

General Scheme of Civil Partnership Bill

June 2008

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Part 1: Preliminary and General

Head 1: Short title and commencement

Provide that:

“(1) This Act may be cited as the Civil Partnership Act [2008].

(2) (a) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(b) The Minister shall consult with the Minister for Social and Family Affairs before making an order under paragraph (a) in relation to *Part 2*.”

Head 2: Interpretation

Provide that:

“In this Act, except where the context otherwise requires—

‘Civil Partner’ means a person who has registered with another person under *Head 11*, and cognate words and expressions should be construed accordingly.”

Part 2: Civil Registration

Chapter 1: Amendment of Part 1 of the Civil Registration Act

Head 3: Interpretation

Provide for the amendment of *Section 2, subsection 1*, of the Civil Registration Act 2004 along the following lines:

Add definitions along the following lines:

“the Act of [2008]” means the Civil Partnership Act [2008],

“Civil Partnership Registration” and “registered Civil Partnership” have the meanings assigned to them by the Act of [2008],

“dissolution of a registered Civil Partnership” has the meaning assigned to it by the Act of [2008],

Amend

the definition of “event” by the insertion after “decree of divorce or decree of nullity”, of “, or civil partnership registration, or dissolution of a registered civil partnership”.

Amend the definition of “registrar” by the following insertions:

a new subparagraph after *subparagraph (a)* along the following lines

“(aa) in relation to a Civil Partnership Registration or intended Civil Partnership Registration or the register of Civil Partnerships, means a registrar within the meaning of Section 17;”

a new subparagraph after *subparagraph (e)* along the following lines:

“(f) in relation to a dissolution of a registered Civil Partnership or the register of dissolved Civil Partnership, means the Courts Service;”

Amend the definition of “the required particulars” by the following insertion:

a new subparagraph after *subparagraph (e)* along the following lines

“(f) in relation to a civil partnership registration, the particulars specified in *Part 5A* of that Schedule”

Provide for the amendment of *Section 2, subsection 2*, of the Civil Registration Act 2004 by the insertion after subparagraph (e) of a new subparagraph along the following lines:

“(f) one of the parties to the marriage is, or both are, already party to a subsisting registered Civil Partnership.”

Provide for the amendment of *Section 2* of the Civil Registration Act 2004 by the insertion after subsection (2) of a new *subsection (2A)* along the following lines:

“(2) For the purposes of this Act there is an impediment to a Civil Partnership Registration if –

(a) the Civil Partnership would be void by virtue of Schedule n;

- (b) one of the parties to the intended registered Civil Partnership is, or both are, already party to a subsisting registered Civil Partnership;
- (c) one, or both, of the parties to the intended registered Civil Partnership will be under the age of 18 years on the date of registration of the intended registered Civil Partnership;
- (d) the parties are of the opposite sex;
- (e) one of the parties to the intended registered Civil Partnership is, or both are, already married.”

Head 4: Functions of Ard-Chláraitheoir

Provide for the amendment of *Section 8, subsection 1*

by the insertion after *subparagraph (b)* of a new subparagraph along the following lines:

“(bb) to extend the Civil Registration Service to Civil Partnership registration, and dissolution of a registered Civil Partnership, wherever granted in the State;”

by the insertion after *subparagraph (e)* of a new subparagraph along the following lines:

“(ee) to establish and maintain registers and indexes for the purposes of the registration of Civil Partnerships and registration of dissolution of a registered Civil Partnership;”

Head 5: Registers

Provide for the amendment of *Section 13, subsection 1* by the insertion after *subparagraph (g)* of new subparagraphs along the following lines:

“(h) a register of all Civil Partnership registrations taking place in the State (which shall be known, and is referred to in this Act, as the register of Civil Partnerships),

(i) a register of all dissolutions of registered Civil Partnerships (which shall be known, and is referred to in this Act, as the register of dissolution of Civil Partnerships).”

Head 6: Staff of Authorities

Provide for the amendment of *Section 17, subsection 1* by the insertion after “marriage” in *subparagraph (b)* of “and Civil Partnerships.”

Provide for the amendment of *Section 17, subsection 13* by the insertion after “marriage” of “and Civil Partnerships.”

Chapter 2: Insert new PART 7A to CRA 2004 – Registration of Civil Partnerships

Head 7: Definitions (Part 7A).

In this Part—

“Civil Partnership registration form” means a form prescribed under *Head 9*;

“the register” means the register of civil partnerships and cognate words shall be construed accordingly;

Head 8: Notification of civil partnership registrations.

Provide along the following lines:

“(1) A civil partnership registered in the State, after the commencement of this section, between persons of any age shall not be valid in law unless the persons concerned—

(a) notify any registrar in writing in a form for the time being standing approved by an tArd-Chláraitheoir of their intention to enter a civil partnership not less than 3 months prior to the date on which the civil partnership is to be registered,

and

(b) attend at the office of that registrar, or at any other convenient place specified by that registrar, at any time during normal business hours not less than 5 days (or such lesser number of days as may be determined by that registrar) before the date aforesaid and make and sign a declaration in his or her presence that there is no impediment to the registering the said civil partnership.

(2) Except in such circumstances as may be prescribed, a notification referred to in *subsection (1)(a)* shall be delivered by both of the parties to the intended civil partnership, in person, to the registrar.

(3) The notification aforesaid shall be accompanied by the prescribed fee and such (if any) other documents and information as may be specified by an tArd-Chláraitheoir.

(4) The requirements specified in *subsections (1)* and *(2)* are declared to be substantive requirements for registering a civil partnership.

(5) When, in relation to an intended civil partnership registration, a registrar receives a notification under *subsection (1)(a)* and any other documents or information specified in *subsection (3)*, he or she shall notify in writing of the receipt each of the parties to the intended civil partnership and the registrar who is intended to register the civil partnership.

(6) A notification under *subsection (5)* shall not be construed as indicating the approval of the registrar concerned of the proposed civil partnership concerned.

(7) The registrar concerned may require each party to an intended civil partnership to provide him or her with such evidence relating to that party's forename, surname, address, marital status, civil partnership status, age and nationality as may be specified by an tArd-Chláraitheoir.

(8) An tArd-Chláraitheoir may, if so authorised by the Minister, publish, in such form and manner as the Minister may direct, notice of notifications of intended civil partnerships under *subsection (1)*, but a notice under this subsection shall not contain

the personal public service number of a party to the intended civil partnership concerned.”

Head 9: Civil Partnership registration form.

Provide along the following lines:

“(1) Where, in relation to an intended civil partnership, a registrar to whom the notification concerned under *Head 8* was given is satisfied that *Head 8* has been complied with he or she shall complete a civil partnership registration form in relation to the intended civil partnership.

(2) In the case of an intended civil partnership, the registrar aforesaid shall, before registration of the civil partnership concerned, give a civil partnership registration form completed in accordance with *subsection (1)* to one of the parties to the civil partnership.

(3) A civil partnership shall not be registered unless one of the parties to the civil partnership has given the relevant civil partnership registration form to the registrar registering the civil partnership, for examination by him or her.

(4) Where a civil partnership has not been registered within the period of 6 months from the date specified in the relevant civil partnership registration form, but is intended to be registered, the civil partnership registration form is no longer valid and the parties must again comply with *Head 8* in order to register their civil partnership.

(5) A form, which shall be known as, and is referred to in this Part, as a civil partnership registration form, may be prescribed for the purposes of this Part.”

Head 10: Registration of civil partnerships.

Provide along the following lines:

“(1) In order to register a civil partnership, the civil partnership registration form relating to the civil partnership shall be signed in the presence of the registrar by—

- (a) each of the parties to the civil partnership, and
- (b) two witnesses to the registration of the civil partnership,

and the registrar shall countersign the form.

(2) The registrar shall, as soon as practicable after a civil partnership registration form is signed by the witnesses and countersigned by the registrar in accordance with *subsection (1)*, enter the particulars in relation to the civil partnership concerned specified in the form in the register and register the civil partnership in such manner as an tArd-Chláraitheoir may direct.

(3) A registrar shall not register a civil partnership if subsection (1) has not been complied with.

(4) The Minister may provide by regulations for the correction of errors in entries in the register and for the causing of corrected entries to be entered in the register and for the retention of the original entries in the register.

(5) Where an tArd-Chláraitheoir is satisfied that an entry in the register relates to a civil partnership in relation to which *Head 8 (1)* was not complied with, he or she—

- (a) shall direct a registrar to cancel the entry and the direction shall be complied with, and
- (b) shall notify the parties concerned of the direction.”

Head 11: Civil partnership registration procedure

Provide along the following lines:

“(1) A civil partnership may be registered by, and only by, a registrar.

(2) A registrar shall not register a civil partnership unless—

- (a) both parties to the civil partnership are present,
- (b) two persons professing to be 18 years or over are present as witnesses,
- (c) the place where the registration takes place is open to the public, and
- (d) he or she is satisfied that the parties to the civil partnership understand the nature of the civil partnership and the declarations specified in *subsection (4)*.

(3) A registrar shall not register a civil partnership except in accordance with a form of registration which—

(a) has been approved by an tArd-Chláráitheoir,

and

(b) includes and is in no way inconsistent with the declarations specified in *subsection (4)*.

(4) The declarations referred to in *subsection (3)* are—

(a) a declaration by the parties to the civil partnership in the presence of —

- (i) each other,
- (ii) the registrar, and
- (iii) the two witnesses to the civil partnership,

to the effect that he or she does not know of any impediment to the civil partnership, and

(b) a declaration by the parties to the civil partnership in the presence of —

- (i) each other,
- (ii) the registrar, and
- (iii) the two witnesses to the civil partnership,

to the effect that they accept each other as civil partners in accordance with the law.

(5) The requirements specified in *subsections (1) to (3)* are declared to be substantive requirements for registration of a civil partnership.

(6) Subject to *subsection (7)*, registration may, at the choice of the parties to the civil partnership, be effected—

(a) through the signing by the parties to the civil partnership of the declarations specified in *subsection (4)* in the presence of —

(i) each other,

(ii) the registrar, and

(iii) the two witnesses to the civil partnership,

or

(b) through spoken declarations, in a form of ceremony approved by an t-Ard Chláraitheoir, by the parties to the civil partnership of the declarations specified in *subsection (4)* in the presence of —

(i) each other,

(ii) the registrar, and

(iii) the two witnesses to the civil partnership,

followed by the signing of the civil partnership document.

(7) If a person, being one of the parties to a civil partnership or one of the witnesses to the registration, does not have a sufficient knowledge of the language of the registration to understand the registration documents and the declarations, the parties to the civil partnership shall —

(a) where they have chosen to register the civil partnership in accordance with *subsection (6)(a)*, arrange for the certified translation of all of the relevant documents into a language known to the person, by a translator who is not a party to the civil partnership or a witness,

or

(b) where they have chosen to register the civil partnership in accordance with *subsection (6)(b)*, arrange for the translation during the ceremony of the words of the ceremony into a language known to the person by an interpreter (not being a party or a witness to the civil partnership) present at the ceremony.

(c) An interpreter who is present at a civil partnership ceremony pursuant to *paragraph (b)* shall—

- (i) before the ceremony, sign, in the presence of the registrar, a statement to the effect that the interpreter understands, and is able to converse in, any language in respect of which he or she is to act as interpreter at the ceremony, and give the statement to the registrar, and
- (ii) immediately after the ceremony, give the registrar a certificate written in the language used by the registrar at the ceremony and signed by the interpreter in the presence of the registrar to the effect that the interpreter has faithfully acted as interpreter at the ceremony.

(8) The parties to a civil partnership registered in accordance with this Act shall be taken to be civil partners of each other when both of them have signed a declaration in the presence of each other, the registrar and the two witnesses that they accept each other as civil partners.

(9) This section shall have effect notwithstanding any statutory provision that conflicts with it.

(10) A declaration specified in *paragraph (a)* of *subsection (4)* may be made at any time before the declaration under *paragraph (b)* of that subsection is made, not being a time earlier than 2 days before the day on which the latter declaration is made.”

Head 12: Places and times for the registration of civil partnerships.

Provide that:

“(1) A civil partnership may be registered only at a place and time chosen by the parties to the civil partnership with the agreement of the registrar concerned and, if the place chosen is not the office of a registrar, the approval of the place by the authority by which the registrar is employed, and the question whether to give or withhold such an approval shall be determined by that authority by reference to such matters as may be specified by the Minister.

(2) (a) Where a registrar registers a civil partnership at a place other than the office of a registrar, a fee of such amount as the authority by whom the registrar is employed may determine shall be paid by the parties to the civil partnership to the registrar.

(b) Where travel or subsistence expenses are incurred by a registrar in connection with the registration of a civil partnership by him or her at a place other than his or her office, an amount in respect of the expenses, calculated by reference to a scale drawn up by the authority by which he or she is employed, shall be paid to the registrar by the parties to the civil partnership.

(c) An amount payable under *paragraph (a) or (b)* may be recovered by the registrar concerned from the parties to the civil partnership concerned as a simple contract debt in any court of competent jurisdiction.”

Head 13: Objections.

Provide along the following lines:

“(1) A person may at any time before the registration of a civil partnership lodge an objection in writing with any registrar and the objection shall state the reasons for the objection.

(2) Where the registrar who receives an objection under *subsection (1)* is not employed by the authority by which is employed the registrar to whom was given the notification in relation to the civil partnership referred to in **Head 8** —

- (a) the first-mentioned registrar shall refer the objection to the Superintendent Registrar of the authority by which the second-mentioned registrar is employed, and
- (b) the Superintendent Registrar shall direct a registrar employed by the last-mentioned authority to perform the function conferred by this section on the first-mentioned registrar,
- (c) the registrar who receives the direction shall comply with it, and
- (d) references in *subsections (3) and (4) and (6) to (8)* to the registrar who receives an objection shall be construed as references to the registrar who receives the direction aforesaid, and this section shall apply and have effect accordingly.

(3) If the registrar who receives an objection under *subsection (1)* is satisfied that the objection relates to a minor error or misdescription in the relevant notification under **Head 8** which would not constitute an impediment to the civil partnership, the registrar shall—

- (a) notify the parties to the intended civil partnership of the objection,
- (b) make such enquiries as he or she thinks fit,
- (c) if the civil partnership registration form has been given to one of those parties, request its return to the registrar and correct it and the notification and make any necessary corrections to any other records relating to the civil partnership, and
- (d) give the corrected civil partnership registration form to one of the parties to the civil partnership.

(4) If the registrar who receives an objection under *subsection (1)* believes that more than a minor error or misdescription exists in the relevant notification under **Head 8** and that the possibility of the existence of an impediment to the intended civil partnership concerned needs to be investigated, he or she shall refer the objection to an tArd-Chláraitheoir for consideration and, pending the decision of an tArd-Chláraitheoir, he or she shall—

- (a) notify the parties to the intended civil partnership that—
 - (i) an objection has been lodged and of the grounds on which it is based,
 - (ii) the objection is being investigated,
 - (iii) the registration of the civil partnership will not proceed until the investigation is completed,
- (b) if the relevant civil partnership registration form has not been issued, suspend its issue,
- (c) if the civil partnership registration form has been issued, request the party to the civil partnership to whom it was given to return it to the registrar,
- (d) notify the proposed registrar of the civil partnership, if a different registrar is intended to register the civil partnership, that an objection is being investigated, and
- (e) direct him or her not to register the civil partnership until the investigation is completed, and the registrar shall comply with the direction.

(5) Where an objection is referred to an tArd-Chláraitheoir pursuant to *subsection (4)*, he or she shall make a decision on the objection as soon as practicable.

(6) In a case referred to in *subsection (4)*, if an tArd-Chláraitheoir decides that no impediment to the intended civil partnership concerned exists, he or she shall advise the registrar concerned to that effect and the registrar shall—

- (a) notify the parties to the civil partnership that no impediment to the civil partnership exists,
- (b) issue or re-issue the civil partnership registration form to one of those parties,
- (c) notify the person who lodged the objection that no impediment to the civil partnership exists.

(7) In a case referred to in *subsection (4)*, if an tArd-Chláraitheoir decides that there is an impediment to the intended civil partnership, he or she shall advise the registrar concerned to that effect and of the reasons for the decision and the registrar shall—

- (a) notify the parties to the civil partnership—
 - (i) that the registration of the civil partnership will not proceed, and
 - (ii) of the decision of an tArd-Chláraitheoir and of the reasons therefor,and
- (b) take all reasonable steps to ensure that the registration does not proceed.

(8) If, notwithstanding the steps taken by the registrar concerned pursuant to *subsection (7)(b)*, the civil partnership concerned is registered, the entry in the register shall not be valid and its purported entry into the register shall be notified to an tArd-Chláraitheoir.

(9) On notification of a civil partnership registration to which subsection (8) refers, an tArd-Chláraitheoir shall—

(a) direct a registrar to cancel the entry and the direction shall be complied with and the cancelled entry shall be retained in the register, and

(b) notify the parties to the civil partnership, and the registrar who made the entry of the direction.

(10) (a) A party to a proposed civil partnership may appeal to the Circuit Court against the decision of an tArd-Chláraitheoir in relation to the civil partnership under *subsection (7)*.

(b) The jurisdiction conferred on the Circuit Court by *paragraph (a)* may be exercised by a judge of the circuit in which either of the parties to the intended civil partnership concerned ordinarily resides or carries on any profession, business or occupation or where the place at which the civil partnership concerned had been intended to be registered is situated.

(11) A person who has lodged an objection under *subsection (1)* may withdraw the objection, but an tArd-Chláraitheoir may, if he or she considers it appropriate to do so, investigate, or complete his or her investigation of, the objection and issue any directions to the registrar concerned in relation to the matter that he or she considers necessary.

(12) An objection on the ground that the civil partnership would be void by virtue of the incapacity of one or both of the parties to give informed consent shall be accompanied by a certificate of a registered medical practitioner supporting the objection.”

Chapter 3: Insert new PART 7B in CRA 2004 – Registration of Decrees of Dissolution

Head 14: Registration of decrees of dissolution.

Provide along the following lines:

“(1) When a court grants a decree of dissolution, an officer of the Courts Service authorised in that behalf by the Courts Service, shall, as soon as may be, enter or cause to be entered in the register of decrees of dissolution the particulars in relation to the matter specified in *Part 6A* of the *First Schedule* as inserted by **Head 22**.

