



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

### *Supplemental*

#### **18 Orders relating to avoidance transactions**

- (1) Where a claim has been made (whether before or after the commencement of this Act), being—
  - (a) an action for aliment,
  - (b) a claim for an order for financial provision, or
  - (c) an application for variation or recall of a decree in such an action or of an order for financial provision,the party making the claim may, not later than one year from the date of the disposal of the claim, apply to the court for an order—
  - (i) setting aside or varying any transfer of, or transaction involving, property effected by the other party not more than 5 years before the date of the making of the claim; or
  - (ii) interdicting the other party from effecting any such transfer or transaction.
- (2) Subject to subsection (3) below, on an application under subsection (1) above for an order the court may, if it is satisfied that the transfer or transaction had the effect of, or is likely to have the effect of, defeating in whole or in part any claim referred to in subsection (1) above, make the order applied for or such other order as it thinks fit.
- (3) An order under subsection (2) above shall not prejudice any rights of a third party in or to the property where that third party—
  - (a) has in good faith acquired the property or any of it or any rights in relation to it for value ; or
  - (b) derives title to such property or rights from any person who has done so.
- (4) Where the court makes an order under subsection (2) above, it may include in the order such terms and conditions as it thinks fit and may make any ancillary order which it considers expedient to ensure that the order is effective.

**19 Inhibition and arrestment**

(1) Where a claim has been made, being—

- (a) an action for aliment, or
- (b) a claim for an order for financial provision,

the court shall have power, on cause shown, to grant warrant for inhibition or warrant for arrestment on the dependence of the action in which the claim is made and, if it thinks fit, to limit the inhibition to any particular property or to limit the arrestment to any particular property or to funds not exceeding a specified value.

(2) In subsection (1) above, " the court" means the Court of Session in relation to a warrant for inhibition and the Court Of Session or the sheriff, as the case may require, in relation to a warrant for arrestment on the dependence.

(3) This section is without prejudice to section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (wages, pensions, etc, to be exempt from arrestment on the dependence of an action).

**20 Provision of details of resources**

In an action—

- (a) for aliment;
- (b) which includes a claim for an order for financial provision ; or
- (c) which includes a claim for interim aliment,

the court may order either party to provide details of his resources or those relating to a child or incapax on whose behalf he is acting.

**21 Award of aliment or custody where divorce or seprration refused**

A court which refuses a decree of divorce or separation shall not, by virtue of such refusal\* be prevented from making an order for aliment or an order regulating custody or education of, or access to, a child or an incidental order determining any dispute between the parties as to their respective property rights.

**22 Expenses of action**

The expenses incurred by a party to a marriage in pursuing or defending—

- (a) an action for aliment brought by either party to the marriage on his own behalf against the other party;
- (b) an action for divorce, separation, declarator of marriage or declarator of nullity of marriage;
- (c) an application made after the commencement of this Act for variation or recall of a decree of aliment or an order for financial provision in an action brought before or after the commencement of this Act,

shall not be regarded as necessaries for which the other party to the marriage is liable.

**23 Actions for aliment of small amounts**

For section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 there shall be substituted the following section—

**“3 Actions for aliment of small amounts.**

- (1) An action under section 2 of the Family Law (Scotland) Act 1985 for aliment only (whether or not expenses are also sought) may be brought before the sheriff as a summary cause if the aliment claimed in the action does not exceed—
  - (a) in respect of a child under the age of 18 years, the sum of £35 per week; and
  - (b) in any other case, the sum of £70 per week;and any provision in any enactment limiting the jurisdiction of the sheriff in a summary cause by reference to any amount, or limiting the period for which a decree granted by him shall have effect, shall not apply in relation to such an action.
- (2) Without prejudice to any other enactment, the sheriff shall have jurisdiction in an action for aliment brought as a summary cause by virtue of subsection (1) above if—
  - (a) the pursuer resides within the jurisdiction of the sheriff, and
  - (b) the action could, by virtue of section 6 of the principal Act (which relates to jurisdiction), have been brought in the sheriff court of another sheriffdom.
- (3) The Lord Advocate may by order vary the amounts prescribed in paragraphs (a) and (b) of subsection (1) above.
- (4) The power to make an order under subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power to vary or revoke any order made thereunder.”