

*Draft Regulations laid before the Scottish Parliament under section 44(5) of the Family Law (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2006 No.**

**FAMILY LAW**

**The Family Law (Scotland) Act 2006  
(Consequential Modifications) Order 2006**

*Made* - - - -

*Coming into force* - - 30th June 2006

The Scottish Ministers, in exercise of the powers conferred by section 44(1) and (2) of the Family Law (Scotland) Act 2006<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 44(5) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1. This Order may be cited as the Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 and shall come into force on 30th June 2006.

**The Succession (Scotland) Act 1964**

2. In section 24(1A) of the Succession (Scotland) Act 1964<sup>(2)</sup> (treatment of adopted persons for the purposes of succession: supplementary provisions) the words from “without” to “parents,” are repealed.

**The Law Reform (Miscellaneous Provisions) (Scotland) Act 1968**

3. Section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968<sup>(3)</sup> (protection of trustees and executors) is repealed.

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(1) 2006 asp 2.

(2) 1964 c. 41. Section 24(1A) was inserted by section 8(10) of, and paragraph 5(3) of Schedule 2 to, the Children (Scotland) Act 1975 (c. 72).

(3) 1968 c. 70. Section 7 was amended by section 10(1) and (2) and Schedules 1 and 2 to the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9).

### **The Marriage (Scotland) Act 1977**

4. In section 2 of the Marriage (Scotland) Act 1977(4) (marriage of related persons)–
- (a) in subsection (6)–
    - (i) for “Subsections (1A) and (1B)” substitute “Subsection (1A)”; and
    - (ii) for “paragraphs 2 and 2A” substitute “paragraph 2”; and
  - (b) subsection (8) is repealed.

### **The Matrimonial Homes (Family Protection) (Scotland) Act 1981**

5. In paragraph (a) of each of subsections (2) and (2A) of section 8 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(5) (interests of heritable creditors), for “an affidavit sworn or affirmed” substitute “a written declaration signed”.

6. In section 14(6) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (interdict competent where spouses live together) the words “and in sections 15 to 17” are repealed(6).

### **The Foster Children (Scotland) Act 1984**

7. In section 21(1) of the Foster Children (Scotland) Act 1984(7) (interpretation), in the definition of “relative”, the words from “and includes” to the end of that definition are repealed.

### **The Family Law (Scotland) Act 1985**

8. In section 12A of the Family Law (Scotland) Act 1985(8) (orders for payment of capital sum: pensions lump sums)–

- (a) after subsection (7) insert–
  - “(7ZA) Subsection (7ZB) applies where a right under an occupational pension scheme to 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.”(9); and
- (b) in subsection (11), for “(7A)” substitute “(7ZC)”.

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(4) 1977 c. 15. Section 2(6) was inserted by paragraph 7 of Part 2 of Schedule 4 to the Gender Recognition Act 2004 (c. 7).

(5) 1981 c. 59.

(6) Section 14(6) was inserted by section 10(3) of the Family Law (Scotland) Act 2006 (asp 2).

(7) 1984 c. 56.

(8) 1985 c. 37. Section 12A was inserted by section 167(3) of the Pensions Act 1995 (c. 26).

(9) Section 8(4A) of the Family Law (Scotland) Act 1985 (c. 37) was inserted by section 17(2) of the Family Law (Scotland) Act 2006 (asp 2).

## **The Civil Partnership Act 2004**

**9.** In paragraph (a) of each of subsections (2) and (3) of section 108 of the Civil Partnership Act 2004<sup>(10)</sup> (interests of heritable creditors), for “an affidavit sworn or affirmed” substitute “a written declaration signed”.

**10.** In section 113(6) of the Civil Partnership Act 2004 (civil partners: competency of interdict) the words “and in sections 114 to 116” are repealed<sup>(11)</sup>.

St Andrew’s House,  
Edinburgh  
2006

Authorised to sign by the Scottish Ministers

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<sup>(10)</sup> 2004 c. 33.

<sup>(11)</sup> Section 113(6) of the Civil Partnership Act 2004 (c. 33) was inserted by paragraph 8 of schedule 1 to the [Family Law \(Scotland\) Act 2006 \(asp 2\)](#).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments to and repeals provisions in primary legislation. These amendments and repeals are consequential for the purposes of, or in consequence of the [Family Law \(Scotland\) Act 2006 \(asp 2\)](#) (“the Act”).

The main amendments and repeals contained in this Order are as follows:–

- (a) the repeal of provisions in section 24(1A) of the Succession (Scotland) Act 1964 (c. 41) and section 21(1) of the Foster Children (Scotland) Act 1984 (c. 56) and the whole of section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) in consequence of the abolition of the status of illegitimacy of section 21 of the Act (articles 2, 3 and 7);
- (b) the amendment of section 8(2)(a) and (2A)(a) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) and section 108(2)(a) and (3)(a) of the Civil Partnership Act 2004 (c. 33) makes similar provision to the amendments made by section 6 and paragraph 5(b) of Schedule 1 to the Act to section 6(3)(e) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and section 106(3)(e) of the Civil Partnership Act 2004 (articles 5 and 9); and
- (c) the amendment of section 12A of the Family Law (Scotland) Act 1985 (c. 37) makes further provision in relation to the implementation of court orders granted under that section which are affected by the operation of the Pensions Act 2004 (c. 35).