(2) When a court grants a decree of nullity, an officer of the Courts Service, authorised in that behalf by the Courts Service, shall, as soon as may be, enter or cause to be entered in the register of decrees of nullity the particulars in relation to the matter specified in *Part 7A* of the *First Schedule* as inserted by **Head 22**.

(3) An officer of the Courts Service, authorised in that behalf by the Courts Service, may amend or cancel or cause to be amended or cancelled an entry in a register referred to in *subsection (1)* or *(2)*.

(4) The Courts Service shall notify an tArd-Chláráitheoir of an amendment or cancellation under *subsection (3)*.

(5) This section shall have effect notwithstanding any statutory provision that conflicts with it.”

Chapter 4: Amendments to PART 8 of CRA 2004

Head 15: Appeals.

Amend Section 60 (1) (a) by replacing “death or marriage” with “death, marriage or civil partnership”;

and amend Section 60 (1) by inserting “, the parties to the civil partnership” after “the parties to the marriage”

Head 16: Correction of errors at request of persons having an interest.

Provide for amendment of Section 63 (1) by the replacement with “, (d) or (h)” of “or (d)”

Head 17: Corrections or cancellations of entries at request of Ard-Chláraitheoir or a registrar.

Provide for the insertion in section 64 of a new subsection (8) along the following lines:

“(8) Where an tArd-Chláraitheoir is satisfied that an entry in the register of civil partnerships relates to—

- (a) a civil partnership, one or both of the parties to which was or were under the age of 18 years at the time of registration of the civil partnership,
- (b) a civil partnership, as respects which one or more of the requirements specified in *subsections (1) and (2) of Head 8* were not complied with, or
- (c) a civil partnership to which there was an impediment,

an tArd-Chláraitheoir shall—

- (i) direct a registrar to cancel the entry and the direction shall be complied with and the cancelled entry shall be retained in the register, and
- (ii) notify the parties to the civil partnership, and the registrar who registered the civil partnership, of the direction.”

Head 18: Enquiries by Ard Chláraitheoir.

Provide for the amendment of Section 65 by the substitution in Subsection (1) subparagraph (a) for “death or marriage” of “death, marriage or civil partnership”.

Head 19: Power of Ard-Chláraitheoir to give information to others.

Provide for the amendment of section 66(1) by the insertion in Subsection (1) after “marriages” of “civil partnerships,” and the substitution for “or decrees of nullity,” of “decrees of nullity or decrees of dissolution.”

Head 20: Offences.

Provide for amendment of Section 69, by

- amendment of subsection (4) by the substitution for “marriage or death” of “marriage, civil partnership or death”
- insertion of a new subsection (9A) along the following lines:

“A registrar who, without reasonable cause, fails or refuses to give a civil partnership registration form to one of the parties to an intended civil partnership in respect of which he or she has received, pursuant to **Head 8**

, a notification under *subsection (1)(a)* of that section is guilty of an offence.”

- amendment of subsection (10)

by the insertion in subparagraph (h) after “section 58” of the appropriate reference to **Head 13**.

by the insertion in subparagraph (i) after “section 46 (1) (b)” of the appropriate reference to **Head 8(1)(b)**.

by the insertion after subparagraph (j) of a new subparagraph (k) along the following lines:

“(k) not being a registrar, deletes or alters information in relation to the parties to a civil partnership on a civil partnership registration form,” ”

Head 21: Vital statistics.

Provide for the amendment of section 73 of the CRA 2004 by the insertion in subsection (1) of new categories of vital statistics by means of inserting subparagraphs along the following lines:

“(ff) civil partnerships,

(fg) decrees of dissolution,”

Provide, if necessary, for the amendment of subsection (3) (a), by the insertion after both the first and second instances of the word “nullity” of “, civil partnership, decree of dissolution”

Provide for the amendment of subsection (7) by the insertion after the word “nullity” of “, civil partnership, decree of dissolution”

Chapter 5: Schedules

Head 22: New Parts 5A, 6A and 7A of First Schedule of CRA 2004

Insert after Part 5 of the First Schedule of the Civil Registration Act 2004 a new Part 5A along the following lines:

“PART 5A

Particulars of Civil Partnerships registered within the State to be Entered in Register of Civil Partnerships

Date and place of registration.

Forename(s), surname, birth surname, date of birth and address of both parties to civil partnership.

Sex of both parties to civil partnership

Personal public service numbers of both parties to civil partnership.

Profession or occupation of both parties to civil partnership.

Forename(s), surname, address and occupation of both witnesses to civil partnership

Signature of registrar.”

Insert after Part 6 of the First Schedule of the Civil Registration Act 2004 a new Part 6A along the following lines:

“PART 6A

Particulars of Decrees of Dissolution to be Entered in Register of Decrees of Dissolution

Head 14

Court by which the decree was granted.

Year and record number of the proceedings.

Forenames, surnames and birth surnames of the parties to the proceedings.

Personal public service numbers of the parties to the proceedings.

Date and place of civil partnership registration.

Date of the decree.

Date of registration of decree.

Forename(s) and surname of officer of Courts Service specified in **Head 14 (1).**”

Insert after Part 7 of the First Schedule of the Civil Registration Act 2004 a new Part 7A along the following lines:

“PART 7A

Particulars of Decrees of Nullity of Civil Partnership to be Entered in Register of Decrees of Nullity (Civil Partnership)

Head 14

Court by which the decree was granted.

Year and record number of the proceedings.

Forename, surnames and birth surnames of the parties to the proceedings.

Personal public service numbers of the parties to the proceedings.

Date and place of civil partnership registration.

Declaration of court.

Date of the decree.

Date of registration.

Forename(s) and surname of officer of Courts Service specified in **Head 14 (2).**”

Head 23: New Schedule 3 in CRA 2004 – Prohibited degrees of relationship

Insert a new Schedule 3 in the Civil Registration Act 2004 along the following lines:

“Schedule 3

A person may not enter a civil partnership with someone within the prohibited degrees of relationship, as defined in the table below. Relationships within that table should be construed as including relationships in the half-blood (e.g. sibling includes a sibling where there is only one parent in common, etc.), and all relationships include relationships by adoption.

Consanguinity

A man may not enter a civil partnership with his:

Grandfather

Grandfather’s brother

Father

Father’s brother

Mother’s brother

Brother

Nephew

Son

Grandson

Grandnephew

”

A woman may not enter a civil partnership with her:

Grandmother

Grandmother’s sister

Mother

Mother’s sister

Father’s sister

Sister

Niece

Daughter

Granddaughter

Grandniece

Part 3: Consequences of Civil Partnership Registration

Chapter 1: Miscellaneous

Head 24: Ethics and conflict of interest

Provide that for the purposes of determining matters concerning ethics and conflict of interest, registered civil partners shall be treated in a manner equivalent to spouses, and that where a declaration of interest would need to be made in relation to a spouse, such a declaration must also be made in relation to a registered civil partner.

Provide that references in relation to a person to a “connected person” or “connected relative” shall, after the commencement of this Act, be construed as including that person’s registered civil partner, or a child of that person’s civil partner to whom the person is or has been in loco parentis, or who is ordinarily resident with that person and the registered civil partner.

Head 25: Civil liability / wrongful death

Amend Section 47 of the Civil Liability Act 1961 (as amended by the Civil Liability Amendment Act 1996) by the insertion after “spouse,” in subsection 1, subparagraph (a) of “ registered civil partner,”.

Head 26: Pensions

Provide that where a contingent or survivor's benefit or pension is provided by an employer or by a pension scheme for the spouse of a person, equivalent benefits must be provided for a registered civil partner.

Head 27: Amendment of Mental Health Act

Provide for the amendment of the Mental Health Act 2001 on the following lines:

- (1) By the insertion in section 2 after the definition of “child” of a new definition:
“ ‘civil partner’, in relation to a person, means a person with whom he or she has registered in a civil partnership within the meaning of the Civil Partnership Act [2008],”;
- (2) By the insertion in section 9 in subsections (1) and (2) after the word “spouse” in each place where it occurs of “or civil partner”;
- (3) By the insertion in section 9 (8) of the following definition:
“ ‘civil partner’, in relation to a person, does not include a civil partner of a person who is living separately and apart from the person or in respect of whom an application or order has been made under the Domestic Violence Act 1996, as amended by **Head 31** of the Civil Partnership Act [2008],”;
- (4) By the insertion in section (10)(3)(c) of “or civil partner” after the word “spouse”;
- (5) By the insertion in section (14)(3)(a) of “or civil partner” after the word “spouse”;
- (6) By the insertion in section (24)(1) of “or civil partner” after the word “spouse”;

Head 28: Immigration

Provide that for the purposes of the Immigration, Residence and Protection Bill 2008, “member of the family” and “dependent”, in relation to a person, includes a person with whom the first named person is registered in a civil partnership, provided that the civil partnership subsists at the relevant time.

The relevant provisions are in sections 36 and 50 of that Bill.

Provide for

the making of provisions paralleling those relating to marriage of foreign nationals [in section 123 of the Immigration, Residence and Protection Bill 2008] in relation to registering civil partnerships.

Chapter 2: Succession

Head 29: Succession

Provide that the Succession Act is amended:

- (1) in section 3 (1) after the definition of “administrator” by the insertion of “civil partner” has the meaning assigned to it by **Head 2** of the Civil Partnership Act [2008];
- (2) in section 3(1) by the substitution of the definition of “legal right” with the following:
 - “legal right” means
 - a. the right of a spouse under section 111 to a share in the estate of a deceased person;
 - b. the right of a civil partner under section 111A to a share in the estate of a deceased person
- (3) By the insertion in section 56 after each occurrence of the word “spouse” of the words “or civil partner”, and cognate expressions to be construed accordingly;
- (4) By the insertion in section 58 (6) after the word “spouse” of “or civil partner”.
- (5) By the insertion after section 67 of a provision conferring on a civil partner of a deceased who dies intestate the same share as a spouse of an intestate deceased subject to the rights of a former spouse and ensuring that the rights of children of the deceased are respected;
- (6) By the insertion in section 68 of “nor civil partner” after “spouse”;
- (7) By the insertion in section 69 of “nor civil partner” after each occurrence of the word “spouse”;
- (8) By the insertion in section 70 of “nor civil partner” after “spouse”;
- (9) By the insertion in section 82 of “or civil partner” after “spouse”;
- (10) By the insertion in section 83 of “or civil partner” after “spouse”;
- (11) By the insertion in section 85 of “or registration in a civil partnership” after each occurrence of “marriage”;
- (12) By the insertion in the title of Part IX of “, or civil partner” after “spouse”;
- (13) By the insertion in section 109 (1) of “or civil partner” after each occurrence of the word “spouse”;
- (14) By the insertion after section 111 of a new section 111A conferring on a civil partner of a testator a right to the estate of the deceased the same as the right of a spouse subject to the rights of a former spouse and ensuring that the rights of children of the deceased are respected;
- (15) By the insertion in section 112 after the words “section 111” of “or the right of a civil partner under section 111A”;
- (16) By the insertion of a new section 113A:

“The legal right of a civil partner may be renounced in an ante-registration contract made in writing between the parties to an intended civil partnership or may be renounced in writing by the civil partner after registration in a civil partnership and during the lifetime of the testator.”
- (17) By the insertion in section 114 of “or civil partner” after each occurrence of the word “spouse”;
- (18) By the insertion in section 115 other than in subsection (6) of that section of “or civil partner” after each occurrence of the word “spouse”;
- (19) By the insertion after subsection (2) of section 120 of a new subsection 2A:

“(2A) Where a civil partner has deserted his or her civil partner for two years or more and that desertion has continued up to the death of the deceased, the first-named civil partner shall be precluded from taking any share in the estate of the deceased as a legal right or on intestacy”;

- (20) By the insertion in section 120(4) of “or the civil partner” after the word “spouse”;
- (21) By the insertion in section 121 of “or civil partner” after each occurrence of the word “spouse”.

Head 30: Amendment of the Statute of Limitations, 1957

Provide for the amendment of section 45 of the Statute of Limitations, 1957 (as inserted by the Succession Act 1965) by the insertion in subsection (1) after the words “section 111” of “or section 111A”.

Chapter 3: Domestic Violence

Head 31: Domestic Violence

Provide that the Domestic Violence Act 1996 is amended as follows:

- (1) By the insertion in section (2)(1)(a)(i) of “or civil partner” after the word “spouse”;
- (2) By the insertion in section (3)(1)(a) of “or civil partner” after the word “spouse”;
- (3) By the insertion after section 8 of a new section 8A as follows:
 - (1) Subsection (2) of **Head 41** (which restricts the right of a civil partner to dispose of or remove household chattels pending the determination of separation or dissolution proceedings), shall apply between the making of an application, against the civil partner of the applicant, for a barring order or a safety order and its determination, and if an order is made, while such order is in force, as it applies between the institution and final determination of separation or dissolution proceedings to which that section relates.
 - (2) For the avoidance of doubt, it is hereby declared that the court which is empowered under subsection (2) (b) of **Head 41** to grant permission for any disposition or removal of household chattels (being household chattels within the meaning of that section) is, notwithstanding anything in **Head 42**, the court before which the proceedings (including any proceedings for a barring order or a safety order) have been instituted.”;
- (4) By the insertion after subsection (2)(c) of section 9 of a new subparagraph (cc):
“(cc) an order under **Head 37 or 41**.”;
- (5) By the insertion in section 13 (2) after “matrimonial cause or matter” of “or separation or dissolution proceedings under the Civil Partnership Act [2008]”;

Head 32: Saver in relation to Domestic Violence Act

Provide that:

“The references to a civil partner in sections 2 and 3 of the Domestic Violence Act 1996 as amended by *Head 31* shall be construed as including references to a person who is a party to a civil partnership that has been dissolved under this Act.”

Chapter 4: Shared Home Protection

Head 33: Interpretation

Provide:

“(1) In this Chapter, except where the context otherwise requires

"conduct" includes an act and a default or other omission;

"conveyance" includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such conveyance, and "convey" shall be construed accordingly;

"the court" means the court having jurisdiction under **Head 42**;

"shared home" has the meaning assigned by **Head 34**;

"household chattels" has the meaning assigned by **Head 41 (7)**;

"interest" means any estate, right, title or other interest, legal or equitable;

"mortgage" includes an equitable mortgage, a charge on registered land and a chattel mortgage, and cognate words shall be construed accordingly;

"rent" includes a conventional rent, a rentcharge within the meaning of section 2 (1) of the Statute of Limitations, 1957, and a terminable annuity payable in respect of a loan for the purchase of a shared home.

(2) References in this Part to any enactment shall be construed as references to that enactment as amended or extended by any subsequent enactment, including this Part.

(3) (a) A reference in this Part to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended.

(b) A reference in this Part to a subsection is a reference to the subsection of the section in which the reference occurs unless it is indicated that reference to some other section is intended.”

Head 34: Shared Home

Provide that:

“(1) In this Act "shared home" means, primarily, a dwelling in which registered civil partners ordinarily reside. The expression comprises, in addition, a dwelling in which a civil partner whose protection is in issue ordinarily resides or, if that civil partner has left the other civil partner, ordinarily resided before so leaving.

(2) In subsection (1), 'dwelling' means any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with the dwelling, being land that is subsidiary and ancillary to it, is required for amenity or convenience and is not being used or developed primarily for commercial purposes, and includes a structure that is not permanently attached to the ground and a vehicle, or vessel, whether mobile or not, occupied as a separate dwelling.”

Head 35: Alienation of interest in shared home

Provide that:

“(1) Where a civil partner, without the prior consent in writing of the other civil partner, purports to convey any interest in the shared home to any person except the other civil partner, then, subject to subsections (2), (3) and (8) and **Head 36**, the purported conveyance shall be void.

(2) Subsection (1) does not apply to a conveyance if it is made by a civil partner in pursuance of an enforceable agreement made before the registration as civil partners of the civil partners.

(3) No conveyance shall be void by reason only of subsection (1)—

(a) if it is made to a purchaser for full value.

(b) if it is made, by a person other than the civil partner making the purported conveyance referred to in subsection (1), to a purchaser for value, or

(c) if its validity depends on the validity of a conveyance in respect of which any of the conditions mentioned in subsection (2) or paragraph (a) or (b) is satisfied.

(4) If any question arises in any proceedings as to whether a conveyance is valid by reason of subsection (2) or (3), the burden of proving that validity shall be on the person alleging it.

(5) In subsection (3), "full value" means such value as amounts or approximates to the value of that for which it is given.

(6) In this section, "purchaser" means a grantee, lessee, assignee, mortgagee, chargeant or other person who in good faith acquires an estate or interest in property.

(7) For the purposes of this section, section 3 of the Conveyancing Act, 1882, shall be read as if the words "as such" wherever they appear in paragraph (ii) of subsection (1) of that section were omitted.

(8) (a) (i) Proceedings shall not be instituted to have a conveyance declared void by reason only of subsection (1) after the expiration of 6 years from the date of the conveyance.

(ii) Subparagraph (i) does not apply to any such proceedings instituted by a civil partner who has been in actual occupation of the land concerned from immediately before the expiration of 6 years from the date of the conveyance concerned until the institution of the proceedings.

(iii) Subparagraph (i) is without prejudice to any right of the other civil partner referred to in subsection (1) to seek redress for a contravention of that subsection otherwise than by proceedings referred to in that subparagraph.

(b) A conveyance shall be deemed not to be and never to have been void by reason of subsection (1) unless—

(i) it has been declared void by a court by reason of subsection (1) in proceedings instituted on or after [the commencement of this Part] and complying with paragraph (a),

or

(ii) subject to the rights of any other person concerned, it is void by reason of subsection (1) and the parties to the conveyance or their successors in title so state in writing before the expiration of 6 years from the date of the conveyance.

(c) A copy of a statement made for the purpose of subparagraph (ii) of paragraph (b) and certified by, or by the successor or successors in title of, the party or parties concerned ('the person or persons') to be a true copy shall, before the expiration of the period referred to in that subparagraph, as appropriate, be lodged by the person or persons in the Land Registry for registration pursuant to section 69 (1) of the Registration of Title Act 1964, as if statements so made had been prescribed under paragraph (s) of the said section 69 (1) or be registered by them in the Registry of Deeds.

