



Family Law (Scotland) Act 1985

1985 CHAPTER 37

Financial provision on divorce, etc.

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 [^{F1}or partnership property] shall be taken to be shared fairly between [^{F2}persons] when it is shared equally or in such other proportions as are justified by special circumstances.
 - (2) [^{F3}Subject to subsection (3A) below,] the net value of the ^{F4}... property shall be the value of the property at the relevant date after deduction of any debts incurred by [^{F5}one or both of the parties to the marriage or as the case may be of the partners] —
 - (a) before the marriage so far as they relate to the matrimonial property [^{F6}or before the registration of the partnership so far as they relate to the partnership property], and
 - (b) during the marriage [^{F7}or partnership],which are outstanding at that date.
 - (3) In this section “the relevant date” means whichever is the earlier of—
 - (a) subject to subsection (7) below, the date on which the [^{F8}persons] ceased to cohabit;
 - (b) the date of service of the summons in the action for divorce [^{F9}or for dissolution of the civil partnership].
- [^{F10}(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—
- (a) in subsection (2) above, for “relevant date” there were substituted “appropriate valuation date”;
 - (b) after that subsection there were inserted—

“(2A) Subject to subsection (2B), in this section the “appropriate valuation date” means—

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- (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 [F11]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 furnishings for such home; or
- (b) during the marriage but before the relevant date.

[F12(4A) Subject to [F13]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 furnishings for such a home, or
- (b) during the partnership but before the relevant date.]

(5) The proportion of any rights or interests of either [F14]person]

[F15(a)] under a life policy [F16]or similar arrangement; and

- (b) in any benefits under a pension [F17]arrangement] which either [F14]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) [F18]or (4A)(b)] above refers shall be taken to form part of the matrimonial property [F19]or partnership property].

[F20(5A) Where either person is entitled to [F21]PPF compensation], 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 [F22]persons] on the ownership or division of any of the matrimonial property [F23]or partnership property];
- (b) the source of the funds or assets used to acquire any of the matrimonial property [F24]or partnership property] where those funds or assets were not derived from the income or efforts of the [F25]persons] during the marriage [F24]or partnership];
- (c) any destruction, dissipation or alienation of property by either [F26]person];
- (d) the nature of the matrimonial property [F27]or partnership property], the use made of it (including use for business purposes or as a [F28]family] home) and

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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 [^{F29}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 [^{F30}persons] thereafter resumed cohabitation, except where the [^{F30}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.

[^{F31}The Secretary of State may by regulations make provision about calculation and 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—

- ^{F33}(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.]

[^{F34}(8B) The Scottish Ministers may by regulations make provision for the purposes of this Act about—

- (a) calculation and verification of PPF compensation,
- (b) apportionment of PPF compensation.

(8C) Regulations under subsection (8B) may include provision—

- (a) for calculation or verification in a manner approved by a prescribed person,
- (b) by reference to regulations under section 112 of the Pensions Act 2008.]

(9) Regulations under subsection (8) [^{F35}or (8B)] above [^{F36}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.

^{F37}(10)

^{F37}(11)]

Textual Amendments

- F1** 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
- F2** 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
- F3** 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)
- F4** 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)
- F5** 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
- F6** 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
- F7** 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

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- F8** 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
- F9** 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
- F10** 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)
- F11** 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
- F12** 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
- F13** 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
- F14** 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
- F15** 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)
- F16** 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)
- F17** 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**
- F18** 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
- F19** 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
- F20** 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
- F21** Words in s. 10(5A) substituted (6.3.2011 for specified purposes, 6.4.2011 in so far as not already in force) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 7 para. 4(a)**; S.I. 2011/664, art. 2(2)(3), Sch. Pts. 1, 2
- F22** 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
- F23** 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
- F24** 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
- F25** 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
- F26** 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
- F27** 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
- F28** 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
- F29** 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
- F30** 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
- F31** 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)
- F32** 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
- F33** 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**

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- F34** S. 10(8B)(8C) substituted for s. 10(8B) (6.3.2011 for specified purposes, 6.4.2011 in so far as not already in force) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 7 para. 4(b)**; S.I. 2011/664, art. 2(2)(3), Sch. Pts. 1, 2
- F35** 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
- F36** 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**
- F37** 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**

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