



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

### *Financial provision on divorce, etc.*

#### **8 Orders for financial provision.**

- (1) In an action for divorce, either party to the marriage <sup>F1</sup>and in an action for dissolution of a civil partnership, either partner] may apply to the court for one or more of the following orders—
- (a) an order for the payment of a capital sum <sup>F2</sup>... to him by the other party to the <sup>F3</sup>action];
  - <sup>F4</sup>(aa) an order for the transfer of property to him by the other party to the <sup>F3</sup>action];]
  - (b) an order for the making of a periodical allowance to him by the other party to the <sup>F3</sup>action];
  - <sup>F5</sup>(baa) a pension sharing order.]
  - <sup>F6</sup>[(ba) an order under section 12A(2) or (3) of this Act;]
  - (c) an incidental order within the meaning of section 14(2) of this Act.
- (2) Subject to sections 12 to 15 of this Act, where an application has been made under subsection (1) above, the court shall make such order, if any, as is—
- (a) justified by the principles set out in section 9 of this Act; and
  - (b) reasonable having regard to the resources of the parties.
- (3) An order under subsection (2) above is in this Act referred to as an “order for financial provision”.
- <sup>F7</sup>[(4) The court shall not, in the same proceedings, make both a pension sharing order and an order under section 12A(2) or (3) of this Act in relation to the same pension arrangement.
- <sup>F8</sup>(4A) [ The court shall not make a pension sharing order, or an order under section 12A(2) or (3) of this Act, in relation to matrimonial property, or partnership property, consisting of compensation such as is mentioned in section 10(5A).]

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- (5) Where, as regards a pension arrangement, the parties to a marriage [<sup>F9</sup>or the partners in a civil partnership] have in effect a qualifying agreement which contains a term relating to pension sharing, the court shall not—
- (a) make an order under section 12A(2) or (3) of this Act; or
  - (b) make a pension sharing order,
- relating to the arrangement unless it also sets aside the agreement or term under section 16(1)(b) of this Act.
- (6) The court shall not make a pension sharing order in relation to the rights of a person under a pension arrangement if there is in force an order under section 12A(2) or (3) of this Act which relates to benefits or future benefits to which he is entitled under the pension arrangement.
- (7) In subsection (5) above—
- (a) “term relating to pension sharing” shall be construed in accordance with section 16(2A) of this Act; and
  - (b) “qualifying agreement” has the same meaning as in section 28(3) of the Welfare Reform and Pensions Act 1999.]

**Textual Amendments**

- F1** Words in s. 8(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 14(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F2** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 para. 34(a), **Sch. 9**
- F3** Word in s. 8(1)(a)-(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 14(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F4** S. 8(1)(aa) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 para. 34(b)**
- F5** S. 8(1)(baa) inserted (1.12.2000) by 1999 c. 30, s. 20(1)(2); s.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F6** S. 8(1)(ba) inserted (19.8.1996) by 1995 c. 26, s. 167(1); S.I. 1996/1843, art. 3(b)
- F7** S. 8(4)-(7) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 6**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F8** S. 8(4A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 17(2), 46(2); S.S.I. 2006/212, art. 2
- F9** Words in s. 8(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 14(3)**; S.S.I. 2005/604, arts. 2(c), 4

**Modifications etc. (not altering text)**

- C1** S. 8 excluded (1.12.2000) by 1999 c. 30, s. 85(5); S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

**[<sup>F10</sup>8A Pension sharing orders: apportionment of charges.**

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs) or under corresponding Northern Ireland legislation.]

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### Textual Amendments

**F10** S. 8A inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 7**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

## 9 Principles to be applied.

(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that—

- (a) the net value of the matrimonial property should be shared fairly between the parties to the marriage [<sup>F11</sup>or as the case may be the net value of the partnership property should be so shared between the partners in the civil partnership];
- (b) fair account should be taken of any economic advantage derived by either [<sup>F12</sup>person] from contributions by the other, and of any economic disadvantage suffered by either [<sup>F12</sup>person] in the interests of the other [<sup>F12</sup>person] or of the family;
- (c) any economic burden of caring,
  - [<sup>F13</sup>(i)] after divorce, for a child of the marriage under the age of 16 years
  - [<sup>F14</sup>(ii)] after dissolution of the civil partnership, for a child under that age who has been accepted by both partners as a child of the family [<sup>F15</sup>or in respect of whom they are, by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents],]should be shared fairly between the [<sup>F16</sup>persons];
- (d) a [<sup>F17</sup>person] who has been dependent to a substantial degree on the financial support of the other [<sup>F17</sup>person] should be awarded such financial provision as is reasonable to enable him to adjust, over a period of not more than three years from
  - [<sup>F18</sup>(i)] the date of the decree of divorce, to the loss of that support on divorce,
  - [<sup>F19</sup>(ii)] the date of the decree of dissolution of the civil partnership, to the loss of that support on dissolution,]
- (e) a [<sup>F20</sup>person] who at the time of the divorce [<sup>F21</sup>or of the dissolution of the civil partnership,] seems likely to suffer serious financial hardship as a result of the divorce [<sup>F21</sup>or dissolution] should be awarded such financial provision as is reasonable to relieve him of hardship over a reasonable period.

(2) In subsection (1)(b) above and section 11(2) of this Act—

“economic advantage” means advantage gained whether before or during the marriage [<sup>F22</sup>or civil partnership] and includes gains in capital, in income and in earning capacity, and “economic disadvantage” shall be construed accordingly;

“contributions” means contributions made whether before or during the marriage [<sup>F22</sup>or civil partnership]; and includes indirect and non-financial contributions and, in particular, any such contribution made by looking after the family home or caring for the family.