(d) Rules of court shall provide that a person who institutes proceedings to have a conveyance declared void by reason of subsection (1) shall, as soon as may be, cause relevant particulars of the proceedings to be entered as a *lis pendens* under and in accordance with the Judgments (Ireland) Act, 1844.

(9) If, after the commencement of this Act, a civil partner gives a general consent in writing to any future conveyance of any interest in a dwelling that is or was the shared home of that civil partner and the deed for any such conveyance is executed after the date of that consent, the consent shall be deemed, for the purposes of subsection (1), to be a prior consent in writing of the civil partner to that conveyance.”

Head 36: Consent of civil partner

Provide that:

“(1) Where the civil partner whose consent is required under *Head 35 (1)* omits or refuses to consent, the court may, subject to the provisions of this section, dispense with the consent.

(2) The court shall not dispense with the consent of a civil partner unless the court considers that it is unreasonable for the civil partner to withhold consent, taking into account all the circumstances, including—

- (a) the respective needs and resources of the civil partners, and
- (b) in a case where the civil partner whose consent is required is offered alternative accommodation, the suitability of that accommodation having regard to the respective degrees of security of tenure in the shared home and in the alternative accommodation.

(3) Where the civil partner whose consent is required under *Head 35 (1)* has deserted and continues to desert the other civil partner, the court shall dispense with the consent. For this purpose, desertion includes conduct on the part of the former civil partner that results in the other civil partner, with just cause, leaving and living separately and apart from the former civil partner.

(4) Where the civil partner whose consent is required under *Head 35 (1)* is incapable of consenting by reason of unsoundness of mind or other mental disability or has not after reasonable inquiries been found, the court may give the consent on behalf of that civil partner, if it appears to the court to be reasonable to do so.

Head 37: Conduct leading to loss of shared home

Provide that:

“(1) Where it appears to the court, on the application of a civil partner, that the other civil partner is engaging in such conduct as may lead to the loss of any interest in the shared home or may render it unsuitable for habitation as a shared home with the intention of depriving the applicant civil partner of his or her residence in the shared home, the court may make such order as it considers proper, directed to the other civil partner or to any other person, for the protection of the shared home in the interest of the applicant civil partner.

(2) Where it appears to the court, on the application of a civil partner, that the other civil partner has deprived the applicant civil partner of his or her residence in the shared home by conduct that resulted in the loss of any interest therein or rendered it unsuitable for habitation as a shared home, the court may order the other civil partner or any other person to pay to the applicant civil partner such amount as the court considers proper to compensate the applicant civil partner for their loss or make such other order directed to the other civil partner or to any other person as may appear to the court to be just and equitable.”

Head 38: Payment of outgoings on shared home

Provide that:

“(1) Any payment or tender made or any other thing done by one civil partner in or towards satisfaction of any liability of the other civil partner in respect of rent, mortgage payments or other outgoings affecting the shared home shall be as good as if made or done by the other civil partner, and shall be treated by the person to whom such payment is made or such thing is done as though it were made or done by the other civil partner.

(2) Nothing in subsection (1) shall affect any claim by the first-mentioned civil partner against the other to an interest in the shared home by virtue of such payment or thing made or done by the first-mentioned civil partner.”

Head 39: Adjournment of proceedings by mortgagee or lessor for possession or sale of shared home

Provide that:

“(1) Where a mortgagee or lessor of the shared home brings an action against a civil partner in which he claims possession or sale of the home by virtue of the mortgage or lease in relation to the non-payment by that civil partner of sums due thereunder, and it appears to the court—

(*a*) that the other civil partner is capable of paying to the mortgagee or lessor the arrears (other than arrears of principal or interest or rent that do not constitute part of the periodical payments due under the mortgage or lease) of money due under the mortgage or lease within a reasonable time, and future periodical payments falling due under the mortgage or lease, and that the other civil partner desires to pay such arrears and periodical payments; and

(*b*) that it would in all the circumstances, having regard to the terms of the mortgage or lease, the interests of the mortgagee or lessor and the respective interests of the civil partners, be just and equitable to do so,

the court may adjourn the proceedings for such period and on such terms as appear to the court to be just and equitable.

(2) In considering whether to adjourn the proceedings under this section and, if so, for what period and on what terms they should be adjourned, the court shall have regard in particular to whether the civil partner of the mortgagor or lessee has been informed (by or on behalf of the mortgagee or lessor or otherwise) of the non-payment of the sums in question or of any of them.”

Head 40: Modification of terms of mortgage or lease as to payment of capital sum

Provide that:

“(1) Where, on an application by a civil partner, after proceedings have been adjourned under *Head 39*, it appears to the court that—

(*a*) all arrears (other than arrears of principal or interest or rent that do not constitute part of the periodical payments due under the mortgage or lease) of money due under the mortgage or lease, and

(*b*) all the periodical payments due to date under the mortgage or lease,

have been paid off and that the periodical payments subsequently falling due will continue to be paid, the court may by order declare accordingly.

(2) If the court makes an order under subsection (1), any term in a mortgage or lease whereby the default in payment that gave rise to the proceedings under *Head 39* has, at any time before or after the initial hearing of such proceedings, resulted or would have resulted in the capital sum advanced thereunder (or part of such sum or interest thereon) or any sum other than the periodical payments, as the case may be, becoming due, shall be of no effect for the purpose of such proceedings or any subsequent proceedings in respect of the sum so becoming due.”

Head 41: Restriction on disposal of household chattels

Provide that:

“(1) Where it appears to the court, on the application of a civil partner, that there are reasonable grounds for believing that the other civil partner intends to sell, lease, pledge, charge or otherwise dispose of or to remove such a number or proportion of the household chattels in a shared home as would be likely to make it difficult for the applicant civil partner to reside in the shared home without undue hardship, the court may by order prohibit on such terms as it may see fit, the other civil partner from making such intended disposition or removal.

(2) Where civil partnership or dissolution proceedings have been instituted by either civil partner, neither civil partner shall sell, lease, pledge, charge or otherwise dispose of or remove any of the household chattels in the shared home until the proceedings have been finally determined, unless—

(a) the other civil partner has consented to such sale, lease, pledge, charge or other disposition or removal, or

(b) the court before which the proceedings have been instituted, on application to it by the civil partner who desires to make such disposition or removal, permits that civil partner to do so, which permission may be granted on such terms as the court may see fit.

(3) In subsection (2) "civil partnership or dissolution proceedings" includes proceedings under *Part 5* and *Head 115 in Part 6* of this Act.

(4) A civil partner who contravenes the provisions of subsection (2) shall, without prejudice to any other liability, civil or criminal, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [£100] or to imprisonment for a term not exceeding six months or to both.

(5) Where it appears to the court, on application to it by either civil partner, that the other civil partner—

(a) has contravened an order under subsection (1) or the provisions of subsection (2), or

(b) has sold, leased, pledged, charged or otherwise disposed of or removed such a number or proportion of the household chattels in the shared home as has made or is likely to make it difficult for the applicant civil partner to reside in the shared home without undue hardship,

the court may order that other civil partner to provide household chattels for the applicant civil partner, or a sum of money in lieu thereof, so as to place the applicant civil partner as nearly as possible in the position that prevailed before such contravention, disposition or removal.

(6) Where a third person, before a sale, lease, pledge, charge or other disposition of any household chattel to him by a civil partner, is informed in writing by the other civil partner that he or she intends to take proceedings in respect of such disposition or intended disposition, the court in proceedings under this section may make such order, directed to the former civil partner or the third person, in respect of such chattel as appears to it to be proper in the circumstances.

(7) For the purposes of this section "household chattels" means furniture, bedding, linen, china, earthenware, glass, books and other chattels of ordinary household use or ornament and also consumable stores, garden effects and domestic animals, but does not include any chattels used by either civil partner for business or professional purposes or money or security for money."

Head 42: Jurisdiction

Provide that:

“(1) The jurisdiction conferred on a court by this Part may be exercised by the High Court.

(2) Subject to subsections (3) and (4), the Circuit Court shall concurrently with the High Court have all the jurisdiction of the High Court to hear and determine proceedings under this Part.

(3) Where either civil partner is a person of unsound mind and there is a committee of the civil partner's estate, the jurisdiction conferred by this Part may, subject to subsection (4), be exercised by the court that has appointed the committee.

(4) Where the rateable value of the land to which the proceedings relate exceeds [£100] or the value of the personal property to which the proceedings relate exceeds [£5, 000] and the proceedings are brought in the Circuit Court, that Court shall, if a defendant so requires, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

(5) (a) The District Court shall, subject to subsection (3), have all the jurisdiction of the High Court to hear and determine proceedings under this Act where the rateable valuation of the land to which the proceedings relate does not exceed [£20].

(b) The District Court shall, subject to subsection (3), have jurisdiction to deal with a question arising under *Head 41* where the value of the household chattels intended to be disposed of or removed or actually disposed of or removed, as the case may be, does not exceed [£5,000] or where such chattels are or immediately before such disposal or removal, were in a shared home the rateable valuation of which does not exceed [£20].

(c) The District Court may, for the purpose of determining whether it has jurisdiction in proceedings under this Act in relation to a shared home that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, [£20].

(6) Proceedings under or referred to in this Part in which each civil partner is a party (whether by joinder or otherwise) shall be conducted in a summary manner and shall be heard otherwise than in public.

(7) Proceedings in the High Court and in the Circuit Court under or referred to in this Act in which each civil partner is a party (whether by joinder or otherwise) shall be heard in chambers.”

Head 43: Joinder of parties

Provide that:

“In any proceedings under or referred to in this Act each of the civil partners as well as any third person who has or may have an interest in the proceedings may be joined—

(*a*) by service upon him of a third-party notice by an existing party to the proceedings, or

(*b*) by direction of the court.”

Head 44: Restriction of section 59 (2) of Registration of Title Act, 1964

Provide that:

“Section 59 (2) of the Registration of Title Act 1964 (which refers to noting upon the register provisions of any enactment restricting dealings in land) shall not apply to the provisions of this Part.”

Head 45: Offences

Provide that:

“Where any person having an interest in any premises, on being required in writing by or on behalf of any other person proposing to acquire that interest to give any information necessary to establish if the conveyance of that interest requires a consent under **Head 35 (1)**, knowingly gives information which is false or misleading in any material particular, he shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding [€254] or to imprisonment for a term not exceeding twelve months or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years,

without prejudice to any other liability, civil or criminal.”

Head 46: Citation [with the Family Home Protection Act]

Provide that

“This Part may be cited together with the Family Home Protection Act 1976 as the Family and Shared Home Protection Acts 1976 – [2008].”

Head 47: Amendment of the Civil Legal Aid Act 1995

Provide that:

“Section 28 of the Civil Legal Aid Act 1995 is amended by the insertion after the words “possession of any property” of “or proceedings under *Part 3, chapter 4* of the Civil Partnership Act [2008], or proceedings arising out of a dispute between civil partners as to the title to or possession of any property;’.”

Head 48: Protection of certain tenancies

Provide for the amendment of the Housing (Private Rented Dwellings) Act 1982, by the insertion of “or registered civil partner” in section (9), subsection (2), after each occurrence of the word “spouse”.

Provide for the amendment of the Residential Tenancies Act 2004, by the insertion in section 39, subsection (3) (i) of “or registered civil partner” after “spouse”.

Part 4: Status of civil partnership

Head 49: Grant of Decree of Nullity

Provide that:

“On application to it in that behalf by either of the civil partners concerned or by another person who, in the opinion in of the court, has sufficient standing in the matter, where the court is satisfied that at the time the civil partners registered in a civil partnership any of the following applied –

- (a) either or both of the parties was under age,
- (b) either or both of the parties was a party to a valid marriage,
- (c) either or both of the parties was already registered in a relationship with another person which was entitled to be recognised as a civil partnership in this jurisdiction and which had not been dissolved,
- (d) either or both of the parties was unable to give informed consent, as attested by an expert medical practitioner,
- (e) the parties are within the forbidden degrees of relationship, or
- (f) the parties were of opposite sexes,

the court may grant a decree of nullity.”

Head 50: Declarations as to civil partnership status.

Provide that:

“(1) The court may, on application to it in that behalf by either of the civil partners concerned or by any other person who, in the opinion of the court, has a sufficient interest in the matter, by order make one or more of the following declarations in relation to a civil partnership, that is to say:

- (a) a declaration that the civil partnership was at its inception a valid civil partnership,
- (b) a declaration that the civil partnership subsisted on a date specified in the application,
- (c) a declaration that the civil partnership did not subsist on a date so specified, not being the date of the inception of the civil partnership,
- (d) a declaration that the validity of a dissolution of a civil partnership, annulment or legal separation obtained under the civil law of any other country or jurisdiction in respect of the civil partnership is not entitled to recognition in the State.

(2) The court may grant an order under *subsection (1)* if, but only if, either of the civil partners concerned—

- (a) is domiciled in the State on the date of the application,
- (b) has been ordinarily resident in the State throughout the period of one year ending on that date, or
- (c) died before that date and either—
 - (i) was at the time of death domiciled in the State, or
 - (ii) had been ordinarily resident in the State throughout the period of one year ending on that date.

(3) The other civil partner or the civil partners concerned or the personal representative of the civil partner or each civil partner, within the meaning of the Act of 1965, shall be joined in proceedings under this section.

(6) Where notice of proceedings under this section is given to a person, the court may, of its own motion or on application to it in that behalf by the person or a party to the proceedings, order that the person be added as a party to the proceedings.

(7) Where a party to proceedings under this section alleges that the civil partnership concerned is or was void, and should be annulled, the court may treat the application under *subsection (1)* as an application for a decree of nullity of civil partnership and may forthwith proceed to determine the matter accordingly and may postpone the determination of the application under *subsection (1)*.

(8) A declaration under this section shall be binding on the parties to the proceedings concerned and on any person claiming through such a party.

(9) A declaration under this section shall not prejudice any person if it is subsequently proved to have been obtained by fraud or collusion.

(10) In this section a reference to a civil partner includes a reference to a person who is a party to a civil partnership that has been dissolved under *Part 5, Chapter 2 [Head 57]* of this Act.”

Head 51: Provisions supplementary to Head 50.

Provide:

“(1) Rules of court may make provision as to the information to be given in an application under **Head 50 (1)** including particulars of any previous or pending proceedings in relation to any civil partnership concerned or to the civil partnership status of a party to any such civil partnership.

(2) Notification of a declaration under **Head 50** shall be given by the registrar of the court to an tArd Chláraitheoir.”

Head 52: Recognition of foreign relationships

Provide that:

“(1) The Minister may, by order, declare that a class of legal relationship entered by two parties of the same sex shall be entitled to be recognised as a civil partnership if under the law of the jurisdiction in which the legal relationship was entered –

- (a) the legal relationship is exclusive in nature,
- (b) the relationship is permanent unless the parties dissolve the relationship through the courts,
- (c) the legal relationship is confined to couples of the same sex or of the opposite sex, and couples of the same sex entering the legal relationship may not be within the forbidden degrees of relationship to each other,
- (d) the rights and obligations attendant on the relationship, in the opinion of the Minister, are sufficient to indicate that the relationship is of a comparable status with a civil partnership.

(2) The Minister shall consult with An tArd-Chláraitheoir prior to making an order under subsection (1).

(3) An order under subsection (1) shall entitle and oblige the parties to such a legal relationship to be treated as civil partners under the law of the State from

- (a) the date of making of the order, or
- (b) the date of entering the relationship,

whichever is the later.

(4) Notice of an order under subsection (1) shall be provided to the Oireachtas in the usual way, and shall also be provided to –

- (a) an tArd-Chláraitheoir,
- (b) INIS,
- (c) the Revenue Commissioners, and
- (d) the Department of Social and Family Affairs.”

Head 53: Determination of questions between civil partners in relation to property.

Provide that:

“(1) Either civil partner may apply to the court in a summary manner to determine any question arising between them as to the title to or possession of any property.

(2) On application to it under *subsection (1)*, the court may—

- (a) make such order with respect to the property in dispute (including an order that it be sold or partitioned) and as to the costs consequent upon the application, and
- (b) direct such inquiries, and give such other directions, in relation to the application,

as the court considers proper.

(3) Either civil partner or a child of a deceased civil partner (in this section referred to subsequently as "the plaintiff civil partner") may make an application specified in *subsection (1)* where it is claimed that the other civil partner (in this section referred to subsequently as "the defendant civil partner") has had in his or her possession or under his or her control—

- (a) money to which, or to a share of which, the plaintiff civil partner was beneficially entitled whether by reason of the fact that it represented the proceeds of property to which, or to an interest in which, the plaintiff civil partner was beneficially entitled or for any other reason, or
- (b) property (other than money) to which, or to an interest in which, the plaintiff civil partner was beneficially entitled,

and that either that money or other property has ceased to be in the possession or under the control of the defendant civil partner or that the plaintiff civil partner does not know whether it is still in the possession or under the control of the defendant civil partner.

(4) Where an application under *subsection (1)* is made by virtue of *subsection (3)* and the court is satisfied that—

- (a) (i) the defendant civil partner concerned has had in his or her possession or under his or her control money or other property to which *paragraph (a) or (b) of subsection (3)* relates, or
- (ii) the defendant civil partner has in his or her possession or under his or her control property that represents the whole or part of the money or other property aforesaid,

and

- (b) the defendant civil partner has not made to the plaintiff civil partner concerned such payment or disposition (not being a testamentary disposition) as would have been appropriate in all the circumstances,

the court may make an order under *subsection (2)* in relation to the application and may, in addition to or in lieu of such an order, make an order requiring the defendant civil partner to pay to the plaintiff civil partner either, as the case may be—

- (i) such sum in respect of the money to which the application relates, or the plaintiff civil partner's share thereof, or
- (ii) such sum in respect of the value of the property (other than money) referred to in *paragraph (a)*, or the plaintiff civil partner's interest therein,

as the court considers proper.

(5) In any proceedings under this section, a person (other than the plaintiff civil partner concerned or the defendant civil partner concerned) who is a party thereto shall, for the purposes of costs or any other matter, be treated as a stakeholder only.

- (6) (*a*) Where a civil partnership has been annulled under the law of the State an application under this section shall not be made by either of the civil partners more than 3 years after the date of the annulment.
- (*b*) Where a civil partnership is void but has not been so declared under the law of the State, an application shall not be made under this section by either of the civil partners more than 3 years after the parties have ceased to be ordinarily resident together.

