

*These notes relate to the Family Law (Scotland) Act 2006
(asp 2) which received Royal Assent on 20 January 2006*

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Financial provision

Section 16: Financial provision: valuation of matrimonial property

28. This section seeks to address the potential for an unfair division of matrimonial property between divorcing spouses. It introduces a measure of discretion for courts when considering the value of matrimonial property on divorce. This includes, for example, the value of the matrimonial home or the occupational pension of one of the parties.
29. Scots law favours a clean break in divorce settlements. This is based on the fair sharing of the net value of all matrimonial property. This provision has the effect of modifying section 10 of the Family Law (Scotland) Act 1985 as it applies to property transferred by an order under Section 8(1)(aa) of that Act. Such property will be valued at a date agreed between the parties, failing which the date of the order. However, while this provision is aimed at enhancing protection and fairness in the division of matrimonial assets by offering some flexibility, it does not in any way alter the general presumption towards the “relevant date” as being the point at which such assets should be divided. The relevant date is whichever is the earlier of the date on which the parties cease to cohabit and the date of the service of the summons in the action of divorce.