### Textual Amendments

**F11** Words in s. 9(1)(a) inserted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(10)(c), **Sch. 28 para. 15(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4

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- F12** Word in s. 9(1)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F13** S. 9(1)(c)(i) formed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F14** S. 9(1)(c)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F15** Words in s. 9(1)(c)(ii) inserted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by Human Fertilisation and Embryology Act 2008 (c. 22), s. 68(2), **Sch. 6 para. 46**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7Sch.)
- F16** Word in s. 9(1)(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F17** Words in s. 9(1)(d) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F18** S. 9(1)(d)(i) formed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F19** S. 9(1)(d)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F20** Word in s. 9(1)(e) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(e)**; S.S.I. 2005/604, arts. 2(c), 4
- F21** Words in s. 9(1)(e) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(2)(e)**; S.S.I. 2005/604, arts. 2(c), 4
- F22** Words in s. 9(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 15(3)**; S.S.I. 2005/604, arts. 2(c), 4

## 10 Sharing of value of matrimonial property.

- (1) In applying the principle set out in section 9(1)(a) of this Act, the net value of the matrimonial property [<sup>F23</sup>or partnership property] shall be taken to be shared fairly between [<sup>F24</sup>persons] when it is shared equally or in such other proportions as are justified by special circumstances.
- (2) [<sup>F25</sup>Subject to subsection (3A) below,] the net value of the <sup>F26</sup>... property shall be the value of the property at the relevant date after deduction of any debts incurred by [<sup>F27</sup>one or both of the parties to the marriage or as the case may be of the partners] —
- before the marriage so far as they relate to the matrimonial property [<sup>F28</sup>or before the registration of the partnership so far as they relate to the partnership property], and
  - during the marriage [<sup>F29</sup>or partnership],
- which are outstanding at that date.
- (3) In this section “the relevant date” means whichever is the earlier of—
- subject to subsection (7) below, the date on which the [<sup>F30</sup>persons] ceased to cohabit;
  - the date of service of the summons in the action for divorce [<sup>F31</sup>or for dissolution of the civil partnership].
- [<sup>F32</sup>(3A) In its application to property transferred by virtue of an order under section 8(1)(aa) of this Act this section shall have effect as if—
- in subsection (2) above, for “relevant date” there were substituted “appropriate valuation date”;
  - after that subsection there were inserted—

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- “(2A) Subject to subsection (2B), in this section the “appropriate valuation date” means—
- (a) where the parties to the marriage or, as the case may be, the partners agree on a date, that date;
  - (b) where there is no such agreement, the date of the making of the order under section 8(1)(aa).
- (2B) If the court considers that, because of the exceptional circumstances of the case, subsection (2A)(b) should not apply, the appropriate valuation date shall be such other date (being a date as near as may be to the date referred to in subsection (2A)(b)) as the court may determine.”; and
- (c) subsection (3) did not apply.]
- (4) Subject to [<sup>F33</sup>subsections (5) and (5A)] below, in this section and in section 11 of this Act “the matrimonial property” means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—
- (a) before the marriage for use by them as a family home or as furniture or plenishings for such home; or
  - (b) during the marriage but before the relevant date.
- [<sup>F34</sup>(4A) Subject to [<sup>F35</sup>subsections (5) and (5A)] below, in this section and in section 11 of this Act “the partnership property” means all the property belonging to the partners or either of them at the relevant date which was acquired by them or by one of them (otherwise than by way of gift or succession from a third party)—
- (a) before the registration of the partnership for use by them as a family home or as furniture or plenishings for such a home, or
  - (b) during the partnership but before the relevant date.]
- (5) The proportion of any rights or interests of either [<sup>F36</sup>person]
- [<sup>F37</sup>(a)] under a life policy [<sup>F38</sup>or similar arrangement; and
  - (b) in any benefits under a pension [<sup>F39</sup>arrangement] which either [<sup>F36</sup>person] has or may have (including such benefits payable in respect of the death of either party),
- which is] referable to the period to which subsection (4)(b) [<sup>F40</sup>or (4A)(b)] above refers shall be taken to form part of the matrimonial property [<sup>F41</sup>or partnership property].
- [<sup>F42</sup>(5A) Where either person is entitled to compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 (c. 35) or any provision in force in Northern Ireland corresponding to that Chapter, the proportion of the compensation which is referable to the period to which subsection (4)(b) or (4A)(b) above refers shall be taken to form part of the matrimonial property or partnership property.]
- (6) In subsection (1) above “special circumstances”, without prejudice to the generality of the words, may include—
- (a) the terms of any agreement between the [<sup>F43</sup>persons] on the ownership or division of any of the matrimonial property [<sup>F44</sup>or partnership property];
  - (b) the source of the funds or assets used to acquire any of the matrimonial property [<sup>F45</sup>or partnership property] where those funds or assets were not derived from the income or efforts of the [<sup>F46</sup>persons] during the marriage [<sup>F45</sup>or partnership];