(7) In this section references to a civil partner include references to—

- (*a*) a personal representative of a deceased civil partner, and
- (*b*) either of the parties to a void civil partnership, whether or not it has been declared to be void under the law of the State.”

Head 54: Jurisdiction of courts and venue.

Provide that:

“(1) Subject to the provisions of this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Part and shall, in relation to that jurisdiction, be known as the Circuit Civil Partnership Court.

(2) Subject to the other provisions of this section, the Circuit Civil Partnership Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings for a decree of nullity.

(3) Where the rateable valuation of any land to which proceedings in the Circuit Civil Partnership Court under this Part relate exceeds [£200], that Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(4) The jurisdiction conferred on the Circuit Civil Partnership Court by this Part may be exercised by the judge of the circuit in which any of the parties to the proceedings ordinarily resides or carries on any business, profession or occupation.

(5) The Circuit Civil Partnership Court may, for the purposes of *subsection (3)* in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, [£200].

(6) **Head 90** shall apply to proceedings under this Part in the Circuit Civil Partnership Court and **Heads 91 to 94** shall apply to proceedings under this Part in that Court and in the High Court.”

Head 55: Notice of proceedings under Part 4.

Provide that:

“Notice of any proceedings under this Part shall be given by the person bringing the proceedings to—

(*a*) the other civil partner concerned or, as the case may be, the civil partners concerned, and

(*b*) any other person specified by the court.”

Part 5: Dissolution of Civil Partnership

Chapter 1: Interpretation

Head 56: Definitions

Provide that:

“(1) In this Part, save where the context otherwise requires—

"the Act of 1965" means the Succession Act 1965;

"conveyance" includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such disposition;

"the court" shall be construed in accordance with **Head 79**;

"decree of dissolution" means a decree under **Head 57**;

"decree of nullity" means a decree granted by a court under **Head 49** declaring a civil partnership to be null and void;

"shared home" has the meaning assigned to it by **Head 34**, with the modification that the references to a civil partner in that section shall be construed as references to a civil partner within the meaning of this Part;

"financial compensation order" has the meaning assigned to it by **Head 66**;

"Land Registry" and "Registry of Deeds" have the meanings assigned to them by the Registration of Title Act 1964, and the Registration of Deeds and Title Act 2006, respectively;

"lump sum order" means an order under **Head 63 (1) (c)**;

"maintenance pending suit order" means an order under **Head 62**;

"member", in relation to a pension scheme, means any person who, having been admitted to membership of the scheme under its rules, remains entitled to any benefit under the scheme;

"pension adjustment order" means an order under **Head 67**;

"pension scheme" means—

(a) an occupational pension scheme (within the meaning of the Pensions Act 1990), or

(b) (i) an annuity contract approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997, or a contract so approved under section 785 of that Act,

(ii) a trust scheme, or part of a trust scheme, so approved under subsection (4) of the said section 784 or subsection (5) of the said section 785, or

(iii) a policy or contract of assurance approved by the Revenue Commissioners under Chapter I of Part 30 of the Taxes Consolidation Act 1997, or

(c) any other scheme or arrangement (including a personal pension plan and a scheme or arrangement established by or pursuant to statute or instrument made under statute other than under the Social Welfare Acts) that provides or is intended to provide either or both of the following, that is to say:

(i) benefits for a person who is a member of the scheme or arrangement ("the member") upon retirement at normal pensionable age or upon earlier or later retirement or upon leaving, or upon the ceasing of, the relevant employment,

(ii) benefits for the widow, widower or dependants of the member, or for any other persons, on the death of the member;

"periodical payments order" and "secured periodical payments order" have the meanings assigned to them by **Head 63**;

"property adjustment order" has the meaning assigned to it by **Head 64**;

"trustees", in relation to a scheme that is established under a trust, means the trustees of the scheme and, in relation to a pension scheme not so established, means the persons who administer the scheme.

(2) In this Part, where the context so requires—

(a) a reference to a civil partnership includes a reference to a civil partnership that has been dissolved under this Part,

(b) a reference to a registration in a new civil partnership includes a reference to a registration in a civil partnership that takes place after a civil partnership that has been dissolved under this Part,

(c) a reference to a civil partner includes a reference to a person who is a party to a civil partnership that has been dissolved under this Part,

and cognate words shall be construed accordingly.

(3) In this Part—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Part,

(b) a reference to a Part, a chapter or section is a reference to a Part, a chapter or section of this Act unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph, subparagraph or clause is a reference to the subsection, paragraph, subparagraph or clause of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended."

Chapter 2: THE OBTAINING OF A DECREE OF DISSOLUTION

Head 57: Grant of decree of dissolution

Provide that:

“Subject to the provisions of this Act, where, on application to it in that behalf by either of the civil partners concerned, the court is satisfied that—

(a) at the date of the institution of the proceedings, the civil partners have lived apart from one another for a period of, or periods amounting to, at least two years during the previous three years, and

(b) such provision as the court considers proper having regard to the circumstances exists or will be made for the civil partners,

the court may grant a decree of dissolution in respect of the civil partnership concerned.”

Head 58: Adjournment of proceedings to assist reconciliation or agreements on the terms of the dissolution.

Provide

“(1) Where an application is made to the court for the grant of a decree of dissolution, the court shall give consideration to the possibility of a reconciliation between the civil partners concerned and, accordingly, may adjourn the proceedings at any time for the purpose of enabling attempts to be made by the civil partners, if they both so wish, to effect such a reconciliation with or without the assistance of a third party.

(2) Where, in proceedings under *Head 57*, it appears to the court that a reconciliation between the civil partners cannot be effected, it may adjourn or further adjourn the proceedings for the purpose of enabling attempts to be made by the civil partners, if they both so wish, to reach agreement, with or without the assistance of a third party, on some or all of the terms of the proposed dissolution.

(3) If proceedings are adjourned pursuant to *subsection (1)* or *(2)*, either or both of the civil partners may at any time request that the hearing of the proceedings be resumed as soon as may be and, if such a request is made, the court shall, subject to any other power of the court to adjourn proceedings, resume the hearing.

(4) The powers conferred by this section are additional to any other power of the court to adjourn proceedings.

(5) Where the court adjourns proceedings under this section, it may, at its discretion, advise the civil partners concerned to seek the assistance of a third party in relation to the effecting of a reconciliation between the civil partners or the reaching of agreement between them on some or all of the terms of the proposed dissolution.

Head 59: Non-admissibility as evidence of certain communications relating to reconciliation, separation or dissolution.

Provide:

“An oral or written communication between either of the civil partners concerned and a third party for the purpose of seeking assistance to effect a reconciliation or to reach agreement between them on some or all of the terms of a separation or a dissolution (whether or not made in the presence or with the knowledge of the other civil partner), and any record of such a communication, made or caused to be made by either of the civil partners concerned or such a third party, shall not be admissible as evidence in any court.”

Head 60: Effect of decree of dissolution.

Provide that:

“Where the court grants a decree of dissolution, the civil partnership, the subject of the decree, is thereby dissolved and a party to that civil partnership may register in a new civil partnership or may marry.”

Chapter 3: PRELIMINARY AND ANCILLARY ORDERS IN OR AFTER PROCEEDINGS FOR DISSOLUTION

Head 61: Preliminary orders in proceedings for dissolution.

Provide:

“Where an application is made to the court for the grant of a decree of dissolution, the court, before deciding whether to grant or refuse to grant the decree, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders—

- (a) a safety order, a barring order, an interim barring order or a protection order under the Domestic Violence Act 1996, as amended by *Head 31*,
- (b) an order under *Head 37* or *Head 41*.”

Head 62: Maintenance pending suit orders.

Provide:

“(1) Where an application is made to the court for the grant of a decree of dissolution, the court may make an order for maintenance pending suit, that is to say, an order requiring either of the civil partners concerned to make to the other civil partner such periodical payments or lump sum payments for his or her support and, as respects periodical payments, for such period beginning not earlier than the date of the application and ending not later than the date of its determination, as the court considers proper and specifies in the order.

(2) The court may provide that payments under an order under this section shall be subject to such terms and conditions as it considers appropriate and specifies in the order.”

Head 63: Periodical payments and lump sum orders.

Provide:

“(1) On granting a decree of dissolution or at any time thereafter, the court, on application to it in that behalf by either of the civil partners concerned, may, during the lifetime of the other civil partner, or, as the case may be, the civil partner concerned, make one or more of the following orders, that is to say—

(a) a periodical payments order, that is to say an order that either of the civil partners shall make to the other civil partner such periodical , payments of such amount, during such period and at such times as may be specified in the order,

(b) a secured periodical payments order, that is to say an order that either of the civil partners shall secure, to the satisfaction of the court, to the other civil partner such periodical payments of such amounts, during such period and at such times as may be so specified,

(c) an order that either of the civil partners shall make to the other civil partner a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified.

(2) The court may order a civil partner to pay a lump sum to the other civil partner to meet any liabilities or expenses reasonably incurred by that other civil partner before the making of an application by that other civil partner for an order under *subsection (1)* in maintaining himself or herself.

(3) An order under this section for the payment of a lump sum may provide for the payment of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The period specified in an order under *paragraph (a) or (b) of subsection (1)* shall begin not earlier than the date of the application for the order and shall end not later than the death of the civil partner in whose favour the order is made or the other civil partner concerned.

(5) (a) Upon the registration in a new civil partnership or marriage of the civil partner in whose favour an order is made under *paragraph (a) or (b) of subsection (1)*, the order shall cease to have effect, except as respects payments due under it on the date of the registration in a new civil partnership or marriage.

(b) If, after the grant of a decree of dissolution, either of the civil partner concerned registers in a new civil partnership or marries, the court shall not, by reference to that decree, make an order under *subsection (1)* in favour of that civil partner.

(6) (a) Where a court makes an order under *subsection (1) (a)*, it shall in the same proceedings, subject to *paragraph (b)*, make an attachment of earnings order (within the meaning of **Head 104**) to secure payments under the first mentioned order if it is satisfied that the person against whom the order is

made is a person to whom earnings (within the meaning aforesaid) fall to be paid.

(*b*) Before deciding whether to make or refuse to make an attachment of earnings order by virtue of *paragraph (a)*, the court shall give the civil partner concerned an opportunity to make the representations specified in *paragraph (c)* in relation to the matter and shall have regard to any such representations made by that civil partner.

(*c*) The representations referred to in *paragraph (b)* are representations relating to the questions—

(i) whether the civil partner concerned is a person to whom such earnings as aforesaid fall to be paid, and

(ii) whether he or she would make the payments to which the relevant order under *subsection (1) (a)* relates.

(*d*) References in this subsection to an order under *subsection (1) (a)* include references to such an order as varied or affirmed on appeal from the court concerned or varied under ***Head 72***.”

Head 64: Property adjustment orders.

Provide:

“(1) On granting a decree of dissolution or at any time thereafter, the court, on application to it in that behalf by either of the civil partners concerned, may, during the lifetime of the other civil partner or, as the case may be, the civil partner concerned, make a property adjustment order, that is to say, an order providing for one or more of the following matters:

- (a) the transfer by either of the civil partners to the other civil partner of specified property, being property to which the first-mentioned civil partner is entitled either in possession or reversion,
- (b) the settlement to the satisfaction of the court of specified property, being property to which either of the civil partners is so entitled as aforesaid, for the benefit of the other civil partner,
- (c) the variation for the benefit of either of the civil partners of any ante-registration or post-registration settlement (including such a settlement made by will or codicil) made on the civil partners,
- (d) the extinguishment or reduction of the interest of either of the civil partners under any such settlement.

(2) An order under *paragraph (b), (c) or (d)* may restrict to a specified extent or exclude the application of **Head 72** in relation to the order.

(3) If, after the grant of a decree of dissolution, either of the civil partners concerned registers in a new civil partnership or marries, the court shall not, by reference to that decree, make a property adjustment order in favour of that civil partner.

(4) Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69 (1)(h) of the Registration of Title Act 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

(5) Where—

- (a) a person is directed by an order under this section to execute a deed or other instrument in relation to land, and
- (b) the person refuses or neglects to comply with the direction or, for any other reason, the court considers it necessary to do so,

the court may order another person to execute the deed or instrument in the name of the first-mentioned person; and a deed or other instrument executed by a person in the name of another person pursuant to an order under this subsection shall be as valid as if it had been executed by that other person.

(6) Any costs incurred in complying with a property adjustment order shall be borne, as the court may determine, by either of the civil partners concerned, or by both of them in such proportions as the court may determine, and shall be so borne in such manner as the court may determine.

(7) This section shall not apply in relation to a shared or family home in which, following the grant of a decree of dissolution, either of the civil partners concerned, having registered in a new civil partnership or married, ordinarily resides with his or her civil partner or spouse.”

Head 65: Miscellaneous ancillary orders.

Provide

“(1) On granting a decree of dissolution or at any time thereafter, the court, on application to it in that behalf by either of the civil partners concerned, may, during the lifetime of the other civil partner or, as the case may be, the civil partner concerned, make one or more of the following orders:

(a) an order—

(i) providing for the conferral on one civil partner either for life or for such other period (whether definite or contingent) as the court may specify of the right to occupy the shared home to the exclusion of the other civil partner, or

(ii) directing the sale of the shared home subject to such conditions (if any) as the court considers proper and providing for the disposal of the proceeds of the sale between the civil partners and any other person having an interest therein,

(b) an order under **Head 37, 39 or 41**,

(c) an order under the Domestic Violence Act 1996 as amended by **Head 31**,

(d) an order for the partition of property or under the Partition Act, 1868, and the Partition Act, 1876,

and, for the purposes of this section, in *paragraphs (c) and (d)*, a reference to a civil partner in a statute referred to in *paragraph (c) or (d)* shall be construed as including a reference to a person who is a party to a civil partnership that has been dissolved under this Act.

(2) The court, in exercising its jurisdiction under *subsection (1) (a)*, shall have regard to the welfare of the civil partners and, in particular, shall take into consideration—

(a) that, where a decree of dissolution is granted, it is not possible for the civil partners concerned to reside together, and

(b) that proper and secure accommodation should, where practicable, be provided for a civil partner who is wholly or mainly dependent on the other civil partner.

(3) *Subsection (1) (a)* shall not apply in relation to a shared home in which, following the grant of a decree of dissolution, either of the civil partners concerned, having registered in a new civil partnership or married, ordinarily resides with his or her civil partner or spouse.”

Head 66: Financial compensation orders.

Provide:

“(1) Subject to the provisions of this section, on granting a decree of dissolution or at any time thereafter, the court, on application to it in that behalf by either of the civil partners concerned, may, during the lifetime of the other civil partner or, as the case may be, the civil partner concerned, if it considers—

- (a) that the financial security of the civil partner making the application ("the applicant") can be provided for either wholly or in part by so doing, or
- (b) that the forfeiture, by reason of the decree of dissolution, by the applicant or the member, as the case may be, of the opportunity or possibility of acquiring a benefit (for example, a benefit under a pension scheme) can be compensated for wholly or in part by so doing,

make a financial compensation order, that is to say, an order requiring the other civil partner to do one or more of the following:

- (i) to effect such a policy of life insurance for the benefit of the applicant as may be specified in the order,
- (ii) to assign the whole or a specified part of the interest of the other civil partner in a policy of life insurance effected by that other civil partner or both of the civil partners to the applicant,
- (iii) to make or to continue to make to the person by whom a policy of life insurance is or was issued the payments which that other civil partner or both of the civil partners is or are required to make under the terms of the policy.

(2) (a) The court may make a financial compensation order in addition to or in substitution in whole or in part for orders under **Head 63, 64, 65 or 67** and in deciding whether or not to make such an order it shall have regard to whether proper provision having regard to the circumstances exists or can be made for the civil partner concerned by orders under those sections.

(b) An order under this section shall cease to have effect on the registration in a new civil partnership, marriage or death of the applicant in so far as it relates to the applicant.

(c) The court shall not make an order under this section in favour of a civil partner who has registered in a new civil partnership or married.

(d) An order under **Head 72** in relation to an order under *paragraph (i) or (ii) of subsection (1)* may make such provision (if any) as the court considers appropriate in relation to the disposal of—

- (i) an amount representing any accumulated value of the insurance policy effected pursuant to the order under the said *paragraph (i)*, or
- (ii) the interest or the part of the interest to which the order under the said *paragraph (ii)* relates.

Head 67: Pension adjustment orders.

Provide:

“(1) In this section, save where the context otherwise requires—

"the Act of 1990" means the Pensions Act 1990;

"active member" in relation to a scheme, means a member of the scheme who is in reckonable service;

"actuarial value" means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) under a scheme calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to normal pensionable age and thereafter in accordance with normal life expectancy on the assumption that the member concerned of the scheme, at the effective date of calculation, is in a normal state of health having regard to his or her age;

"approved arrangement", in relation to the trustees of a scheme, means an arrangement whereby the trustees, on behalf of the person for whom the arrangement is made, effect policies or contracts of insurance that are approved of by the Revenue Commissioners with, and make the appropriate payments under the policies or contracts to, one or more undertakings;

"contingent benefit" means a benefit payable under a scheme, other than a payment under *subsection (7)* to or for one or more of the following, that is to say, the surviving civil partner and any dependants of the member civil partner concerned and the personal representative of the member civil partner, if the member civil partner dies while in relevant employment and before attaining any normal pensionable age provided for under the rules of the scheme;

"defined contribution scheme" has the meaning assigned to it by section 2 (1) of the Act of 1990 as amended by the Social Welfare and Pensions Act 2008;

"designated benefit", in relation to a pension adjustment order, means an amount determined by the trustees of the scheme concerned, in accordance with relevant guidelines, and by reference to the period and the percentage of the retirement benefit specified in the order concerned under *subsection (2)*;

"member civil partner", in relation to a scheme, means a civil partner who is a member of the scheme;

"normal pensionable age" means the earliest age at which a member of a scheme is entitled to receive benefits under the rules of the scheme on retirement from relevant employment, disregarding any such rules providing for early retirement on grounds of ill health or otherwise;

"occupational pension scheme" has the meaning assigned to it by section 2 (1) of the Act of 1990;

"reckonable service" means service in relevant employment during membership of any scheme;

"relevant guidelines" means any relevant guidelines for the time being in force under paragraph (c) or (cc) of section 10 (1) of the Act of 1990;

"relevant employment", in relation to a scheme, means any employment (or any period treated as employment) or any period of self-employment to which a scheme applies;

"retirement benefit", in relation to a scheme, means all benefits (other than contingent benefits) payable under the scheme;

"rules", in relation to a scheme, means the provisions of the scheme, by whatever name called;

"scheme" means a pension scheme;

"transfer amount" shall be construed in accordance with *subsection (4)*;

"undertaking" has the meaning assigned to it by the Insurance Act 1989.

