
- “(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 – 45

-
- (a) the age of the applicant and the length of the period during which the applicant and the deceased lived together as a couple;
- (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; 5
- (c) any additional matter which, if the application were treated as if it had been made under Part 2 of the Cohabitation Rights Act 2017 (financial settlement orders), the court would consider relevant in determining the application.” 10
- 7 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 – 15
- (a) the cohabitants have ceased living together as a couple and, within 24 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 Rights Act 2017 or by one of the former cohabitants, or 20
- (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. 25
- (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.” 30
- 8 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 Rights Act 2017** 35
- (1) On making a financial settlement order under section 8 of the Cohabitation Rights Act 2017, 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. 40
- (2) In subsection (1) above “the court” has the same meaning as in the Cohabitation Rights Act 2017.
- (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 45

court shall not entertain any application for an order under section 2 of this Act made by the former cohabitant who survives.”

- 9 In section 25 of 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 Rights Act 2017;” 5
- (b) ““relevant child”, in relation to cohabitants in a relationship, has the same meaning as in the Cohabitation Rights Act 2017;”.

PART 4

AMENDMENTS OF FATAL ACCIDENTS ACT 1976 10

- 10 In this Part of this Schedule “the 1976 Act” means the Fatal Accidents Act 1976.
- 11 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 Rights Act 2017) in a relationship with the deceased;” 15
- 12 In section 1A of the 1976 Act (bereavement) –
- (a) omit “and” at the end of paragraph (a);
- (b) after paragraph (a) insert – 20
- “(aa) of the person who, immediately before the date of the death, was a cohabitant (within the meaning of the Cohabitation Rights Act 2017) in a relationship with the deceased; and”.
- 13 In section 3 of the 1976 Act (assessment of damages), omit subsection (4). 25

PART 5

AMENDMENTS OF CIVIL PARTNERSHIP ACT 2004

- 14 (1) Schedule 4 to the Civil Partnership Act 2004 is amended as follows.
- (2) In consequence of the amendments made by section 20 and paragraph 2 of this Schedule, omit paragraph 13. 30
- (3) In consequence of the amendment made by section 21, omit paragraph 15(5).

Cohabitation Rights 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 as cohabitants; to make provision about the property of deceased persons who are survived by a cohabitant; and for connected purposes.

Lord Marks of Henley-on-Thames

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