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- (c) any destruction, dissipation or alienation of property by either [<sup>F47</sup>person];
- (d) the nature of the matrimonial property [<sup>F48</sup>or partnership property], the use made of it (including use for business purposes or as a [<sup>F49</sup>family] home) and the extent to which it is reasonable to expect it to be realised or divided or used as security;
- (e) the actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce [<sup>F50</sup>or the dissolution of the civil partnership].
- (7) For the purposes of subsection (3) above no account shall be taken of any cessation of cohabitation where the [<sup>F51</sup>persons] thereafter resumed cohabitation, except where the [<sup>F51</sup>persons] ceased to cohabit for a continuous period of 90 days or more before resuming cohabitation for a period or periods of less than 90 days in all.
- <sup>F52</sup>[ The Secretary of State may by regulations make provision about calculation and  
<sup>F53</sup>(8) verification in relation to the valuation for the purposes of this Act of benefits under a pension arrangement or relevant state scheme rights.]
- [ Regulations under subsection (8) above may include—
- <sup>F54</sup>(8A) (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person; and
- (b) provision by reference to regulations under section 30 or 49(4) of the Welfare Reform and Pensions Act 1999.]
- [ The Scottish Ministers may by regulations make provision for or in connection  
<sup>F55</sup>(8B) with the verification, or apportionment, of compensation such as is mentioned in subsection (5A).]
- (9) Regulations under subsection (8) [<sup>F56</sup>or (8B)] above [<sup>F57</sup>may make different provision for different purposes and] shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>F58</sup>(10) .....
- <sup>F58</sup>(11) .....]

#### Textual Amendments

- F23** Words in s. 10(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F24** Word in s. 10(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F25** Words in s. 10(2) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 16(a)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F26** Word in s. 10(2) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(3)(a)**, **Sch. 30**; S.I. 2005/3175, art. 2(6)
- F27** Words in s. 10(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F28** Words in s. 10(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F29** Words in s. 10(2)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(3)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F30** Word in s. 10(3)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 16(4)(a)**; S.S.I. 2005/604, arts. 2(c), 4

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- F31** Words in s. 10(3)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(4)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F32** S. 10(3A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 16(b)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F33** Words in s. 10(4) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(a)**, 46(2); S.S.I. 2006/212, art. 2
- F34** S. 10(4A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(5)**; S.S.I. 2005/604, arts. 2(c), 4
- F35** Words in s. 10(4A) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(a)**, 46(2); S.S.I. 2006/212, art. 2
- F36** Word in s. 10(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(6)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F37** Letter in s. 10(5) inserted (19.8.1996) by 1995 c. 26, **s. 167(2)(a)(i)**; S.I. 1996/1843, **art. 3(b)** (with art. 4)
- F38** Words in s. 10(5) substituted (19.8.1996) by 1995 c. 26, **s. 167(2)(a)(ii)**; S.I. 1996/1843, **art. 3(a)** (with art. 4)
- F39** Word in s. 10(5)(b) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 8(1)(2)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F40** Words in s. 10(5) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(b)**, 46(2); S.S.I. 2006/212, art. 2
- F41** Words in s. 10(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(6)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F42** S. 10(5A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(c)**, 46(2); S.S.I. 2006/212, art. 2
- F43** Word in s. 10(6)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F44** Words in s. 10(6)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F45** Words in s. 10(6)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F46** Word in s. 10(6)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F47** Word in s. 10(6)(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F48** Word in s. 10(6)(d) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F49** Words in s. 10(6)(d) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F50** Words in s. 10(6)(e) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(7)(e)**; S.S.I. 2005/604, arts. 2(c), 4
- F51** Word in s. 10(7) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 16(8)**; S.S.I. 2005/604, arts. 2(c), 4
- F52** S. 10(8)-(11) inserted (15.7.1996 for certain purposes only and 19.8.1996 otherwise) by 1995 c. 26, **s. 167(2)(b)**; S.I. 1996/1843, **art. 3** (with art. 4)
- F53** S. 10(8) substituted (15.4.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 8(1)(3)** (with s. 91(4)); S.S.I. 2000/111, art., 2
- F54** S. 10(8A) inserted (15.4.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 8(1)(4)** (with s. 91(4)); S.S.I. 2000/111, **art. 2**
- F55** S. 10(8B) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(d)**, 46(2); S.S.I. 2006/212, art. 2
- F56** Words in s. 10(9) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(3)(e)**, 46(2); S.S.I. 2006/212, art. 2

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- F57** Words in s. 10(9) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 8(1)(5)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F58** S. 10(10)(11) repealed (1.12.2000) by 1999 c. 30, s. 84, 88, **Sch. 12 Pt. I para. 8(6)**, **Sch. 13 Pt. II**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

## 11 Factors to be taken into account.

- (1) In applying the principles set out in section 9 of this Act, the following provisions of this section shall have effect.
- (2) For the purposes of section 9(1)(b) of this Act, the court shall have regard to the extent to which—
  - (a) the economic advantages or disadvantages sustained by either [<sup>F59</sup>person] have been balanced by the economic advantages or disadvantages sustained by the other [<sup>F59</sup>person], and
  - (b) any resulting imbalance has been or will be corrected by a sharing of the value of the matrimonial property [<sup>F60</sup>or the partnership property] or otherwise.
- (3) For the purposes of section 9(1)(c) of this Act, the court shall have regard to—
  - (a) any decree or arrangement for aliment for the child;
  - (b) any expenditure or loss of earning capacity caused by the need to care for the child;
  - (c) the need to provide suitable accommodation for the child;
  - (d) the age and health of the child;
  - (e) the educational, financial and other circumstances of the child;
  - (f) the availability and cost of suitable child-care facilities or services;
  - (g) the needs and resources of the [<sup>F61</sup>persons]; and
  - (h) all the other circumstances of the case.
- (4) For the purposes of section 9(1)(d) of this Act, the court shall have regard to—
  - (a) the age, health and earning capacity of the [<sup>F62</sup>person] who is claiming the financial provision;
  - (b) the duration and extent of the dependence of that [<sup>F63</sup>person] prior to divorce or to the dissolution of the civil partnership];
  - (c) any intention of that [<sup>F62</sup>person] to undertake a course of education or training;
  - (d) the needs and resources of the [<sup>F64</sup>persons]; and
  - (e) all the other circumstances of the case.
- (5) For the purposes of section 9(1)(e) of this Act, the court shall have regard to—
  - (a) the age, health and earning capacity of the [<sup>F65</sup>person] who is claiming the financial provision;
  - (b) the duration of the marriage [<sup>F66</sup>or of the civil partnership];
  - (c) the standard of living of the [<sup>F67</sup>persons] during the marriage or civil partnership];
  - (d) the needs and resources of the [<sup>F68</sup>persons]; and
  - (e) all the other circumstances of the case.
- (6) In having regard under subsections (3) to (5) above to all the other circumstances of the case, the court may, if it thinks fit, take account of any support, financial or otherwise, given by the [<sup>F69</sup>person] who is to make the financial provision to any person whom