(2) Subject to the provisions of this section, where a decree of dissolution ("the decree") has been granted, the court, if it so thinks fit, may, in relation to retirement benefit under a scheme of which one of the civil partners concerned is a member, on application to it in that behalf at the time of the making of the order for the decree or at any time thereafter during the lifetime of the member civil partner by either of the civil partners, make an order providing for the payment, in accordance with the provisions of this section, to the other civil partner and, in the case of the death of that civil partner, his or her personal representative, of a benefit consisting, either, as the court may determine, of the whole, or such part as the court considers appropriate, of that part of the retirement benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme and has accrued at the time of the making of the order for the decree and, for the purpose of determining the benefit, the order shall specify—

- (i) the period of reckonable service of the member civil partner prior to the granting of the decree to be taken into account, and
- (ii) the percentage of the retirement benefit accrued during that period to be paid to the other civil partner.

(3) Subject to the provisions of this section, where a decree of dissolution ("the decree") has been granted, the court, if it so thinks fit, may, in relation to a contingent benefit under a scheme of which one of the civil partners concerned is a member, on application to it in that behalf not more than one year after the making of the order for the decree by either of the civil partners concerned, make an order providing for the payment, upon the death of the member civil partner, to the other civil partner, of either, as the court may determine, the whole, or such part (expressed as a percentage) as the court considers appropriate, of that part of any contingent benefit that is

payable (or which, but for the making of the order for the decree, would have been payable) under the scheme.

(4) Where the court makes an order under *subsection (2)* in favour of a civil partner and payment of the designated benefit concerned has not commenced, the civil partner in whose favour the order is made shall be entitled to the application in accordance with *subsection (5)* of an amount of money from the scheme concerned (in this section referred to as a "transfer amount") equal to the value of the designated benefit, such amount being determined by the trustees of the scheme in accordance with relevant guidelines.

(5) Subject to *subsection (16)*, where the court makes an order under *subsection (2)* in favour of a civil partner and payment of the designated benefit concerned has not commenced, the trustees of the scheme concerned shall, for the purpose of giving effect to the order—

(a) on application to them in that behalf at the time of the making of the order or at any time thereafter by the civil partner in whose favour the order was made ("the civil partner"), and

(b) on the furnishing to them by the civil partner of such information as they may reasonably require,

apply in accordance with relevant guidelines the transfer amount calculated in accordance with those guidelines either—

(i) if the trustees and the civil partner so agree, in providing a benefit for or in respect of the spouse under the scheme aforesaid that is of the same actuarial value as the transfer amount concerned, or

(ii) in making a payment either to—

(I) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or

(II) in the discharge of any payment falling to be made by the trustees under any such other approved arrangement,

as may be determined by the civil partner.

(6) Subject to *subsection (16)*, where the court makes an order under *subsection (2)* in relation to a defined contribution scheme and an application has not been brought under *subsection (5)*, the trustees of the scheme may, for the purpose of giving effect to the order, if they so think fit, apply in accordance with relevant guidelines the transfer amount calculated in accordance with those guidelines, in making a payment to—

(a) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or

(b) in the discharge of any payment falling to be made by the trustees under such other approved arrangement,

as may be determined by the trustees.

(7) Subject to *subsection (16)*, where

(a) the court makes an order under *subsection (2)*, and

(b) the member civil partner concerned dies before payment of the designated benefit concerned has commenced,

the trustees shall, for the purpose of giving effect to the order, within 3 months of the death of the member civil partner, provide for the payment to the person in whose

favour the order was made of an amount that is equal to the transfer amount calculated in accordance with relevant guidelines.

(8) Subject to *subsection (16)*, where

(a) the court makes an order under *subsection (2)*, and

(b) the member civil partner concerned ceases to be a member of the scheme otherwise than on death,

the trustees may, for the purpose of giving effect to the order, if they so think fit, apply, in accordance with relevant guidelines, the transfer amount calculated in accordance with those guidelines either, as the trustees may determine—

(i) if the trustees and the person in whose favour the order is made ("the person") so agree, in providing a benefit for or in respect of the person under the scheme aforesaid that is of the same actuarial value as the transfer amount concerned, or

(ii) in making a payment, either to—

(I) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or

(II) in the discharge of any payment falling to be made under such other approved arrangement,

as may be determined by the trustees.

(9) Subject to *subsection (16)*, where—

(a) the court makes an order under *subsection (2)* in favour of a civil partner ("the civil partner"),

(b) the civil partner dies before the payment of the designated benefit has commenced,

the trustees shall, within 3 months of the death of the civil partner, provide for the payment to the personal representative of the civil partner of an amount equal to the transfer amount calculated in accordance with relevant guidelines.

(10) Subject to *subsection (16)*, where—

(a) the court makes an order under *subsection (2)* in favour of a civil partner ("the civil partner"), and

(b) the civil partner dies after payment of the designated benefit has commenced,

the trustees shall, within 3 months of the death of the civil partner, provide for the payment to the personal representative of the civil partner of an amount equal to the actuarial value, calculated in accordance with relevant guidelines, of the part of the designated benefit which, but for the death of the civil partner, would have been payable to the civil partner during the lifetime of the member civil partner.

(11) Where—

(a) the court makes an order under *subsection (2)* or (3) in relation to an occupational pension scheme, and

(b) the trustees of the scheme concerned have not applied the transfer amount concerned in accordance with *subsection (5), (6), (7), (8) or (9)*, and

(c) after the making of the order, the member civil partner ceases to be an active member of the scheme, the trustees shall, within 12 months of the cessation, notify the registrar or clerk of the court concerned and the other civil partner of the cessation.

(12) Where the trustees of a scheme apply a transfer amount under *subsection (6)* or *(8)*, they shall notify the civil partner (not being the civil partner who is the member civil partner) or other person concerned and the registrar or clerk of the court concerned of the application and shall give to that civil partner or other person concerned particulars of the scheme or undertaking concerned and of the transfer amount.

(13) Where the court makes an order under *subsection (2)* or *(3)* for the payment of a designated benefit or a contingent benefit, as the case may be, the benefit shall be payable or the transfer amount concerned applied out of the resources of the scheme concerned and, unless otherwise provided for in the order or relevant guidelines, shall be payable in accordance with the rules of the scheme or, as the case may be, applied in accordance with relevant guidelines.

(14) Where the court makes an order under *subsection (2)*, the amount of the retirement benefit payable, in accordance with the rules of the scheme concerned to, or to or in respect of, the member civil partner shall be reduced by the amount of the designated benefit payable pursuant to the order.

(15) (a) Where the court makes an order under *subsection (3)*, the amount of the contingent benefit payable, in accordance with the rules of the scheme concerned in respect of the member civil partner shall be reduced by an amount equal to the contingent benefit payable pursuant to the order.
(b) Where the court makes an order under *subsection (2)* and the member civil partner concerned dies before payment of the designated benefit concerned has commenced, the amount of the contingent benefit payable in respect of the member civil partner in accordance with the rules of the scheme concerned shall be reduced by the amount of the payment made under *subsection (7)*.

(16) Where, pursuant to an order under *subsection (2)*, the trustees of a scheme make a payment or apply a transfer amount under *subsection (5), (6), (7), (8), (9) or (10)*, they shall be discharged from any obligation to make any further payment or apply any transfer amount under any other of those subsections in respect of the benefit payable pursuant to the order.

(17) A person who makes an application under *subsection (2)* or *(3)* or an application for an order under **Head 72 (2)** in relation to an order under *subsection (2)* shall give notice thereof to the trustees of the scheme concerned and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by any person to whom notice of the application has been given under this section or **Head 81**.

(18) An order under *subsection (3)* shall cease to have effect on the death, registration in a new civil partnership or marriage of the person in whose favour it was made in so far as it relates to that person.

(19) The court may, in a pension adjustment order or by order made under this subsection after the making of a pension adjustment order, give to the trustees of the

scheme concerned such directions as it considers appropriate for the purposes of the pension adjustment order including directions compliance with which occasions non-compliance with the rules of the scheme concerned or the Act of 1990; and a trustee of a scheme shall not be liable in any court or other tribunal for any loss or damage caused by his or her non-compliance with the rules of the scheme or with the Act of 1990 if the non-compliance was occasioned by his or her compliance with a direction of the court under this subsection.

(20) The registrar or clerk of the court concerned shall cause a copy of a pension adjustment order to be served on the trustees of the scheme concerned.

(21) (a) Any costs incurred by the trustees of a scheme under *subsection (17)* or in complying with a pension adjustment order or a direction under *subsection (19)* or *(24)* shall be borne, as the court may determine, by the member civil partner or by the other person concerned or by both of them in such proportion as the court may determine and, in the absence of such determination, those costs shall be borne by them equally.

(b) Where a person fails to pay an amount in accordance with *paragraph (a)* to the trustees of the scheme concerned, the court may, on application to it in that behalf by the trustees, order that the amount be deducted from the amount of any benefit payable to the person under the scheme or pursuant to an order under *subsection (2)* or *(3)* and be paid to the trustees.

(22) (a) The court shall not make a pension adjustment order in favour of a civil partner who has registered in a new civil partnership or married.

(b) The court may make a pension adjustment order in addition to or in substitution in whole or in part for an order or orders under **Head 63, 64, 65 or 66** and, in deciding whether or not to make a pension adjustment order, the court shall have regard to the question whether proper provision, having regard to the circumstances, exists or can be made for the civil partner concerned by an order or orders under any of those sections.

(23) Section 54 of the Act of 1990 and any regulations under that section shall apply with any necessary modifications to a scheme if proceedings for the grant of a decree of dissolution to which a member civil partner is a party have been instituted and shall continue to apply notwithstanding the grant of a decree of dissolution in the proceedings.

(24) For the purposes of this Act, the court may, of its own motion, and shall, if so requested by either of the civil partners concerned or any other person concerned, direct the trustees of the scheme concerned to provide the civil partners or that other person and the court, within a specified period of time—

(a) with a calculation of the value and the amount, determined in accordance with relevant guidelines, of the retirement benefit, or contingent benefit, concerned that is payable (or which, but for the making of the order for the decree of dissolution concerned, would have been payable) under the scheme and has accrued at the time of the making of that order, and

(b) with a calculation of the amount of the contingent benefit concerned that is payable (or which, but for the making of the order for the decree of dissolution concerned, would have been payable) under the scheme.

(25) An order under this section may restrict to a specified extent or exclude the application of *Head 72* in relation to the order.”

Head 68: Orders for provision for civil partner out of estate of other civil partner.

Provide:

“(1) Subject to the provisions of this section, where one of the civil partners in respect of whom a decree of dissolution has been granted dies, the court, on application to it in that behalf by the other civil partner (“the applicant”) not more than 6 months after representation is first granted under the Act of 1965 in respect of the estate of the deceased civil partner, may by order make such provision for the applicant out of the estate of the deceased civil partner as it considers appropriate having regard to the rights of any other person having an interest in the matter and specifies in the order if it is satisfied that proper provision in the circumstances was not made for the applicant during the lifetime of the deceased civil partner under **Head 63, 64, 65, 66 or 67** for any reason (other than conduct referred to in *subsection (2) (i) of Head 70* of the applicant).

(2) The court shall not make an order under this section in favour of a civil partner who has registered in a new civil partnership or married since the granting of the decree of dissolution concerned.

(3) In considering whether to make an order under this section the court shall have regard to all the circumstances of the case including—

(a) any order under *paragraph(c) of Head 63 (1)* or a property adjustment order in favour of the applicant, and

(b) any devise or bequest made by the deceased civil partner to the applicant.

(4) The provision made for the applicant concerned by an order under this section together with any provision made for the applicant by an order referred to in *subsection (3) (a)* (the value of which for the purposes of this subsection shall be its value on the date of the order) shall not exceed in total the share (if any) of the applicant in the estate of the deceased civil partner to which the applicant was entitled or (if the deceased civil partner died intestate as to the whole or part of his or her estate) would have been entitled under the Act of 1965 as amended by **Head 29** if the civil partnership had not been dissolved.

(5) Notice of an application under this section shall be given by the applicant to the civil partner or spouse (if any) of the deceased civil partner concerned and to such (if any) other persons as the court may direct and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by the civil partner or spouse of the deceased civil partner and any other such persons as aforesaid.

(6) The personal representative of a deceased civil partner in respect of whom a decree of dissolution has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other civil partner concerned and, where an application is made under this section, the personal representative of the deceased civil partner shall not, without the leave of the court,

distribute any of the estate of that civil partner until the court makes or refuses to make an order under this section.

(7) Where the personal representative of a deceased civil partner in respect of whom a decree of dissolution has been granted gives notice of his or her death to the other civil partner concerned ("the civil partner") and—

(a) the civil partner intends to apply to the court for an order under this section,

(b) the civil partner has applied for such an order and the application is pending, or

(c) an order has been made under this section in favour of the civil partner, the civil partner shall, not later than one month after the receipt of the notice, notify the personal representative of such intention, application or order, as the case may be, and, if he or she does not do so, the personal representative shall be at liberty to distribute the assets of the deceased civil partner, or any part thereof, amongst the parties entitled thereto.

(8) The personal representative shall not be liable to the civil partner for the assets or any part thereof so distributed unless, at the time of such distribution, he or she had notice of the intention, application or order aforesaid.

(9) Nothing in *subsection (7) or (8)* shall prejudice the right of the civil partner to follow any such assets into the hands of any person who may have received them.

(10) On granting a decree of dissolution or at any time thereafter, the court, on application to it in that behalf by either of the civil partners concerned, may, during the lifetime of the other civil partner or, as the case may be, the civil partner concerned, if it considers it just to do so, make an order that either or both civil partners shall not, on the death of either of them, be entitled to apply for an order under this section.”

Head 69: Orders for sale of property.

Provide:

“(1) Where the court makes a secured periodical payments order, a lump sum order or a property adjustment order, thereupon, or at any time thereafter, it may make an order directing the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the civil partners concerned has or have a beneficial interest, either in possession or reversion.

(2) The jurisdiction conferred on the court by *subsection (1)* shall not be so exercised as to affect a right to occupy the shared home of the civil partner concerned that is enjoyed by virtue of an order under this Part.

(3) (a) An order under *subsection (1)* may contain such consequential or supplementary provisions as the court considers appropriate.

(b) Without prejudice to the generality of *paragraph (a)*, an order under *subsection (1)* may contain—

(i) a provision specifying the manner of sale and some or all of the conditions applying to the sale of the property to which the order relates,

(ii) a provision requiring any such property to be offered for sale to a person, or a class of persons, specified in the order,

(iii) a provision directing that the order, or a specified part of it, shall not take effect until the occurrence of a specified event or the expiration of a specified period,

(iv) a provision requiring the making of a payment or payments (whether periodical payments or lump sum payments) to a specified person or persons out of the proceeds of the sale of the property to which the order relates, and

(v) a provision specifying the manner in which the proceeds of the sale of the property concerned shall be disposed of between the following persons or such of them as the court considers appropriate, that is to say, the civil partners concerned and any other person having an interest therein.

(4) A provision in an order under *subsection (1)* providing for the making of periodical payments to one of the civil partners concerned out of the proceeds of the sale of property shall, on the death, registration in a new civil partnership or marriage of that civil partner, cease to have effect except as respects payments due on the date of the death, registration in a new civil partnership or marriage.

(5) Where a civil partner has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other civil partner) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or **Head 64 or 65 (1) (a)** in relation to that property or those proceeds, the court shall give to that person an opportunity to make representations with respect to the making of the order and the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the court is required to have regard under **Head 70** in any relevant

proceedings under a provision referred to in that section after the making of those representations.

(6) This section shall not apply in relation to a shared home or a family home in which, following the grant of a decree of dissolution, either of the civil partners concerned, having registered in a new civil partnership or married, ordinarily resides with his or her civil partner or spouse.”

Head 70: Provisions relating to certain orders under Heads 62 to 68 and 72.

Provide:

“(1) In deciding whether to make an order under *Head 62, 63, 64, 65 (1) (a), 66, 67, 68 or 72* and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the civil partners concerned.

(2) Without prejudice to the generality of *subsection (1)*, in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

(a) the income, earning capacity, property and other financial resources which each of the civil partners concerned has or is likely to have in the foreseeable future,

(b) the financial needs, obligations and responsibilities which each of the civil partners has or is likely to have in the foreseeable future (whether in the case of the registration in a new civil partnership or marriage of the civil partner or otherwise),

(c) the standard of living enjoyed by the couple concerned before the proceedings were instituted or before the civil partners commenced to live apart from one another, as the case may be,

(d) the age of each of the civil partners, the duration of their civil partnership and the length of time during which the civil partners lived with one another,

(e) any physical or mental disability of either of the civil partners,

(f) the contributions which each of the civil partners has made or is likely in the foreseeable future to make to the welfare of the couple, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other civil partner and any contribution made by either of them by looking after the home,

(g) the effect on the earning capacity of each of the civil partners of the civil partnership responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a civil partner is impaired by reason of that civil partner having relinquished or foregone the opportunity of remunerative activity in order to look after the home,

(h) any income or benefits to which either of the civil partners is entitled by or under statute,

(i) the conduct of each of the civil partners, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,

(j) the accommodation needs of either of the civil partners,

(k) the value to each of the civil partners of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of dissolution concerned, that civil partner will forfeit the opportunity or possibility of acquiring,

(1) the rights of any person other than the civil partners but including a person to whom either civil partner is registered in a new civil partnership or married or any child to whom either of the civil partners have an obligation of support.

(3) In deciding whether to make an order under a provision referred to in *subsection (1)* and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the civil partners and is still in force.

(4) The court shall not make an order under a provision referred to in subsection (1) unless it would be in the interests of justice to do so.”

