



Family Law (Scotland) Act 2006

2006 asp 2

Cohabitation

25 Meaning of “cohabitant” in sections 26 to 29

- (1) In sections 26 to 29, “cohabitant” means either member of a couple consisting of—
 - (a) a man and a woman who are (or were) living together as if they were husband and wife; or
 - (b) two persons of the same sex who are (or were) living together as if they were civil partners.
- (2) In determining for the purposes of any of sections 26 to 29 whether a person (“A”) is a cohabitant of another person (“B”), the court shall have regard to—
 - (a) the length of the period during which A and B have been living together (or lived together);
 - (b) the nature of their relationship during that period; and
 - (c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.
- (3) In subsection (2) and section 28, “court” means Court of Session or sheriff.

26 Rights in certain household goods

- (1) Subsection (2) applies where any question arises (whether during or after the cohabitation) as to the respective rights of ownership of cohabitants in any household goods.
- (2) It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.
- (3) The presumption in subsection (2) shall be rebuttable.
- (4) In this section, “household goods” means any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include—
 - (a) money;

- (b) securities;
- (c) any motor car, caravan or other road vehicle; or
- (d) any domestic animal.

27 Rights in certain money and property

- (1) Subsection (2) applies where, in relation to cohabitants, any question arises (whether during or after the cohabitation) as to the right of a cohabitant to—
 - (a) money derived from any allowance made by either cohabitant for their joint household expenses or for similar purposes; or
 - (b) any property acquired out of such money.
- (2) Subject to any agreement between the cohabitants to the contrary, the money or property shall be treated as belonging to each cohabitant in equal shares.
- (3) In this section “property” does not include a residence used by the cohabitants as the sole or main residence in which they live (or lived) together.

28 Financial provision where cohabitation ends otherwise than by death

- (1) Subsection (2) applies where cohabitants cease to cohabit otherwise than by reason of the death of one (or both) of them.
- (2) On the application of a cohabitant (the “applicant”), the appropriate court may, after having regard to the matters mentioned in subsection (3)—
 - (a) make an order requiring the other cohabitant (the “defender”) to pay a capital sum of an amount specified in the order to the applicant;
 - (b) make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;
 - (c) make such interim order as it thinks fit.
- (3) Those matters are—
 - (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
 - (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—
 - (i) the defender; or
 - (ii) any relevant child.
- (4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).
- (5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—
 - (a) the applicant; or
 - (b) any relevant child.
- (6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—
 - (a) the defender; or

- (b) any relevant child,
is offset by any economic advantage the applicant has derived from contributions made by the defender.
- (7) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—
 - (a) on such date as may be specified;
 - (b) in instalments.
- (8) Any application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit.
- (9) In this section—
 - “appropriate court” means—
 - (a) where the cohabitants are a man and a woman, the court which would have jurisdiction to hear an action of divorce in relation to them if they were married to each other;
 - (b) where the cohabitants are of the same sex, the court which would have jurisdiction to hear an action for the dissolution of the civil partnership if they were civil partners of each other;
 - “child” means a person under 16 years of age;
 - “contributions” includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and
 - “economic advantage” includes gains in—
 - (a) capital;
 - (b) income; and
 - (c) earning capacity;and “economic disadvantage” shall be construed accordingly.
- (10) For the purposes of this section, a child is “relevant” if the child is—
 - (a) a child of whom the cohabitants are the parents;
 - (b) a child who is or was accepted by the cohabitants as a child of the family.

29 Application to court by survivor for provision on intestacy

- (1) This section applies where—
 - (a) a cohabitant (the “deceased”) dies intestate; and
 - (b) immediately before the death the deceased was—
 - (i) domiciled in Scotland; and
 - (ii) cohabiting with another cohabitant (the “survivor”).
- (2) Subject to subsection (4), on the application of the survivor, the court may—
 - (a) after having regard to the matters mentioned in subsection (3), make an order—
 - (i) for payment to the survivor out of the deceased’s net intestate estate of a capital sum of such amount as may be specified in the order;
 - (ii) for transfer to the survivor of such property (whether heritable or moveable) from that estate as may be so specified;
 - (b) make such interim order as it thinks fit.

Status: This is the original version (as it was originally enacted).

- (3) Those matters are—
- (a) the size and nature of the deceased's net intestate estate;
 - (b) any benefit received, or to be received, by the survivor—
 - (i) on, or in consequence of, the deceased's death; and
 - (ii) from somewhere other than the deceased's net intestate estate;
 - (c) the nature and extent of any other rights against, or claims on, the deceased's net intestate estate; and
 - (d) any other matter the court considers appropriate.
- (4) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor an amount which would exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased.
- (5) An application under this section may be made to—
- (a) the Court of Session;
 - (b) a sheriff in the sheriffdom in which the deceased was habitually resident at the date of death;
 - (c) if at the date of death it is uncertain in which sheriffdom the deceased was habitually resident, the sheriff at Edinburgh.
- (6) Any application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died.
- (7) In making an order under paragraph (a)(i) of subsection (2), the court may specify that the capital sum shall be payable—
- (a) on such date as may be specified;
 - (b) in instalments.
- (8) In making an order under paragraph (a)(ii) of subsection (2), the court may specify that the transfer shall be effective on such date as may be specified.
- (9) If the court makes an order in accordance with subsection (7), it may, on an application by any party having an interest, vary the date or method of payment of the capital sum.
- (10) In this section—
- “intestate” shall be construed in accordance with section 36(1) of the Succession (Scotland) Act 1964 (c. 41);
- “legal rights” has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c. 41);
- “net intestate estate” means so much of the intestate estate as remains after provision for the satisfaction of—
- (a) inheritance tax;
 - (b) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse or surviving civil partner; and
 - (c) the legal rights, and the prior rights, of any surviving spouse or surviving civil partner; and
- “prior rights” has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c. 41).

30 Administration of Justice Act 1982: extension of definition of “relative”

In section 13 of the Administration of Justice Act 1982 (c. 53) (supplementary provisions and definitions in relation to Part 2), in the definition of relative, after paragraph (b) insert—

“(ba) any person, not being the civil partner of the injured person, who was, at the time of the act or omission giving rise to liability in the responsible person, living with the injured person as the civil partner of the injured person;”.