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he maintains as a dependant in his household whether or not he owes an obligation of aliment to that person.

- (7) In applying the principles set out in section 9 of this Act, the court shall not take account of the conduct of either party [<sup>F70</sup>to the marriage or as the case may be of either partner] unless—
- (a) the conduct has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision; or
  - (b) in relation to section 9(1)(d) or (e), it would be manifestly inequitable to leave the conduct out of account.

#### Textual Amendments

- F59** Word in s. 11(2)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F60** Words in s. 11(2)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(2\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F61** Word in s. 11(3)(g) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(3\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F62** Word in s. 11(4)(a)(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(4\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F63** Words in s. 11(4)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(4\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F64** Word in s. 11(4)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(4\)\(c\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F65** Word in s. 11(5)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(5\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F66** Words in s. 11(5)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(5\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F67** Words in s. 11(5)(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(5\)\(c\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F68** Word in s. 11(5)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(5\)\(d\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F69** Word in s. 11(6) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(6\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F70** Words in s. 11(7) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 17\(7\)](#); S.S.I. 2005/604, arts. 2(c), 4

## 12 Orders for payment of capital sum or transfer of property.

- (1) An order under section 8(2) of this Act for payment of a capital sum or transfer of property may be made—
- (a) on granting decree of divorce [<sup>F71</sup>or of dissolution of a civil partnership]; or
  - (b) within such period as the court on granting [<sup>F72</sup>the decree] may specify.
- (2) The court, on making an order referred to in subsection (1) above, may stipulate that it shall come into effect at a specified future date.
- (3) The court, on making an order under section 8(2) of this Act for payment of a capital sum, may order that the capital sum shall be payable by instalments.

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- (4) Where an order referred to in subsection (1) above has been made, the court may, on an application by
- [<sup>F73</sup>(a)] either party to the marriage,
  - [<sup>F74</sup>(b)] either partner,
- on a material change of circumstances, vary the date or method of payment of the capital sum or the date of transfer of property.

#### Textual Amendments

- F71** Words in s. 12(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 18\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F72** Words in s. 12(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 18\(2\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F73** S. 12(4)(a) renumbered (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 18\(3\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F74** S. 12(4)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 18\(3\)](#); S.S.I. 2005/604, arts. 2(c), 4

#### [<sup>F75</sup>12A Orders for payment of capital sum: pensions lump sums.

- (1) This section applies where the court makes an order under section 8(2) of this Act for payment of a capital sum (a “capital sum order”) by a party to the marriage [<sup>F76</sup>or a partner in a civil partnership (“the liable person”)] in circumstances where—
- (a) the matrimonial property [<sup>F77</sup>or the partnership property] within the meaning of section 10 of this Act includes any rights or interests in benefits under a pension [<sup>F78</sup>arrangement] which the liable [<sup>F79</sup>person] has or may have (whether such benefits are payable to him or in respect of his death); and
  - (b) those benefits include a lump sum payable to him or in respect of his death.
- (2) Where the benefits referred to in subsection (1) above include a lump sum payable to the liable [<sup>F80</sup>person], the court, on making the capital sum order, may make an order requiring the [<sup>F81</sup>person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, to the other party to the marriage [<sup>F82</sup>or as the case may be to the other partner (“the other person”)].
- (3) Where the benefits referred to in subsection (1) above include a lump sum payable in respect of the death of the liable [<sup>F83</sup>person], the court, on making the capital sum order, may make an order—
- (a) if the [<sup>F84</sup>person responsible for the pension arrangement] in question [<sup>F85</sup>has] power to determine the person to whom the sum, or any part of it, is to be paid, requiring them to pay the whole or part of that sum, when it becomes due, to the other [<sup>F83</sup>person];
  - (b) if the liable [<sup>F83</sup>person] has power to nominate the person to whom the sum, or any part of it, is to be paid, requiring the liable [<sup>F83</sup>person] to nominate the other [<sup>F83</sup>person] in respect of the whole or part of that sum;
  - (c) in any other case, requiring the [<sup>F84</sup>person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, to the other [<sup>F83</sup>person] instead of to the person to whom, apart from the order, it would be paid.