Head 71: Retrospective periodical payments orders.

Provide:

“(1) Where, having regard to all the circumstances of the case, the court considers it appropriate to do so, it may, in a periodical payments order, direct that—

(a) the period in respect of which payments under the order shall be made shall begin on such date before the date of the order, not being earlier than the time of the institution of the proceedings concerned for the grant of a decree of dissolution, as may be specified in the order,

(b) any payments under the order in respect of a period before the date of the order be paid in one sum and before a specified date, and

(c) there be deducted from any payments referred to in *paragraph (b)* made to the civil partner concerned an amount equal to the amount of such (if any) payments made to that civil partner by the other civil partner as the court may determine, being payments made during the period between the making of the order for the grant of the decree aforesaid and the institution of the proceedings aforesaid.

(2) The jurisdiction conferred on the court by *subsection (1) (b)* is without prejudice to the generality of **Head 63 (1) (c)**.”

Head 72: Variation, etc., of certain orders under this Part.

Provide:

“(1) This section applies to the following orders:

- (a) a maintenance pending suit order,
- (b) a periodical payments order,
- (c) a secured periodical payments order,
- (d) a lump sum order if and in so far as it provides for the payment of the lump sum concerned by instalments or requires the payment of any such instalments to be secured,
- (e) an order under *paragraph (b), (c) or (d) of Head 64 (1)* in so far as such application is not restricted or excluded pursuant to *Head 64 (2)*,
- (f) an order under *subparagraph (i) or (ii) of Head 65 (1) (a)*,
- (g) a financial compensation order,
- (h) an order under *Head 67 (2)* insofar as such application is not restricted or excluded pursuant to *Head 67 (26)*,
- (i) an order under this section.

(2) Subject to the provisions of this section and *Head 70* and to any restriction or exclusion pursuant to *Head 64 (2) or 67 (26)* and without prejudice to *Head 66 (2) (d)*, the court may, on application to it in that behalf—

- (a) by either of the civil partners concerned,
- (b) in the case of the death of either of the civil partners, by any other person who has, in the opinion of the court, a sufficient interest in the matter, or
- (c) in the case of the registration in a new civil partnership or the marriage of either of the civil partners, by his or her civil partner or spouse,

if it considers it proper to do so having regard to any change in the circumstances of the case and to any new evidence, by order vary or discharge an order to which this section applies, suspend any provision of such an order or any provision of such an order temporarily, revive the operation of such an order or provision so suspended, further vary an order previously varied under this section or further suspend or revive the operation of an order or provision previously suspended or revived under this section; and, without prejudice to the generality of the foregoing, an order under this section may require the divesting of any property vested in a person under or by virtue of an order to which this section applies.

(4) The power of the court under *subsection (2)* to make an order varying, discharging or suspending an order referred to in *subsection (1) (e)* shall be subject to any restriction or exclusion specified in that order and shall (subject to the limitation aforesaid) be a power—

- (a) to vary the settlement to which the order relates in any person's favour or to extinguish or reduce any person's interest under that settlement, and
- (b) to make such supplemental provision (including a further property adjustment order or a lump sum order) as the court thinks appropriate in consequence of any variation, extinguishment or reduction made pursuant to *paragraph (a)*,

and *Head 69* shall apply to a case where the court makes such an order as aforesaid under *subsection (2)* as it applies to a case where the court makes a property adjustment order with any necessary modifications.

(5) The court shall not make an order under *subsection (2)* in relation to an order referred to in *subsection (1) (e)* unless it appears to it that the order will not prejudice the interests of any person who—

(a) has acquired any right or interest in consequence of the order referred to in *subsection (1) (e)*, and

(b) is not a party to the civil partnership concerned.

(6) This section shall apply, with any necessary modifications, to instruments executed pursuant to orders to which this section applies as it applies to those orders.

(7) Where the court makes an order under *subsection (2)* in relation to a property adjustment order relating to land, a copy of the order under *subsection (2)* certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69 (1) (h) of the Registration of Title Act 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

Head 73: Method of making payments under certain orders.

Provide:

“(1) The court may by order provide that a payment under an order to which this section applies shall be made by such method as is specified in the order and be subject to such terms and conditions as it considers appropriate and so specifies.

(2) This section applies to an order under

(a) *Head 98 or Head 100,*

(b) *Head 62, 63, 69 or 72.*

Head 74: Stay on certain orders the subject of appeal.

Provide:

“Where an appeal is brought from an order under—

(*a*) **Head 98** or **Head 100**,

(*b*) **Head 62**, paragraph (*a*) or (*b*) of **Head 63 (1)** or paragraph (*a*), (*b*) or (*c*)
of **Head 72 (1)**,

the operation of the order shall not be stayed unless the court that made the order or to which the appeal is brought directs otherwise.”

Head 75: Transmission of periodical payments through District Court clerk.

Provide that

“Notwithstanding anything in this Part, *Head 103* shall apply in relation to an order ("the relevant order"), being a maintenance pending suit order, a periodical payments order or a secured periodical payments order or any such order as aforesaid as affected by an order under *Head 72*, with the modifications that—

(*a*) the reference in subsection (4) of *Head 103* to the maintenance creditor shall be construed as a reference to the person to whom payments under the relevant order concerned are required to be made,

(*b*) the other references in *Head 103* to the maintenance creditor shall be construed as references to the person on whose application the relevant order was made, and

(*c*) the reference in subsection (3) of *Head 103* to the maintenance debtor shall be construed as a reference to the person to whom payments under the relevant order are required by that order to be made,

and with any other necessary modifications.”

Head 76: Application of maintenance pending suit and periodical payment orders to certain members of Defence Forces.

Provide that:

“The reference in section 98 (1) (*h*) of the Defence Act 1954, to an order for payment of alimony shall be construed as including a reference to any maintenance pending suit order, periodical payments order or secured periodical payments order made under this Part.”

Head 77: Amendment of Enforcement of Court Orders Act 1940

Provide that:

“The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act 1940, to an order shall be construed as including references to a *maintenance order*, a *variation order*, an *interim order*, a maintenance pending suit order and a periodical payments order made under this Part.”

Chapter 4: MISCELLANEOUS

Head 78: Powers of court in relation to transactions intended to prevent or reduce relief.

Provide:

“(1) In this section—

"disposition" means any disposition of property howsoever made other than a disposition made by a will or codicil;

"relief" means the financial or other material benefits conferred by an order under **Head 62, 63 or 64, paragraphs (a) or (b) of Head 65 (1), or Head 66, 67, 68 or 72** (other than an order affecting an order referred to in **subsection (1) (e)** thereof) and references to defeating a claim for relief are references to—

(a) preventing relief being granted to the person concerned,

(b) limiting the relief granted, or

(c) frustrating or impeding the enforcement of an order granting relief,

"reviewable disposition", in relation to proceedings for the grant of relief brought by a civil partner, means a disposition made by the other civil partner concerned or any other person but does not include such a disposition made for valuable consideration (other than registration in a civil partnership or marriage) to a person who, at the time of the disposition, acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief.

(2) (a) The court, on the application of a person ("the applicant") who has instituted proceedings that have not been determined for the grant of relief, may—

(i) if it is satisfied that the other civil partner concerned or any other person, with the intention of defeating the claim for relief, proposes to make any disposition of or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for the purpose of restraining that other civil partner or other person from so doing or otherwise for protecting the claim,

(ii) if it is satisfied that that other civil partner or other person has, with that intention, made a reviewable disposition and that, if the disposition were set aside, relief or different relief would be granted to the applicant, make an order setting aside the disposition.

(b) Where relief has been granted by the court and the court is satisfied that the other civil partner concerned or another person has, with the intention aforesaid, made a reviewable disposition, it may make an order setting aside the disposition.

(c) An application under *paragraph (a)* shall be made in the proceedings for the grant of the relief concerned.

(3) Where the court makes an order under *paragraph (a) or (b) of subsection (2)*, it shall include in the order such provisions (if any) as it considers necessary for its implementation (including provisions requiring the making of any payments or the disposal of any property).

(4) Where an application is made under *subsection (2)* with respect to a disposition that took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property that the other civil partner concerned or any other person proposes to make and the court is satisfied—

(*a*) in case the application is for an order under *subsection (2)(a)(i)*, that the disposition or other dealing concerned would (apart from this section) have the consequence, or

(*b*) in case the application is for an order under *paragraph (a)(ii)* or (*b*) of *subsection (2)*, that the disposition has had the consequence,

of defeating the applicant's claim for relief, it shall be presumed, unless the contrary is shown, that that other civil partner or other person disposed of or otherwise dealt with the property concerned, or, as the case may be, proposes to do so, with the intention of defeating the applicant's claim for relief.”

Head 79: Jurisdiction of courts and venue.

Provide:

“ (1) Subject to the provisions of this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Part and shall, in relation to that jurisdiction, be known as the Circuit Civil Partnership Court.

(2) Where the rateable valuation of any land to which proceedings in the Circuit Civil Partnership Court under this Part relate exceeds [£200], that Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(3) The jurisdiction conferred on the Circuit Civil Partnership Court by this Part may be exercised by the judge of the circuit in which any of the parties to the proceedings ordinarily resides or carries on any business, profession or occupation.

(4) The Circuit Civil Partnership Court may, for the purposes of *subsection (2)* in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, [£200].

(5) **Head 90** shall apply to proceedings under this Part in the Circuit Civil Partnership Court and **Heads 91 to 94** shall apply to proceedings under this Part in that Court and in the High Court.

(6) In proceedings under **Head 63, 64, 65 (1) (a), 66, 67, 68 or 72** each of the civil partners concerned shall give to the other civil partner such particulars of his or her property and income as may reasonably be required for the purposes of the proceedings.

(7) Where a person fails or refuses to comply with *subsection (6)*, the court on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.”

Head 80: Exercise of jurisdiction by court in relation to dissolution.

Provide:

“(1) The court may grant a decree of dissolution if, but only if, one of the following requirements is satisfied—

(a) either of the civil partners concerned was domiciled in the State on the date of the institution of the proceedings concerned,

(b) either of the civil partners was ordinarily resident in the State throughout the period of one year ending on that date.

(2) Where proceedings are pending in a court in respect of an application for the grant of a decree of dissolution or in respect of an appeal from the determination of such an application and the court has or had, by virtue of *subsection (1)*, jurisdiction to determine the application, the court shall, notwithstanding **Head 89 (4) or Head 54**, as the case may be, have jurisdiction to determine an application for the grant of a decree of judicial separation or a decree of nullity in respect of the civil partnership concerned.

(3) Where proceedings are pending in a court in respect of an application for the grant of a decree of nullity or in respect of an appeal from the determination of such an application and the court has or had, by virtue of **Head 54**, jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of dissolution in respect of the civil partnership concerned.

(4) Where proceedings are pending in a court in respect of an application for the grant of a decree of judicial separation or in respect of an appeal from the determination of such an application and the court has or had, by virtue of **Head 89 (4)**, jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of dissolution in respect of the civil partnership concerned.”

Head 81: Notice of proceedings under Act.

Provide:

“Notice of any proceedings under this Act shall be given by the person bringing the proceedings to—

(*a*) the other civil partner concerned or, as the case may be, the civil partners concerned, and

(*b*) any other person specified by the court.”

Head 82: Cost of mediation and counselling services.

Provide:

“The cost of any mediation services or counselling services provided for a civil partner who is or becomes a party to proceedings under this Act shall be in the discretion of the court concerned.”

Part 6: Application of certain other matters to civil partners

Chapter 1: Amendment of other legislation

Head 83: Amendment of Criminal Damage Act 1991.

Provide for amendment of the Criminal Damage Act 1991 (as amended by the Family Law (Divorce) Act 1996), as follows:

By the insertion after section 1 (3) of a new subsection (3A):

“(3A) Where, as respects an offence under *section 2, 3 (a) or 4 (a)*—

(a) the property concerned is a shared home within the meaning of **Part 3, Chapter 4** of the Civil Partnership Act [2008], or a dwelling, within the meaning of **Head 34 (2)** of the Civil Partnership Act [2008], in which a person, who is a party to a civil partnership that has been dissolved under the Civil Partnership Act [2008], ordinarily resided with his or her former civil partner, before the dissolution,

and

(b) the person charged—

(i) is the civil partner of a person who resides, or is entitled to reside, in the home or is a party to a civil partnership that has been dissolved under the Civil Partnership Act [2008], and

(ii) is the subject of a protection order or barring order or is excluded from the home pursuant to an order under the Domestic Violence Act 1996 as amended by **Head 31** of the Civil Partnership Act [2008], or any other order of a court,

sections 2, 3 (a) and 4 (a) shall have effect as if the references therein to any property belonging to another, however expressed, were references to the home.”

Head 84: Amendment of Employment Equality Act 1998

Provide for amendment of the Employment Equality Act 1998 as follows:

By the amendment of Section 2 (1)

(1) by the insertion after the definition of “the Authority” of –

“ ‘civil status’ means being single, married, separated, divorced, widowed, registered in a civil partnership within the meaning of the Civil Partnership [Act 2008] or a party to a civil partnership which has been dissolved;” and

(1) by the deletion of

“ ‘marital status’ means being single, married, separated, divorced or widowed;” and

(3) by the amendment of the definition of “member of the family” to insert “or civil partner” after “spouse” at paragraphs (a) and (b).

And the Act by the replacement throughout of “civil status” for “marital status”, wherever it occurs.

Head 85: Amendment of Equal Status Act 2000.

Provide for amendment of the Equal Status Act 2000 as follows:

By the amendment of Section 2 (1)

(1) by the insertion after the definition of “Authority” of –

“ ‘civil status’ means being single, married, separated, divorced, widowed, registered in a civil partnership within the meaning of the Civil Partnership [Act 2008] or a party to a civil partnership which has been dissolved;”

(2) by the deletion of

“ ‘marital status’ means being single, married, separated, divorced or widowed;”

(3) by the amendment of the definition of “near relative” by the insertion after “spouse, ” of “civil partner, ”.

And the Act by the replacement throughout of “civil status” for “marital status”, wherever it occurs.

Head 86: Amendment of Powers of Attorney Act 1996

Provide for amendment of the Powers of Attorney Act 1996 (as amended by the Family Law (Divorce) Act 1996), as follows:

- (1) By amending section 5 as follows:
 - a. By the insertion in section 5(4)(b) after the word “spouse,” of “civil partner,”;
 - b. By the insertion of a new subsection (7A) as follows:

“(7A) An enduring power in favour of a civil partner shall, unless the power provides otherwise, be invalidated or, as the case may be, cease to be in force if subsequently—

 - (a) the civil partnership is either annulled or dissolved under the law of the State,
 - (b) a decree of judicial separation is granted to either civil partner by a court in the State,
 - (c) a written agreement to separate is entered into between the civil partners, or
 - (d) a protection order, interim barring order, barring order or safety order is made against the attorney on the application of the donor, or vice versa.”;
- (2) By the insertion in section 6 (7)(b)(iii)(II) after the word “spouse,” of “civil partner,”;
- (3) By the insertion after paragraph 2A (inserted by the Family Law (Divorce) Act 1996) of Part I of the Second Schedule of a new paragraph 2B as follows:

“2B. The expiry of an enduring power of attorney effected in the circumstances mentioned in section 5 (7A) shall apply only so far as it relates to an attorney who is the civil partner of the donor.”;
- (4) By the insertion after paragraph 3 of Part II of the Second Schedule of a new paragraph 4 as follows:

“4. The expiry of an enduring power of attorney effected in the circumstances mentioned in *section 5 (7A)* shall apply only so far as it relates to an attorney who is the civil partner of the donor.”.

Head 87: Amendment of Pensions Act 1996

Provide for amendment of the Pensions Act 1990 (as amended by the Pensions (Amendment) Act 1996 and the Family Law (Divorce) Act 1996), as follows:

“(1) subsection (4) (inserted by the Pensions (Amendment) Act 1996) of section 5 shall apply and have effect in relation to **Head 67** as it applies and has effect by virtue of section 47 of the Family Law (Divorce) Act 1996 in relation to section 17 of that Act, with the modifications that—

- (a) the reference to section 12 of the Family Law Act 1995 or section 17 of the Family Law (Divorce) Act 1996 shall be construed as a reference to **Head 67**,
- (b) the reference in paragraph (c) to the Family Law Act 1995 or the Family Law (Divorce) Act 1996, shall be construed as a reference to the Civil Partnership Act [2008],
- (c) the references to subsections (1), (2), (3), (5), (6), (7), (8), (10) and (25) of section 17 of the Family Law (Divorce) Act 1996 shall be construed as references to *subsections (1), (2), (3), (5), (6), (7), (8), (10) and (24)* of **Head 67**, and
- (d) the reference to section 2 of the Family Law (Divorce) Act 1996 shall be construed as a reference **Head 56**,

and

(2) in section 10 (1), by the substitution for paragraph (cc) (inserted by the Pensions (Amendment) Act 1996) of the following paragraph:

"(cc) to issue guidelines or guidance notes generally on the operation of this Act and on the provisions of the Family Law Act 1995, the Family Law (Divorce) Act 1996, and the Civil Partnership Act [2008] relating to pension schemes (within the meaning of section 2 of the Family Law Act 1995, *section 2* of the Family Law (Divorce) Act 1996, and **Head 56**);".

Chapter 2: Court Jurisdiction

Head 88: Definitions

Provide that:

“In this Part "civil partnership law proceedings", in relation to a court, means proceedings before a court of competent jurisdiction under—

- (a) this Act, with the exception of **Part 7**, or
- (b) the Domestic Violence Act 1996, as amended by **Head 31**, or
- (c) between civil partners under the Partition Act 1868, and the Partition Act 1876, where the fact that they are civil partners of each other is of relevance to the proceedings.

Head 89: Courts, jurisdiction and venue

Provide that:

“(1) The Circuit Court shall be known as "the Circuit Civil Partnership Court" when exercising its jurisdiction to hear and determine civil partnership law proceedings or, where provided for, when transferring civil partnership law proceedings to the High Court.

(2) Subject to the other provisions of this section, the Circuit Civil Partnership Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Act for a decree of judicial separation.

