



JUDICIARY OF
ENGLAND AND WALES

THE HON MR JUSTICE MOSTYN

7 October 2015

A possible ambiguity has been identified in para 62(d) and (e) of the Financial Remedies Omnibus. One reading might suggest that a claim under the Inheritance (Provision for Family and Dependants) Act 1975 was barred where the death of the payer occurred prior to the expiration of the term. Therefore to put the matter beyond doubt para 62 should read as amended in the annex to this statement.

It is emphasised that the draft orders as published thus far do not have the status of Forms approved under Part 5 of the FPR and while their use is encouraged the parties and the court are free to depart from them to any extent that is considered appropriate on the facts of the particular case.

62. **Spousal periodical payments order with an extendable / non-extendable term**

The [applicant]/[respondent] shall pay to the [respondent]/[applicant] maintenance pending suit until the date of decree absolute and afterwards periodical payments. Payments shall be at the rate of £[insert] per annum, payable [weekly]/[monthly] [in advance]/[in arrears] by standing order. Payments shall start on [insert date], and shall end on the first to occur of:

- a. the death of either the applicant or the respondent;
- b. the [respondent's]/[applicant's] remarriage;
- c. a further order; or

[Extendable Term:]

d. [insert date] / [e.g. the youngest surviving child of the family attaining the age of 18 or ceasing full-time [secondary]/[tertiary] education [to first degree level] [including/excluding a gap year]] after which the [respondent's]/[applicant's] claims for periodical payments and secured periodical payments shall be dismissed, and it is directed that upon the expiry of **this** term:

- i. the [respondent]/[applicant] shall not be entitled to make any further application in relation to the marriage for an order under the Matrimonial Causes Act 1973 section 23(1)(a) or (b) for periodical payments or secured periodical payments; and
- ii. the [respondent]/[applicant] shall not be entitled on the [applicant's]/[respondent's] **later** death to apply for an order under the Inheritance (Provision for Family and Dependents) Act 1975, section 2.

However, the [respondent]/[applicant] may apply for an order to extend this term, provided the application is made before the term expires. **For the avoidance of doubt, paragraph (d)(ii) shall not apply in the event of the [applicant's]/[respondent's] death prior to the expiration of this term.**

[Non-Extendable Term:]

e. [insert date] / [e.g. the youngest surviving child of the family attaining the age of 18 or ceasing full-time [secondary]/[tertiary] education [to first degree level] [including/excluding a gap year]] after which the [respondent's]/ [applicant's] claims for periodical payments and secured periodical payments shall be dismissed, and it is directed that:

- i. upon the expiry of **this** term, the [respondent]/[applicant] shall not be entitled to make any further application in relation to the marriage for an order under the Matrimonial Causes Act 1973 section 23(1)(a) or (b) for periodical payments or secured periodical payments;
- ii. pursuant to the Matrimonial Causes Act 1973 section 28(1A), the [respondent]/[applicant] may not apply for an order to extend this term;
- iii. upon the expiry of the term, the [respondent]/[applicant] shall not be entitled on the [applicant's]/[respondent's] **later** death to apply for an order under the Inheritance (Provision for Family and Dependents) Act 1975, section 2.

For the avoidance of doubt, the [respondent]/[applicant] may not apply for an order to extend this term. **Further, paragraph (e)(iii) shall not apply in the event of the [applicant's]/[respondent's] death prior to the expiration of this term.**