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- (4) Any payment by the [F86 person responsible for the pension arrangement] under an order under subsection (2) or (3) above—
- (a) shall discharge so much of the [F87 liability of the person responsible for the pension arrangement] to or in respect of the liable [F83 person] as corresponds to the amount of the payment; and
  - (b) shall be treated for all purposes as a payment made by the liable [F83 person] in or towards the discharge of his liability under the capital sum order.
- (5) Where the liability of the liable [F83 person] under the capital sum order has been discharged in whole or in part, other than by a payment by the [F88 person responsible for the pension arrangement] under an order under subsection (2) or (3) above, the court may, on an application by any person having an interest, recall any order under either of those subsections or vary the amount specified in such an order, as appears to the court appropriate in the circumstances.
- (6) Where—
- (a) an order under subsection (2) or (3) above imposes any requirement on the [F89 person responsible for] a pension [F90 arrangement] (“the first [arrangement]”) and the liable [F83 person] acquires transfer credits under another [arrangement] (“the new [F90 arrangement]”) which are derived (directly or indirectly) from a transfer from the first [arrangement] of all his accrued rights under that ; and
  - (b) the [F89 person responsible for] the new [arrangement][F91 has] been given notice in accordance with regulations under subsection (8) below,
- the order shall have effect as if it had been made instead in respect of the [F89 person responsible for] the new [F90 arrangement]; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.
- (7) Without prejudice to subsection (6) above, the court may, on an application by any person having an interest, vary an order under subsection (2) or (3) above by substituting for the [F92 person responsible for the pension arrangement] specified in the order the [F92 person responsible for] any other pension [arrangement] under which any lump sum referred to in subsection (1) above is payable to the liable [F83 person] or in respect of his death.
- [ Subsection (7ZB) applies where a right under an occupational pension scheme to
- <sup>F93</sup>(7ZA) payment of a lump sum in respect of death would, but for the provisions of Chapter 3 of Part 2 of the Pensions Act 2004 (c. 35), arise during an assessment period (within the meaning of section 132 of that Act).
- (7ZB) An order under subsection (3) shall not take effect until the assessment period comes to an end for a reason other than the giving of a transfer notice under section 160 of that Act.
- (7ZC) Notwithstanding the provisions of section 8(4A), for the purpose only of giving effect to subsection (7), the court may deal with an order under subsection (2) so that it—
- (a) is addressed to the Board of the Pension Protection Fund instead of the person responsible for a pension arrangement; and
  - (b) takes effect in respect of an entitlement to compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 or the Northern Ireland provision, instead of rights in relation to any lump sum referred to in subsection (1) which is payable to the liable party.]

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- [ Where—
- <sup>F94</sup>(7A) (a) the court makes an order under subsection (3); and
- (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the Pensions Act 2004 (c. 35) (“the 2004 Act”), or the Northern Ireland provision, in relation to the scheme, the order shall, on the giving of such notice, be recalled.
- (7B) Subsection (7C) applies where—
- (a) the court makes an order under subsection (2) imposing requirements on the trustees or managers of an occupational pension scheme; and
- (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the 2004 Act, or the Northern Ireland provision, in relation to the scheme.
- (7C) The order shall have effect from the time when the notice is given—
- (a) as if—
- (i) references to the trustees or managers of the scheme were references to the Board; and
- (ii) references to any lump sum to which the person with benefits under a pension arrangement is or might become entitled under the scheme were references to the amount of any compensation payable under that Chapter of the 2004 Act, or the Northern Ireland provision, to which that person is or might become entitled in respect of the lump sum; and
- (b) subject to such other modifications as may be prescribed by regulations by the Scottish Ministers.]
- (8) The Secretary of State may by regulations—
- (a) require notices to be given in respect of changes of circumstances relevant to orders under subsection (2) or (3) above;
- [ make provision for the recovery of the administrative expenses of complying
- <sup>F95</sup>(b) with such orders from the liable [<sup>F83</sup>person] or the other [<sup>F83</sup>person] .
- (9) Regulations under [<sup>F96</sup>subsections (7C)(b) and] (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>F97</sup>[ The definition of “benefits under a pension scheme” in section 27 of this Act does not
- (10) apply to this section.]
- [ In subsections [<sup>F99</sup>(7ZC)] to (7C) “the Northern Ireland provision”, in relation to
- <sup>F98</sup>(11) a provision of the 2004 Act, means any provision in force in Northern Ireland corresponding to the provision of that Act.]]

#### Textual Amendments

- F75** S. 12A inserted (15.7.1996 for certain purposes only and 19.8.1996 otherwise) by 1995 c. 26, s. 167(3); S.I. 1996/1843, art. 3 (with art. 4)
- F76** Words in s. 12A(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), Sch. 28 para. 19(2)(a); S.S.I. 2005/604, arts. 2(c), 4
- F77** Words in s. 12A(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), Sch. 28 para. 19(2)(b); S.S.I. 2005/604, arts. 2(c), 4

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- F78** Word in s. 12A(1)(a) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(2)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F79** Word in s. 12A(1)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F80** Word in s. 12A(2) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 5(2)**; S.S.I. 2006/212, art. 2
- F81** Words in s. 12A(2) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(3)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F82** Words in s. 12A(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(3)**; S.S.I. 2005/604, arts. 2(c), 4
- F83** Word in ss. 12A(3)-(8) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(4)**; S.S.I. 2005/604, arts. 2(c), 4
- F84** Words in s. 12A(3)(a)(c) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(4)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F85** Word in s. 12A(3)(a) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(3)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F86** Words in s. 12A(4) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(5)(a)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F87** Words in s. 12A(4) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(5)(b)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F88** Words in s. 12A(5) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(6)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F89** Words in s. 12A(6) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(a)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F90** Words in s. 12A(6) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(b)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F91** Word in s. 12A(6)(b) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(c)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F92** Words in s. 12A(7) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(8)(a)-(c)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F93** Ss. 12A(7ZA)-(7ZC) inserted (30.6.2006) by The Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), arts. 1, **8(a)**
- F94** Ss. 12A(7A)-(7C) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(4)(a)**, 46(2); S.S.I. 2006/212, art. 2
- F95** S. 12A(8)(b) repealed (1.12.2000) by 1999 c. 30, s. 88, **Sch. 13 Pt. II**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F96** Words in s. 12A(9) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(4)(b)**, 46(2); S.S.I. 2006/212, art. 2
- F97** S. 12A(10) substituted (1.12.2000) by 1999 c. 30, ss. 84, **Sch. 12 Pt. I para. 9(1)(9)**
- F98** S. 12A(11) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 17(4)(c)**, 46(2); S.S.I. 2006/212, art. 2
- F99** Word in s. 12A(11) substituted (30.6.2006) by The Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), arts. 1, **8(b)**