(3) Where in proceedings under this Act for a decree of judicial separation an order could be made in respect of land whose rateable valuation exceeds [£200] and an application commencing those proceedings is made to the Circuit Civil Partnership Court, that Court shall, if the respondent so requires before the hearing thereof, transfer those proceedings to the High Court, but any order made (including an interim order) or act done in the course of those proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

(4) The jurisdiction referred to in *subsection (2)* of this section shall only be exercisable where either of the civil partners is domiciled in the State on the date of the application commencing proceedings or is ordinarily resident in the State throughout the period of one year ending on that date.

(5) The jurisdiction referred to in *subsection (2)* of this section shall, in the Circuit Civil Partnership Court, be exercised by the judge of the circuit where either civil partner to the proceedings ordinarily resides or carries on any profession, business or occupation.”

Head 90: Hearing of proceedings

Provide that:

“The Circuit Civil Partnership Court shall sit to hear and determine proceedings instituted under this Act and under the Acts and proceedings referred to in *Head 88* of this Act in a different place or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held.”

Head 91: Conduct of Civil Partnership proceedings in Circuit and High Courts

Provide that:

“(1) Circuit Civil Partnership Court proceedings shall be as informal as is practicable and consistent with the administration of justice.

(2) Neither judges sitting in the Circuit Civil Partnership Court nor barristers nor solicitors appearing in such courts shall wear wigs or gowns.

(3) Civil Partnership law proceedings before the High Court shall be as informal as is practicable and consistent with the administration of justice.

(4) In hearing and determining such proceedings as are referred to in *subsection (3)* of this section neither judges sitting in the High Court nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns.”

Head 92: Privacy

Provide that:

“Proceedings referred to in *Head 88* shall be heard otherwise than in public.”

Head 93: Costs

Provide that:

“The costs of any proceedings referred to in *Head 88* shall be at the discretion of the court.”

Head 94: Rules of Court

Provide that:

“(1) Rules of court shall provide for the documentation required for the commencement of proceedings referred to in *Head 88* in a summary manner.

(2) The rules of court, and any established form or course of pleading, practice or procedure, for the purposes of any proceedings referred to in *Head 88* shall, pending the due making of rules of court, apply for such purposes with such adaptations as may be necessary.”

Head 95: Conduct of District Court Civil Partnership Proceedings

Provide that:

“(1) Proceedings before the District Court under *Head 88* shall be as informal as is practicable and consistent with the administration of justice.

(2) Neither district justices hearing and determining such proceedings as are referred to in *subsection (1)* of this section nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns.”

Chapter 3: Maintenance of civil partner

Head 96: Interpretation

Provide that:

“In this Chapter, save where the context otherwise requires—

"antecedent order" means—

(a) a maintenance order,

(b) a variation order,

(c) an interim order,

(d) an order under **Head 101** (in so far as it is deemed under that section to be a maintenance order),

(e) an order for maintenance pending suit under **Head 62**, or a periodical payments order under **Part 5**,

"attachment of earnings order" means an order under **Head 104**,

"Court" shall be construed in accordance with **Head 116**,

"desertion" includes conduct on the part of one civil partner that results in the other civil partner, with just cause, leaving and living separately and apart from him or her, and cognate words shall be construed accordingly;

"earnings" means any sums payable to a person—

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);

(b) by way of pension or other like benefit in respect of employment (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment);

"interim order" means an order under **Head 100**;

"maintenance creditor", in relation to an order under this Act, or to proceedings arising out of such an order, means a person on whose application there has been made such an order;

"maintenance debtor", in relation to an attachment of earnings order, or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means the spouse by whom payments are required by the relevant antecedent order to be made and, in relation to any other order under this Act or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means a spouse who is or, if it were made, would be required by such an order to make periodical payments for the support of persons named in the order;

"maintenance order" means an order under *Head 98*;

"normal deduction rate" and "protected earnings rate" have the meanings respectively assigned to them by *Head 104*;

"variation order" means an order under *Head 99* varying a maintenance order.

(2) Subject to *Head 110*, the relationship of employer and employee shall be regarded as subsisting between two persons if one of them as a principal and not as a servant or agent pays earnings to the other.

(3) References in this Part to a District Court clerk, include references to his or her successor in the office of District Court clerk and to any person acting on his or her behalf.

(4) References in this Part to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Part.”

Head 97: Commencement of periodical payments

Provide that:

“A periodical payment under an order under this Part shall commence on the date that is specified in the order being a date which may be before or after the date on which the order is made but which shall not be earlier than the date of the application for the order.”

Head 98: Maintenance order

Provide that:

“(1) Subject to subsection (3) of this section, where it appears to the Court, on application to it by a civil partner, that the other civil partner has failed to provide such maintenance for the applicant civil partner as is proper in the circumstances, the Court may make an order (in this Part referred to as a maintenance order) that the other civil partner make to the applicant civil partner periodical payments, for the support of the applicant civil partner, for such period during the lifetime of the applicant civil partner, of such amount and at such times, as the Court may consider proper.

(2) The Court shall not make a maintenance order for the support of a civil partner where the civil partner has deserted and continues to desert the other civil partner unless, having regard to all the circumstances (including the conduct of the other civil partner) the Court is of the opinion that it would be repugnant to justice not to make a maintenance order.

(3) The Court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of the civil partners, including income or benefits to which either civil partner is entitled by or under statute, and

(b) the financial and other responsibilities of –

(i) the civil partners towards each other, and

(ii) each civil partner as a parent towards any dependent children, and the needs of any such children, including the need for care and attention, and

(c) the conduct of each of the civil partners, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it.”

Head 99: Discharge, variation and termination of maintenance order

Provide that:

“(1) The Court may—

(a) discharge a maintenance order at any time after one year from the making thereof, on the application of the maintenance debtor, where it appears to the Court that, having regard to the maintenance debtor's record of payments pursuant to the order and to the other circumstances of the case, the person for whose support it provides will not be prejudiced by the discharge thereof, or

(b) discharge or vary a maintenance order at any time, on the application of either party, if it thinks it proper to do so having regard to any circumstances not existing when the order was made (including the conduct of each of the civil partners, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it), or, if it has been varied, when it was last varied, or to any evidence not available to that party when the maintenance order was made or, if it has been varied, when it was last varied.

(2) Notwithstanding anything contained in subsection (1) of this section, the Court shall, on application to it under that subsection, discharge that part of a maintenance order which provides for the support of a maintenance creditor where it appears to it that the maintenance creditor, being the civil partner of the maintenance debtor, has deserted and continues to desert the maintenance debtor unless, having regard to all the circumstances (including the conduct of the other civil partner) the Court is of the opinion that it would be repugnant to justice to do so.”

Head 100: Interim order

Provide that:

“On an application to the Court for a maintenance order, the Court, before deciding whether to make or refuse to make the order, may, if it appears to the Court proper to do so having regard to the needs of the person for whose support the maintenance order is sought and the other circumstances of the case, make an order (in this Part referred to as an interim order) for the payment to the applicant by the maintenance debtor, for a definite period specified in the order or until the application is adjudicated upon by the Court, of such periodical sum as, in the opinion of the Court, is proper.”

Head 101: Orders in respect of certain agreements between civil partners

Provide that:

“Where—

- (a) the parties to a civil partnership enter into an agreement in writing (including a separation agreement) that includes either or both of the following provisions, that is to say—
 - (i) a provision whereby one civil partner undertakes to make periodical payments towards the maintenance of the other civil partner,
 - (ii) a provision governing the rights and liabilities of the civil partners towards one another in respect of the making or securing of payments (other than payments specified in paragraph (a) (i) of this section), or the disposition or use of any property, and
- (b) an application is made by one or both of the civil partners to the High Court or the Circuit Court for an order making the agreement a rule of court,

the Court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of both civil partner, and such order shall, in so far as it relates to a provision specified in paragraph (a) (i) of this section, be deemed, for the purpose of *Head 103* and *Chapter 4* of this Part, to be a maintenance order.”

Head 102: Preservation of pension entitlements in separation agreements

Provide that:

“(1) Subject to the provisions of this section, on an application to the High Court or the Circuit Court under **Head 101**, the Court may, on application to it in that behalf by either of the civil partners concerned, make an order directing the trustees of a pension scheme of which either or both of the civil partners are members, not to regard the separation of the civil partners by agreement as a ground for disqualifying either of them for the receipt of a benefit under the scheme a condition for the receipt of which is that the civil partners should be residing together at the time when the benefit becomes payable.

(2) Notice of an application under subsection (1) shall be given by the civil partners concerned to the trustees of the pension scheme concerned and, in deciding whether to make an order under subsection (1), the Court shall have regard to any order made, or proposed to be made, by it in relation to the application by the civil partner or civil partners concerned under **Head 101** and any representations made by those trustees in relation to the matter.

(3) Any costs incurred by the trustees of a pension scheme under subsection (2) or in complying with an order under subsection (1) shall be borne, as the court may determine, by either of the civil partners concerned or by both of the civil partners and in such proportions and such manner as the Court may determine.

(4) In this section 'pension scheme' has the meaning assigned to it by **Part 5** of this Act.”

Head 103: Transmission of payments through District Court clerk

Provide that:

“(1) Where the Court makes a maintenance order, a variation order or an interim order under this Part, the Court shall—

(a) thereupon direct that payments under the order shall be made to the District Court clerk, unless the maintenance creditor requests it not to do so and the Court considers that it would be proper not to do so, and

(b) in a case in which the Court has not given a direction under paragraph (a) of this subsection, direct, at any time thereafter on the application of the maintenance creditor, that the payments aforesaid shall be made to the District Court clerk.

(2) Where payments to the District Court clerk under this section are in arrear, the District Court clerk shall, if the maintenance creditor so requests in writing, take such steps as he considers reasonable in the circumstances to recover the sums in arrear whether by proceeding in his own name for an attachment of earnings order or otherwise.

(3) Where a direction has been given under subsection (1) of this section, the Court, on the application of the maintenance debtor and having afforded the maintenance creditor an opportunity to oppose the application, may, if it is satisfied that, having regard to the record of the payments made to the District Court clerk and all the other circumstances, it would be proper to do so, discharge the direction.

(4) The District Court clerk shall transmit any payments made to him by virtue of this section to the maintenance creditor.

(5) Nothing in this section shall affect any right of a person to take proceedings in his own name for the recovery of any sum payable, but not paid, to the District Court clerk by virtue of this section.

(6) References in this section, in relation to any proceedings, to the District Court clerk are references to such District Court clerk in such District Court district as may be determined from time to time by the Court concerned.”

Chapter 4: Attachment of Earnings

Head 104: Attachment of Earnings order

Provide that:

“(1) (*a*) On application—

(i) to the High Court by a person on whose application the High Court has made an antecedent order,

(ii) to the Circuit Court by a Person on whose application the Circuit Court has made an antecedent order,

(iii) to the District Court—

(I) by a person on whose application the District Court has made an antecedent order, or

(II) by a District Court clerk to whom payments under an antecedent order are required to be made,

the Court to which the application is made (subsequently referred to in this section as "the Court") may, to secure payments under the antecedent order, if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid, make an attachment of earnings order.

(*b*) References in this subsection to an antecedent order made by any Court include references to such an order made, varied or affirmed on appeal from that Court.

(1A) (*a*) Where a court has made an antecedent order, it shall in the same proceedings, subject to subsection (3), make an attachment of earnings order in order to secure payments under the antecedent order if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid.

(*b*) References in this subsection to an antecedent order made by a court include references to such an order made, varied or affirmed on appeal from that court.

(2) An attachment of earnings order shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the maintenance debtor in his employment or is a trustee (within the meaning of **Head 67**) of a pension scheme (within the meaning aforesaid) under which the maintenance debtor is receiving periodical pension benefits and shall operate as a direction to that person to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate, having regard to the normal deduction rate and the protected earnings rate, from the maintenance debtor's earnings and to pay the amounts deducted, at such times as the Court may order—

(*a*) in case the relevant antecedent order is an enforceable maintenance order, to the District Court clerk specified by the attachment of earnings order for transmission to the person entitled to receive payments made under the relevant antecedent order,

(*b*) in any other case, to the person referred to in paragraph (*a*) of this subsection or, if the Court considers proper, to the District Court clerk specified by the attachment of earnings order for transmission to that person.

(3) (*a*) Before deciding whether to make or refuse to make an attachment of earnings order, the court shall give the maintenance debtor concerned an opportunity to make the representations specified in paragraph (*b*) in relation to the matter and shall have regard to any such representations made by the maintenance debtor.

(*b*) The representations referred to in paragraph (*a*) are representations relating to the questions—

(i) whether the spouse concerned is a person to whom such earnings as aforesaid fall to be paid, and

(ii) whether he or she would make the payments to which the relevant order relates.

(4) An attachment of earnings order shall—

(*a*) specify the normal deduction rate, that is to say, the rate at which the Court considers it reasonable that the earnings to which the order relates should be applied in satisfying the relevant antecedent order, not exceeding the rate appearing to the Court to be necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the relevant antecedent order, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the relevant antecedent order and any costs incurred in proceedings relating to the relevant antecedent order which are payable by the maintenance debtor,

(*b*) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the maintenance debtor, the Court considers it proper that the relevant earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

(*c*) contain so far as they are known to the Court such particulars as it considers appropriate for the purpose of enabling the maintenance debtor to be identified by the person to whom the order is directed.

(5) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the relevant antecedent order that have not been made and that, but for the attachment of earnings order, would fall to be made under the relevant antecedent order.”

Head 105: Compliance with attachment of earnings order.

Provide that:

“(1) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall, if it has been served upon him, comply with it; but he shall be under no liability for non-compliance therewith before ten days have elapsed since the service.

(2) Where an attachment of earnings order is served on any person and the maintenance debtor is not in his employment or the maintenance debtor subsequently ceases to be in his employment, that person shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the Court.

(3) On any occasion when a person makes, in compliance with an attachment of earnings order, a deduction from a maintenance debtor's earnings, he shall give to the maintenance debtor a statement in writing of the total amount of the deduction.

(4) Such court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the maintenance debtor concerned of whom the registrar or clerk so specified becomes aware and such service may be effected by leaving the order or a copy of the order at, or sending the order or a copy of the order by registered prepaid post to, the residence or place of business in the State of the person to be served.”

Head 106: Application of sums received by District Court clerk.

Provide that:

“Any payments made to a District Court clerk under an attachment of earnings order shall, when transmitted by him to the person entitled to receive those payments, be deemed to be payments made by the maintenance debtor so as to discharge—

- (*a*) firstly, any sums payable under the relevant antecedent order, and
- (*b*) secondly, any costs in proceedings relating to the relevant antecedent order payable by the maintenance debtor when the attachment of earnings order was made or last varied.”

Head 107: Statement as to earnings.

Provide that:

“(1) In relation to an attachment of earnings order or an application for such an order, the Court that made the order or to which the application is made may, before or at the hearing or while the order is in force—

(a) order the maintenance debtor to give to the Court, within a specified period, a statement in writing signed by him of—

(i) the name and address of any person by whom earnings are paid to him,

(ii) specified particulars as to his earnings and expected earnings and as to his resources and needs, and

(iii) specified particulars for enabling the maintenance debtor to be identified by any employer of his,

(b) order any person appearing to the Court to have the maintenance debtor in his employment to give to the Court, within a specified period, a statement signed by that person, or on his behalf, of specified particulars of the maintenance debtor's earnings and expected earnings.

(2) Notice of an application for an attachment of earnings order served on a maintenance debtor may include a requirement that he shall give to the Court, within the period and in the manner specified in the notice, a statement in writing of the matters referred to in subsection (1) (a) of this section and of any other matters which are or may be relevant to the determination of the normal deduction rate and the protected earnings rate to be specified in the order.

(3) In any proceedings in relation to an attachment of earnings order, a statement given to the Court in compliance with an order under paragraph (a) or (b) of subsection (1) of this section or with a requirement under subsection (2) of this section shall be admissible as evidence of the facts stated therein, and a document purporting to be such a statement shall be deemed, unless the contrary is shown, to be a statement so given.”

Head 108: Notification of changes of employment and earnings.

Provide that:

“Where an attachment of earnings order is in force:

(*a*) the maintenance debtor shall notify in writing the Court that made the order of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than ten days from the date on which he does so,

(*b*) the maintenance debtor shall, on any occasion on which he becomes employed or re-employed, include in his notification under paragraph (*a*) of this section particulars of his earnings and expected earnings from the relevant employment,

(*c*) any person who becomes an employer of the maintenance debtor and knows that the order is in force and by what Court it was made shall, within ten days of his becoming the maintenance debtor's employer or of acquiring that knowledge (whichever is the later), notify that Court in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and expected earnings.”

Head 109: Power to determine whether particular payments are earnings.

Provide that:

“(1) Where an attachment of earnings order is in force, the Court that made the order shall, on the application of the employer concerned or the maintenance debtor or the person to whom payments are being made under the order, determine whether payments (or any portions thereof) to the maintenance debtor of a particular class or description specified by the application are earnings for the purpose of the order, and the employer shall give effect to any determination for the time being in force under this section.

(2) Where an application under this section is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments (or any portions thereof) of the class or description specified by the application which are made by him to the maintenance debtor while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the Court otherwise orders, apply as respects such payments (or any portions thereof) if the employer subsequently withdraws the application or as the case may be, abandons the appeal.”

Head 110: Persons in service of State, local authority etc.

Provide that:

“(1) Where a maintenance debtor is in the service of the State, a local authority for the purposes of the Local Government Act 1941, a harbour authority within the meaning of the Harbours Act 1946, the Health Service Executive, a vocational education committee established by the Vocational Education Act 1930, or a committee of agriculture established by the Agriculture Act 1931, or is a member of either House of the Oireachtas—

(*a*) in a case where a maintenance debtor in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State by whom the department, office, organisation, service, undertaking or other body is administered may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,

(*b*) in a case where a maintenance debtor is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,

(*c*) in any other case, where a maintenance debtor is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary of the Department of Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment, and

(*d*) any earnings of a maintenance debtor paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in paragraph (*a*) or (*b*), as the case may be, of this subsection, the Secretary of the Department of Finance or such other officer as may be designated under paragraph (*a*) or (*c*), as the case may be, of this subsection, as may be appropriate.

(2) If any question arises in proceedings for or arising out of an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a maintenance debtor in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for Finance, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for Finance under subsection (2) of this section and to be signed by an officer of the Minister for Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a maintenance debtor in the service of the State include references to a maintenance debtor to whom earnings are paid directly out of moneys provided by the Oireachtas.”

