

# **FAMILY LAW (SCOTLAND) ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Cohabitation***

##### ***Section 25: Meaning of “cohabitant” in sections 26 to 29***

41. This section defines the term “cohabitant” as it is used in this legislation and, at subsection (2), describes the factors which courts will take into account when determining whether a person is a cohabitant for the purposes of sections 26 to 29. This section applies equally to same sex couples.

##### ***Section 26: Rights in certain household goods***

42. The provisions relating to cohabitants are designed to give legal protection to unmarried cohabitants on the breakdown of the relationship or when a partner dies. Subsection (2) specifies that it shall be presumed that each party has the right to an equal share of any household goods which were acquired during the period of the cohabitation. This excludes items which were received as gifts or acquired by succession from a third party. Subsection (4) further defines what is meant by “household goods”.

##### ***Section 27: Rights in certain money and property***

43. This section specifies that money deriving from any allowances made by either cohabitant for their joint household expenses – or any property purchased from such money – will be treated as belonging to each cohabitant in equal shares. Subsection (3) makes it clear that “property” does not here include the cohabitants’ family home.

##### ***Section 28: Financial provision where cohabitation ends otherwise than by death***

44. On the break up of a committed cohabiting relationship, one party may find themselves in a position of financial vulnerability and section 28 seeks to make provision for such situations. It provides that one party can apply to the court for a limited financial settlement from their former cohabitant. Subsection (2) states that courts may require the defender to pay a capital sum, payable as described at subsection (7). Courts may also require the defender to make payment in respect of the cost of caring for any child of whom the cohabitants are parents under the age of 16, also payable as described at subsection (7).
45. In considering such applications for financial support, courts will consider, under subsection (3), whether the defender has derived any economic advantage from contributions made by the applicant and conversely whether the applicant has suffered any economic disadvantage. Subsections (4) to (6) provide for a balancing exercise to be carried out by the court when assessing the economic advantage and disadvantage derived and suffered by either or both parties. Subsection (8) specifies that any application to the court under this section would have to be made within a year after the day on which the cohabitation ended. This section also sets out which courts have jurisdiction to deal with such applications. Subsection (10) provides for the definition

of the relevant child, namely a child of whom the cohabitants are the parents or a child who is or was accepted by the cohabitants as a child of the family.

***Section 29: Application to court by survivor for provision on intestacy***

46. This section makes provision to allow applications to be made to the court by the surviving partner on the death of a cohabitant when that person has died intestate. The surviving partner may make such an application for a share in the deceased partner's estate although this is qualified by subsection (4) which specifies that any such award cannot exceed the amount which the survivor would have been entitled to under statutory rules of intestacy had the survivor been the spouse or civil partner of the deceased.
47. Subsection (2) provides that, if appropriate, courts may award either a capital sum or a transfer of property from the estate. A capital sum may be paid either on a specified date or in instalments, as is specified at subsection (7). Subsection (3) describes the matters which courts may take into account when considering making an order under section 29. Such matters include the size of the deceased cohabitant's estate and the nature and extent of any other claims on the estate.
48. Subsection (6) specifies that an application to the court under section 29 must be made within 6 months of the date on which the deceased died. Subsection (10) provides definitions of certain expressions used in the section. This section applies equally to same sex partners.

***Section 30: Administration of Justice Act 1982: extension of definition of "relative"***

49. Under the Administration of Justice Act 1982, it is competent for a "relative" of an injured person to raise a court action for a claim of liability against the responsible person. This section amends the definition of "relative" under the Act to include a same-sex cohabiting partner.