## 13 Orders for periodical allowance.

- (1) An order under section 8(2) of this Act for a periodical allowance may be made—
- (a) on granting decree of divorce [<sup>F100</sup>or of dissolution of a civil partnership];
  - (b) within such period as the court on granting [<sup>F101</sup>the decree] may specify; or
  - (c) after [<sup>F102</sup>such decree] where—
    - (i) no such order has been made previously;

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- (ii) application for the order has been made after the date of decree; and  
(iii) since the date of decree there has been a change of circumstances.
- (2) The court shall not make an order for a periodical allowance under section 8(2) of this Act unless—
- (a) the order is justified by a principle set out in paragraph (c), (d) or (e) of section 9(1) of this Act; and
  - (b) it is satisfied that an order for payment of a capital sum or for transfer of property<sup>[F103]</sup>, or a pension sharing order,] under that section would be inappropriate or insufficient to satisfy the requirements of the said section 8(2).
- (3) An order under section 8(2) of this Act for a periodical allowance may be for a definite or an indefinite period or until the happening of a specified event.
- (4) Where an order for a periodical allowance has been made under section 8(2) of this Act, and since the date of the order there has been a material change of circumstances, the court shall, on an application by or on behalf of either party to the marriage or his executor<sup>[F104]</sup>, or as the case may be either partner or his executor,], have power by subsequent order—
- (a) to vary or recall the order for a periodical allowance;
  - (b) to backdate such variation or recall to the date of the application therefor or, on cause shown, to an earlier date;
  - (c) to convert the order into an order for payment of a capital sum or for a transfer of property.
- <sup>[F105]</sup>(4A) Without prejudice to the generality of subsection (4) above, the making of a <sup>[F106]</sup>maintenance assessment<sup>[F106]</sup> maintenance calculation] with respect to a child who has his home with a person to whom the periodical allowance is made (being a child to whom the person making the allowance has an obligation of aliment) is a material change of circumstances for the purposes of that subsection.]
- (5) The provisions of this Act shall apply to applications and orders under subsection (4) above as they apply to applications for periodical allowance and orders on such applications.
- (6) Where the court backdates an order under subsection (4)(b) above, the court may order any sums paid by way of periodical allowance to be repaid.
- (7) An order for a periodical allowance made under section 8(2) of this Act—
- (a) shall, if subsisting at the death of the <sup>[F107]</sup>person] making the payment, continue to operate against that <sup>[F107]</sup>person's] estate, but without prejudice to the making of an order under subsection (4) above;
  - <sup>[F108]</sup>(b) shall cease to have effect on the person receiving payment—
    - (i) marrying,
    - (ii) entering into a civil partnership, or
    - (iii) dying,
 except in relation to any arrears due under it.]

#### Textual Amendments

**F100** Words in s. 13(1)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 20\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4

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- F101** Words in s. 13(1)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 20(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F102** Words in s. 13(1)(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 20(2)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F103** Words in s. 13(2)(b) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 10** (with s. 91(4)); S.S.I. 2000/238, **art. 2**
- F104** Words in s. 13(4) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 20(3)**; S.S.I. 2005/604, arts. 2(c), 4
- F105** S. 13(4A) inserted (5.4.1993) by S.I. 1993/660, **art. 2(4)**.
- F106** Words in s. 13(4A) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 5(4)** (with s. 83(6)); S.I. 2003/192, art. 3, **Sch.**
- F107** Words in s. 13(7)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 20(4)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F108** S. 13(7)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 20(4)(b)**; S.S.I. 2005/604, arts. 2(c), 4

#### 14 Incidental orders.

- (1) Subject to subsection (3) below, an incidental order may be made under section 8(2) of this Act before, on or after the granting or refusal of decree of divorce [F109] or of dissolution of a civil partnership].
- (2) In this Act, “an incidental order” means one or more of the following orders—
- (a) an order for the sale of property;
  - (b) an order for the valuation of property;
  - (c) an order determining any dispute between the parties to the marriage [F110], or as the case may be the partners,] as to their respective property rights by means of a declarator thereof or otherwise;
  - (d) an order regulating the occupation of
    - [F111(i)] the matrimonial home [F112] or
    - [F112(ii)] the family home of the partnership,]or the use of furniture and plenishings therein or excluding either [F113] person] from such occupation;
  - (e) an order regulating liability, as between the [F114] persons], for outgoings in respect of
    - [F115(i)] the matrimonial home [F116] or
    - [F116(ii)] the family home of the partnership,]or furniture or plenishings therein;
  - (f) an order that security shall be given for any financial provision;
  - (g) an order that payments shall be made or property transferred to any curator bonis or trustee or other person for the benefit of the [F117] person] by whom or on whose behalf application has been made under section 8(1) of this Act for an incidental order;
  - (h) an order setting aside or varying any term in an antenuptial or postnuptial marriage settlement [F118] or in any corresponding settlement in respect of the civil partnership];
  - (j) an order as to the date from which any interest on any amount awarded shall run;