Head 111: Discharge, variation and lapse of attachment of earnings order.

Provide that:

“(1) The Court that made an attachment of earnings order may, if it thinks fit, on the application of the maintenance creditor, the maintenance debtor or the District Court clerk on whose application the order was made, make an order discharging or varying that order.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, if it has been served upon him, comply with it, but he shall be under no liability for non-compliance before ten days have elapsed since the service.

(3) Where an employer affected by an attachment of earnings order ceases to have the maintenance debtor in his employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by that employer).

(4) The lapse of an order under subsection (3) of this section shall not prevent its remaining in force for other purposes.”

Head 112: Cesser of attachment of earnings order.

Provide that:

“(1) An attachment of earnings order shall cease to have effect upon the discharge of the relevant antecedent order, except as regards payments under the attachment of earnings order in respect of any time before the date of the discharge.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer.”

Head 113: Provisions in relation to alternative remedies.

Provide that:

“(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8 (1) of the Enforcement of Court Orders Act 1940, for the enforcement of the relevant antecedent order shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.

(2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8 (1) of the Enforcement of Court Orders Act 1940, for the enforcement of the relevant antecedent order.”

Head 114: Enforcement.

Provide that:

“(1) Where, without reasonable excuse, a person—

(a) fails to comply with subsection (1) or (2) of *Head 105* or *Head 108* or an order under *Head 107* or *Head 111 (2)* of this Act, or

(b) gives to a Court a statement pursuant to *Head 107 (1)* of this Act, or a notification under *Head 108* of this Act, that is false or misleading,

and a maintenance creditor as a result fails to obtain a sum of money due under an attachment of earnings order, that sum may be sued for as a simple contract debt in any court of competent jurisdiction by the maintenance creditor or the District Court clerk to whom such sum falls to be paid, and that court may order the person to pay to the person suing such amount (not exceeding the sum aforesaid) as in all the circumstances the court considers proper for distribution in such manner and in such amounts as the court may specify amongst the persons for whose benefit the attachment of earnings order was made.

(2) Where a person gives to a Court—

(a) a statement pursuant to *Head 107* of this Act, or

(b) a notification under *Head 108* of this Act,

that is to his knowledge false or misleading, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [£200] or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both.

(3) A person who contravenes *Head 105 (3)* of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [£50].”

Chapter 5: Miscellaneous

Head 115: Property in household allowance

Provide that:

“Any allowance made by one civil partner to the other civil partner for the purpose of meeting household expenses, and any property or interest in property acquired out of such allowance, shall, in the absence of any agreement, whether express or implied, between them to the contrary, belong to the spouses as joint owners.”

Head 116: Jurisdiction of courts

Provide that:

“(1) Subject to subsection (2) of this section, the Circuit Court and the District Court shall have jurisdiction to hear and determine proceedings under **Head 98, 99, 100 and 103** of this Part.

(2) (a) The District Court and the Circuit Court, on appeal from the District Court, shall not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than €500 per week for the support of a civil partner.

(b) Subject to paragraph (d) of this subsection, nothing in subsection (1) of this section shall be construed as conferring on the District Court or the Circuit Court jurisdiction to make an order or direction under **Head 98, 99, 100 and 103** of this Part in any matter in relation to which the High Court has made an order or direction under any of those **Heads**.

(c) Subject to paragraph (d) of this subsection, nothing in subsection (1) of this section shall be construed as conferring on the District Court jurisdiction to make an order or direction under **Head 98, 99, 100 and 103** of this Part in any matter in relation to which the Circuit Court (except on appeal from the District Court) has made an order or direction under any of those sections.

(3) In proceedings under this Part each of the civil partners concerned shall give to the other civil partner such particulars of his or her property and income as may reasonably be required for the purpose of the proceedings.

(4) Where a person fails or refuses to comply with subsection (3), the Court, on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.”

Head 117: Payments to be without deduction of income tax

Provide that:

“A periodical payment of money pursuant to a maintenance order, a variation order, an interim order, an order under *Head 101* (in so far as it is deemed under that section to be a maintenance order), or an attachment of earnings order shall be made without deduction of income tax.”

Head 118: Conduct of court proceedings

Provide that:

“(1) Proceedings under this Part shall be conducted in a summary manner and shall be heard otherwise than in public.

(2) Proceedings in the High Court and the Circuit Court under this Act shall be heard in chambers.”

Head 119: Costs

Provide that:

“The costs of any proceedings under this Part shall be in the discretion of the Court.”

Head 120: Voidance of certain provisions of agreements

Provide that:

“An agreement shall be void in so far as it would have the effect of excluding or limiting the operation of any provision of this Part (other than *Head 115*).”

Head 121: Amendment of Enforcement of Court Orders Act 1940

Provide that:

“The references in subsections (1) and (7) of section 8 (1) of the Enforcement of Court Orders Act 1940, to an order shall be construed as including references to a maintenance order, a variation order, or an interim order, an order under *Head 101* (in so far as it is deemed under that section to be a maintenance order) or a direction under *Head 103*.”

Part 7: Qualified cohabitants

Chapter 1: Meaning of cohabitant and qualified cohabitant

Head 122: Interpretation

Provide that:

“In this Part, unless the context otherwise requires—

‘cohabitant’ has the meaning given in *Head 123 (1)*;

‘court’ means the High Court of the Circuit Court;

‘Minister’ means the Minister for Justice, Equality and Law Reform;

‘qualified cohabitant’ has the respective meanings given in *Head 123 (4)* and *Head 129*.”

Head 123: Cohabitant and qualified cohabitant

Provide that:

“(1) For the purposes of this Part, unless the context otherwise requires, ‘cohabitants’ means two adults (whether they are of the same sex or the opposite sex) who live together as a couple in an intimate relationship, and who are not married to each other or related to each other within a prohibited degree of relationship; and ‘cohabitant’ means one of two such adults.

- (2) In determining whether two adults are living together as a couple within the meaning of subsection (1), all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular context—
- (a) the duration of the relationship,
 - (b) the nature and extent of common residence,
 - (c) whether or not a sexual relationship exists,
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the cohabitants,
 - (e) the joint purchase of an estate or interest in land or the joint acquisition of personal property,
 - (f) the degree of commitment to a shared life,
 - (g) the care and support of children,
 - (h) the performance of household duties, and,
 - (i) the reputation and public aspects of the relationship.
- (3) No finding in respect of any of the matters mentioned in subsection (2), or in respect of any combination of them, is to be regarded as necessary for the purposes of determining that two adults are cohabitants; and in determining whether they are cohabitants, the Court may have regard to those matters, and attach such weight to those matters, as is appropriate in the circumstances.
- (4) For the purposes of this Part (with the exception of *Head 129*), ‘qualified cohabitant’ means—
- (j) a cohabitant who has been living together as a couple within the meaning of subsection (1) for three years, or,
 - (k) where there is a child of the relationship, a cohabitant who has been living together as a couple within the meaning of subsection (1) for two years.
- (5) Notwithstanding subsection (4), a cohabitant may make an application under this Part where the cohabitant establishes that, otherwise, a serious injustice would arise.

Chapter 2: Agreements between cohabitants

Head 124: Validity of certain agreements between cohabitants

Provide that

“(1) For the avoidance of doubt, and notwithstanding any rule of law to the contrary, cohabitants may enter into a cohabitant agreement.

(2) For the purposes of this Act, a cohabitant agreement means an agreement between two cohabitants which makes provision for financial matters (and only such matters) during the relationship or on its ending (whether by death or otherwise).

(3) A cohabitant agreement shall be valid and enforceable if it is in writing, it is signed by both cohabitants, and that, before the agreement is signed by either of them, each cohabitant has received legal advice independently of the other cohabitant, or, if they have not been so separately advised, that they have been advised together and have waived a right to independent advice.

(4) Subject to the provisions of this section, a cohabitant agreement shall also comply with the general law of contract, whether common law or statutory.

(5) Nothing in a cohabitant agreement affects the power of the court to make an order in respect of the right to custody of, maintenance of or access to or otherwise in relation to the children of the cohabitants.

(6) A cohabitant agreement may provide that the provisions of *Chapter 4* shall not apply to the cohabitants entering into the agreement.

(7) Without prejudice to *subsection (6)*, in exceptional circumstances a court may, on application set aside a cohabitant agreement where its enforceability would cause serious injustice.”

Chapter 3: Additional statutory entitlements for cohabitants
Head 125: Amendment of Residential Tenancies Act 2004

Provide that

“Section 39 of the *Residential Tenancies Act 2004* is amended by the substitution of ‘was a cohabitant with the tenant within the meaning of **Head 123** of the Civil Partnership Act [2008]’ in subsection (3)(a)(ii) for ‘cohabited with the tenant as husband and wife’.”

Head 126: Amendment of Civil Liability Acts

Provide for the following:

“Section 47 of the *Civil Liability Act 1961*, as amended by section 1 of the *Civil Liability (Amendment) Act 1996*, is amended by the substitution in subsection (1)(c) of ‘cohabitant within the meaning of **Head 123** of the Civil Partnership Act [2008]’ for ‘husband or wife’.”

Head 127: Amendment of Powers of Attorney Act 1996

Provide that:

“The First Schedule of the *Powers of Attorney Act* 1996 is amended by the insertion of the following additional class after paragraph 3.(1)(h): ‘(i) the donor’s cohabitant, within the meaning of **Head 123** of the Civil Partnership Act [2008].”

Head 128: Amendment of Domestic Violence Act 1996

Provide that:

“(1) In this section, “Act of 1996” means the *Domestic Violence Act 1996*.

(2) Section 2 of the Act of 1996 is amended by the substitution of ‘is a cohabitant, within the meaning of **Head 123** of the Civil Partnership Act [2008], of the respondent’ in subsection (1)(a)(ii) for ‘is not the spouse of the respondent but has lived with the respondent as husband and wife for a period of at least six months in aggregate during the period of twelve months immediately prior to the application for the safety order, or’.

(3) Section 2(1)(a) of the Act of 1996 is amended by the insertion after paragraph (iv) of “ or (v) is a parent of whom there is a child with the respondent;”.

(4) Section 3 of the Act of 1996 is amended by the substitution of “is a cohabitant, within the meaning of **Head 123** of the Civil Partnership Act [2008], of the respondent” in subsection (1)(b) for “is not the spouse of the respondent but has lived with the respondent as husband and wife for a period of at least six months in aggregate during the period of nine months immediately prior to the application for the barring order, or”.

Chapter 4: Applications by qualified cohabitants for redress
Head 129: Application for provision from the estate of a deceased cohabitant

Provide that:

- “(1) In this section, a qualified cohabitant means a cohabitant who:
- (a) was living as a cohabitant with the deceased for 3 years immediately prior to the deceased’s death, or,
 - (b) where there is a child of the relationship, was living as a cohabitant with the deceased for 2 years immediately prior to the deceased’s death.
- (2) Where, on an application by or on behalf of a qualified cohabitant, on notice to the respondent, the court is of the opinion that the deceased failed to make adequate provision or made no provision for the qualified cohabitant in accordance with his or her means, whether by his or her will or otherwise, the court may order that such provision shall be made for the qualified cohabitant out of the net estate of the deceased as the court considers just and equitable.
- (3) In making an order under this section, the court shall make what provision is reasonable in the circumstances, having regard to the factors set out in **Head 130 (5)** and also the following factors –
- (a) the interests of the beneficiaries of the estate,
 - (b) any benefit received or to be received by the qualified cohabitant on, or as a result of, the deceased’s death other than out of the net estate, and
 - (c) the provision (if any) made for the qualified cohabitant through orders made under **Heads 131, 132 or 133**.
- (4) For the purposes of this section, “net estate” means the estate as remains after provision for the satisfaction of –
- (a) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse within the meaning of the *Succession Act 1965*,
 - (b) the legal rights and the prior rights, if any, of any surviving spouse,
 - (c) the legal rights and the prior rights, if any, of any surviving civil partner within the meaning of the *Succession Act 1965* as amended by **Head 29**, and
 - (d) the legal rights and the prior rights, if any, of any surviving civil partner.
- (5) An order under this section shall not affect the legal right of a surviving spouse within the meaning of the *Succession Act 1965*, or any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy.
- (6) Rules of court shall provide for the conduct of proceedings under this section in a summary manner.
- (7) An application under this section shall be made within 6 months from the first taking out of representation of the deceased’s estate or 12 months from the date of death, whichever is the latest.

Head 130: Application by economically dependent qualified cohabitant

Provide that:

“(1) For the purposes of this Part, “applicant” means a qualified cohabitant who also comes within the requirements of *subsection (3)*, and “respondent” means the adult person with whom the applicant lived, within the meaning of *Head 123*.

(2) An applicant may apply to the court, on notice to the respondent, seeking to have an order or orders made under *Heads 131, 132 or 133*, or under any of those sections or any combination of them.

(3) In applying for any order under *Heads 131, 132 or 133*, the applicant shall establish to the satisfaction of the court that, arising from the ending of the relationship (including where it ended through death), he or she is economically dependent.

(4) An order under *Heads 131, 132 or 133* shall only be made where the court considers it is just and equitable to do so.

(5) Before making an order under *Heads 131, 132 or 133*, the court (having been satisfied that the applicant is economically dependent within the meaning of *subsection (3)*) shall have regard to the following factors -

- (a) the rights and entitlements of any spouse,
- (b) the rights and entitlements of any child of a previous relationship, or of any child of the relationship between the applicant and the respondent or of any child treated by them as their child,
- (c) the rights and entitlements of any former spouse,
- (d) the rights and entitlements of any civil partner,
- (e) the rights and entitlements of any former civil partner,
- (f) the nature and duration of the relationship,
- (g) the size and nature of the estate,
- (h) the financial needs, obligations and responsibilities which the applicant has or is likely to have in the foreseeable future,
- (i) the contributions and sacrifices which the applicant made or is likely to make in the foreseeable future to the welfare of the respondent and any child referred to in *paragraph (b)*, including any contribution made to the income, earning capacity, property and financial resources of the respondent and any sacrifice made by looking after the home or caring for the respondent and any child referred to in *paragraph (b)*,
- (j) the effect on the earning capacity of the applicant of the responsibilities assumed during the period he or she lived together with the respondent, including the degree to which the future earning capacity of the applicant was impaired by reason of having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the respondent and any child referred to in *paragraph (b)*,
- (k) any physical or mental disability of the applicant, and
- (l) any other matter which the court may consider relevant in the particular circumstances.”

Head 131: Property adjustment orders

Provide that

- “(1) On an application by an applicant within the meaning of *Head 130*, on notice to the respondent, the court may make a property adjustment order.
- (2) A property adjustment order may provide for one or more of the following matters:
- (a) the transfer by either of the cohabitants to the other cohabitant, to any dependent child of the relationship or to any other specified person for the benefit of such person of specified property, being property to which the first-mentioned cohabitant is entitled either in possession or reversion,
 - (b) the settlement to the satisfaction of the court of specified property, being property to which either of the cohabitants is so entitled as aforesaid, for the benefit of the other cohabitant and of any dependent child of the relationship or of any or all of those persons,
 - (c) the variation for the benefit of either of the cohabitants and of any dependent child of the relationship or of any or all of those persons of any agreement within the meaning of *Head 124* (subject to the terms set out in *Head 124 (7)*) or other settlement (including such a settlement made by will or codicil) made on the cohabitants,
 - (d) the extinguishment or reduction of the interest of either of the cohabitants under any such agreement (subject to the terms set out in *Head 124 (7)*) or settlement.”

Head 132: Compensatory maintenance orders

Provide that:

- “(1) On an application by an applicant within the meaning of *Head 130*, on notice to the respondent, the court may make a compensatory maintenance order.
- (2) The purpose of a compensatory maintenance order is to restore financial independence to the applicant.
- (3) An order for compensatory maintenance may, as the court considers appropriate, require the respondent to make periodical payments or lump sum payments to the applicant.”

Head 133: Pension adjustment orders and pension splitting orders

Provide that:

“(1) On an application by an applicant within the meaning of *Head 130*, on notice to the respondent, the court may make a pension adjustment order or pension splitting order, or both.

(2) Before making an order or orders under this section, the court shall be satisfied that it is not possible to make just and equitable financial provision for the applicant within the meaning of *Head 130 (4)* for the applicant by means of a property adjustment order or maintenance order.”

Head 134: Mediation and other alternatives to proceedings

Provide that:

“Before instituting any proceedings under this Act, a solicitor acting for any cohabitant shall:

- (a) discuss the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to effect a reconciliation between them,
- (b) discuss the possibility of engaging in mediation to help to effect a settlement of any intended proceedings on a basis agreed between the cohabitants and give to them the names and addresses of persons qualified to provide a mediation service, and
- (c) discuss the possibility (where appropriate) of effecting a settlement of any intended proceedings by means of an agreement in writing between them.”

Head 135: Limitation period

Provide that:

“Proceedings under this Act shall, save in exceptional circumstances, be instituted within 2 years of the ending of the relationship between the cohabitants, whether through death or otherwise.”

Head 136: Procedure

Provide that:

- “(1) Subject to the provisions of section 40 of the *Civil Liability and Courts Act 2004*, proceedings under this Act shall be heard otherwise than in public.
- (2) The costs of any proceedings under this Act shall be at the discretion of the court.”

Head 137: Transitional provisions

Provide that:

“(1) *Head 124* shall only apply to agreements entered into after the commencement by Order of that section.

(2) *Chapter 4* of *Part 7* shall only apply to cohabitants whose relationship has come to an end (whether by death or otherwise) after the commencement by Order of *Part 7* but, subject to that, account may be taken of time prior to such commencement in calculating the duration of the cohabitation relationship in accordance with *Head 123(4)*.”

Head 138: Saver in relation to rights of others

Provide that:

“In making any order under Part 3, Part 4, Part 5, Part 6 or Part 7 of this Act, and in particular in making any maintenance order, lump sum order, property adjustment order, pension adjustment order, or order for provision from the estate of a deceased person, a court of competent jurisdiction shall have regard to the rights of any other person with an interest in the matter, including any rights of any civil partner or former civil partner, and, in particular, shall have regard to the rights of a spouse (if any) or the rights (if any) of a former spouse (if any).”