

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

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## **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.

##### ***Section 17: Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund***

30. The purpose of this section is to amend matrimonial legislation to take account of the introduction of the Pension Protection Fund (PPF). The fund, which is designed to protect members of eligible private sector defined pension schemes where the employer has become insolvent, was introduced in the Pensions Act 2004. Once the PPF provisions of the Pensions Act come into force, where an eligible private sector pension scheme is unable to meet the minimum level of members benefits, the scheme’s assets and liabilities will be transferred into the PPF which will be administered by a Pension Protection Board. The Board will have responsibility for making compensation (not pension) payments to existing pensioners and to pay such compensation to other members when they reach retirement. This section ensures that Scotland’s policy relating to pension sharing on divorce and the PPF will be consistent with that in the rest of the UK.
31. A consequential amendment has been made in paragraph 5 of schedule 2 to the Act to section 12 A(2) of the Family Law (Scotland) Act 1985.

##### ***Section 18: Financial provision: incidental orders***

32. **Section 18** provides sheriffs with the power to direct a sheriff clerk to execute deeds relating to moveable property. Currently the sheriff can do so in relation to heritable property where the grantor of deeds cannot be found, refuses or is unable, or fails to execute the deed. However, in an increasing number of matrimonial cases, courts are

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

being asked to make orders for the transfer of movable property, e.g. insurance policies.  
This section removes the existing anomaly in the law.