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- [<sup>F119</sup>(ja) in relation to a deed relating to moveable property, an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed;]
- (k) any ancillary order which is expedient to give effect to the principles set out in section 9 of this Act or to any order made under section 8(2) of this Act.
- (3) An incidental order referred to in subsection (2)(d) or (e) above may be made only on or after the granting of [<sup>F120</sup>the decree].
- (4) An incidental order may be varied or recalled by subsequent order on cause shown.
- (5) So long as an incidental order granting a party to a marriage the right to occupy a matrimonial home or the right to use furniture and plenishings therein remains in force then—
- (a) section 2(1), (2), (5)(a) and (9) of the <sup>M1</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981 (which confer certain general powers of management on a spouse in relation to a matrimonial home), and
  - (b) subject to section 15 (3) of this Act, section 12 of the said Act of 1981 and [<sup>F121</sup>section 41 of the Bankruptcy (Scotland) Act 1985] (which protect the occupancy rights of a spouse against arrangements intended to defeat them),
- shall, except to the extent that the order otherwise provides, apply in relation to the order—
- (i) as if that party were a non-entitled spouse and the other party were an entitled spouse within the meaning of section 1(1) or 6(2) of the said Act of 1981 as the case may require;
  - (ii) as if the right to occupy a matrimonial home under that order were “occupancy rights” with the meaning of the said Act of 1981; and
  - (iii) with any other necessary modifications; and
- subject to section 15(3) of this Act, section 11 of the said Act of 1981 (protection of spouse in relation to furniture and plenishings) shall apply in relation to the order as if that party were a spouse within the meaning of the said section 11 and the order were an order under section 3(3) or (4) of the said Act of 1981.
- [<sup>F122</sup>(5A) So long as an incidental order granting a partner in a civil partnership the right to occupy a family home or the right to use furnishings and plenishings therein remains in force then—
- (a) section 102(1), (2), (5)(a) and (9) of the Civil Partnership Act 2004, and
  - (b) subject to section 15(3) of this Act, section 111 of that Act,
- shall, except to the extent that the order otherwise provides, apply in relation to the order in accordance with subsection (5B).
- (5B) Those provisions apply—
- (a) as if that partner were a non-entitled partner and the other partner were an entitled partner within the meaning of section 101 or 106(2) of that Act as the case may require,
  - (b) as if the right to occupy a family home under that order were a right specified in paragraph (a) or (b) of section 101(1) of that Act, and
  - (c) with any other necessary modification.]
- (6) In subsection (2)(h) above, “settlement” includes a settlement by way of a policy of assurance to which section 2 of the <sup>M2</sup>Married Women’s Policies of Assurance (Scotland) Act 1880 relates.



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- (7) Notwithstanding subsection (1) above, the Court of Session may by Act of Sederunt make rules restricting the categories of incidental order which may be made under section 8(2) of this Act before the granting of decree of divorce [F123 or of dissolution of a civil partnership].

#### Textual Amendments

- F109** Words in s. 14(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(2)**; S.S.I. 2005/604, arts. 2(c), 4
- F110** Words in s. 14(2)(c) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F111** S. 14(2)(d)(i) formed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F112** S. 14(2)(d)(ii) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F113** Word in s. 14(2)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F114** Word in s. 14(2)(e) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F115** S. 14(2)(e)(i) formed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F116** S. 14(2)(e)(ii) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F117** Words in s. 14(2)(g) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F118** Words in s. 14(2)(h) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(3)(e)**; S.S.I. 2005/604, arts. 2(c), 4
- F119** S. 14(2)(ja) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 18, 46(2); S.S.I. 2006/212, art. 2
- F120** Words in s. 14(3) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(4)**; S.S.I. 2005/604, arts. 2(c), 4
- F121** Words substituted by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), ss. 75(1)(5)(6), **Sch. 7 para. 23**
- F122** S. 14(5A)(5B) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(5)**; S.S.I. 2005/604, arts. 2(c), 4
- F123** Words in s. 14(7) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 21(6)**; S.S.I. 2005/604, arts. 2(c), 4

#### Marginal Citations

- M1** 1981 c. 59.  
**M2** 1880 c. 26.

## 15 Rights of third parties.

- (1) The court shall not make an order under section 8(2) of this Act for the transfer of property if the consent of a third party which is necessary under any obligation, enactment or rule of law has not been obtained.
- (2) The court shall not make an order under section 8(2) of this Act for the transfer of property subject to security without the consent of the creditor unless he has been given an opportunity of being heard by the court.

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- (3) Neither an incidental order, nor any rights conferred by such an order, shall prejudice any rights of any third party insofar as those rights existed immediately before the making of the order.

## 16 Agreements on financial provision.

- (1) Where the parties to a marriage [<sup>F124</sup>or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [<sup>F125</sup>or on dissolution of the civil partnership], the court may make an order setting aside or varying—
- (a) any term of the agreement relating to a periodical allowance where the agreement expressly provides for the subsequent setting aside or variation by the court of that term; or
  - (b) the agreement or any term of it where the agreement was not fair and reasonable at the time it was entered into.

- (2) The court may make an order—

- (a) under subsection (1)(a) above at any time after granting decree of divorce [<sup>F126</sup>or of dissolution of the civil partnership]; and
- <sup>F127</sup>(b) under subsection (1)(b) above, if the agreement does not contain a term relating to pension sharing, on granting decree of divorce [<sup>F126</sup>or of dissolution of the civil partnership] or within such time as the court may specify on granting decree of divorce [<sup>F126</sup> or of dissolution of the civil partnership]; or
- (c) under subsection (1)(b) above, if the agreement contains a term relating to pension sharing—
  - (i) where the order sets aside the agreement or sets aside or varies the term relating to pension sharing, on granting decree of divorce [<sup>F126</sup>or of dissolution of the civil partnership]; and
  - (ii) where the order sets aside or varies any other term of the agreement, on granting decree of divorce [<sup>F126</sup>or of dissolution of the civil partnership] or within such time thereafter as the court may specify on granting decree of divorce [<sup>F126</sup>or of dissolution of the civil partnership].]

<sup>F128</sup>(2A) In subsection (2) above, a term relating to pension sharing is a term corresponding to provision which may be made in a pension sharing order and satisfying the requirements set out in section 28(1)(f) or 48(1)(f) of the Welfare Reform and Pensions Act 1999.]

<sup>F129</sup>(2B) Subsection (2C) applies where—

- (a) the parties to a marriage or the partners in a civil partnership have entered into an agreement as to financial provision to be made on divorce or on dissolution of the civil partnership; and
- (b) the agreement includes provision in respect of a person's rights or interests or benefits under an occupational pension scheme.

(2C) The Board of the Pension Protection Fund's subsequently assuming responsibility for the occupational pension scheme in accordance with Chapter 3 of Part 2 of the Pension Act 2004 (c. 35) or any provision in force in Northern Ireland corresponding to that Chapter shall not affect—

- (a) the power of the court under subsection (1)(b) to make an order setting aside or varying the agreement or any term of it;

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- (b) on an appeal, the powers of the appeal court in relation to the order.]
- (3) Without prejudice to subsections (1) and (2) above, where the parties to a marriage [F130 or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [F131 or on dissolution of the civil partnership] and—
- (a) the estate of the [F132 person] by whom any periodical allowance is payable under the agreement has, since the date when the agreement was entered into, been sequestrated, the award of sequestration has not been recalled and the [F132 person] has not been discharged;
  - (b) an analogous remedy within the meaning of section 10(5) of the Bankruptcy (Scotland) Act 1985 has, since that date, come into force and remains in force in respect of that [F132 person's] estate; F133 ...
  - (c) that [F132 person's] estate is being administered by a trustee acting under a voluntary trust deed granted since that date by the [F132 person] for the benefit of his creditors generally or is subject to an analogous arrangement, [F134]; or
  - (d) by virtue of the making of a [F135 maintenance calculation][F135 maintenance calculation], child support maintenance has become payable by either party to the agreement with respect to a child to whom or for whose benefit periodical allowance is paid under that agreement,]

the court may, on or at any time after granting decree of divorce [F136 or of dissolution of the civil partnership], make an order setting aside or varying any term of the agreement relating to the periodical allowance.

- (4) Any term of an agreement purporting to exclude the right to apply for an order under subsection (1)(b) or (3) above shall be void.
- (5) In this section, “agreement” means an agreement entered into before or after the commencement of this Act.

#### Textual Amendments

- F124** Words in s. 16(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F125** Words in s. 16(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F126** Words in s. 16(2) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), **Sch. 2 para. 5(3)**; S.S.I. 2006/212, art. 2
- F127** S. 16(2)(b)(c) substituted for s. 16(2)(b) (1.12.2000) by [1999 c. 30](#), s. 84, **Sch. 12 Pt. I para. 11**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F128** S. 16(2A) inserted (1.12.2000) by [1999 c. 30](#), s. 84, **Sch. 12 Pt. I para. 11**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F129** S. 16(2B)(2C) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 17(5)**, 46(2); S.S.I. 2006/212, art. 2
- F130** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F131** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F132** Words in s. 16(3)(a)-(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F133** Word in s. 16(3)(b) deleted (5.4.1993) by [S.I. 1993/660](#), **art. 2(5)(a)**.
- F134** S. 16(3)(d) and preceding word inserted (5.4.1993) by [S.I. 1993/660](#), **art 2(5)(b)**.

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- F135** Words in s. 16(3)(d) substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(a\)\(2\), Sch. 3 para. 5\(5\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, [Sch.](#)
- F136** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 22\(3\)\(d\)](#); S.S.I. 2005/604, arts. 2(c), 4

## 17 Financial provision on declarator of nullity of marriage.

- (1) Subject to the following provisions of this section, the provisions of this Act shall apply to actions for declarator of nullity of marriage [<sup>F137</sup>or of a civil partnership] as they apply to actions for divorce [<sup>F138</sup>or for dissolution of a civil partnership]; and in this Act, unless the context otherwise requires, “action for divorce ” includes an action for declarator of nullity of marriage [<sup>F139</sup>and “action for dissolution of a civil partnership” includes an action for declarator of nullity of a civil partnership] and, in relation to such an action, “decree” [<sup>F140</sup>, “divorce” and “dissolution of a civil partnership”] shall be construed accordingly.
- (2) In an action for declarator of nullity of marriage [<sup>F141</sup>or of nullity of a civil partnership], it shall be competent for either party to claim interim aliment under section 6(1) of this Act notwithstanding that he denies the existence of the marriage [<sup>F142</sup>or civil partnership].
- (3) Any rule of law by virtue of which either party to an action for declarator of nullity of marriage may require restitution of property upon the granting of such declarator shall cease to have effect.

### Textual Amendments

- F137** Words in s. 17(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F138** Words in s. 17(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(2\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F139** Words in s. 17(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(2\)\(c\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F140** Words in s. 17(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(2\)\(d\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F141** Words in s. 17(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(3\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F142** Words in s. 17(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 23\(3\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4

**Status:**

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**Changes to legislation:**

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