
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 212 (C.19)

FAMILY LAW

**The Family Law (Scotland) Act 2006 (Commencement,
Transitional Provisions and Savings) Order 2006**

Made - - - - 19th April 2006

The Scottish Ministers, in exercise of the powers conferred by section 46(2) and (3) of the Family Law (Scotland) Act 2006(1), hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006.

(2) In this Order—

- (a) “the Act” means the Family Law (Scotland) Act 2006;
- (b) “the 1986 Act” means the Law Reform (Parent and Child) (Scotland) Act 1986(2); and
- (c) references to sections, subsections and schedules are, unless otherwise stated, references to sections and subsections of, and schedules to, the Act.

Commencement of the Act

2. Subject to the transitional provisions and savings contained in articles 3 to 13, the provisions of the Act shall come into force on 4th May 2006.

Transitional provisions

3. In so far as they relate to periods of non-cohabitation, the provisions of sections 5, 6 and 8, and paragraphs 3 to 5 and 7 of schedule 1 shall not apply where spouses or, as the case may be, civil partners cease to cohabit before 4th May 2006.

4. The provisions of sections 12, 16, 21, 22, 32, and 37 to 42 and paragraph 1 of schedule 2 shall not apply in relation to any proceedings which commenced before 4th May 2006.

(1) 2006 asp 2.
(2) 1986 c. 9.

5. The provisions of section 19 and paragraph 11 of schedule 1 shall not apply where spouses are divorced or any marriage is annulled or, as the case may be, any civil partnership is dissolved or annulled before 4th May 2006.

6. The provisions of section 28 shall not apply in respect of cohabitants who cease to cohabit before 4th May 2006.

7. The provisions of section 29 shall not apply where a cohabitant dies before 4th May 2006.

8. The provisions of section 35 shall not apply in respect of deaths which occur before 4th May 2006.

Savings provisions

9. Notwithstanding commencement of the amendment in section 21(2)(c) adding subsection (6) of section 1 of the 1986 Act, it shall continue to be competent to bring an action for declarator of legitimacy, legitimation or illegitimacy for the purposes of the determination of any question mentioned in subsection (4) of that section.

10. Notwithstanding commencement of the amendment to section 7 of the 1986 Act in paragraph 6(2) of schedule 2, that section shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date in relation to actions for declarator of legitimacy, legitimation or illegitimacy brought for the purposes of the determination of any question mentioned in section 1(4) of the 1986 Act.

11. Notwithstanding commencement of its repeal in schedule 3, the Legitimation (Scotland) Act 1968(3) shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date for the purposes of the determination of any question as to the succession to or devolution of any title, honour or dignity.

12. Notwithstanding commencement of the repeal in schedule 3 of the words “legitimacy, legitimation, illegitimacy” in section 8(2) of the Civil Evidence (Scotland) Act 1988(4), that section shall continue to have effect on and after 4th May 2006 as it had effect immediately before that date in relation to actions for declarator of legitimacy, legitimation or illegitimacy brought for the purposes of the determination of any question mentioned in section 1(4) or 9(1)(c) or (ca)(5) of the 1986 Act.

13. Notwithstanding the commencement of the repeal in schedule 3 of—

(a) sections 15 to 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(6);
and

(b) sections 114 to 116 of the Civil Partnership Act 2004(7),

those sections will continue to have effect on and after 4th May 2006 as they had effect immediately before that date for the purposes of powers of arrest granted before that date under section 15 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or, as the case may be, section 114 of the Civil Partnerships Act 2004.

(3) 1968 c. 22.

(4) 1988 c. 32.

(5) Section 9(1)(ca) of the Law Reform (Parent and Child) (Scotland) Act 1986 was inserted by section 21(4)(b) of the Family Law (Scotland) Act 2006.

(6) 1981 c. 59.

(7) 2004 c. 33.

St Andrew's House, Edinburgh
19th April 2006

HUGH HENRY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the [Family Law \(Scotland\) Act 2006 \(asp 2\)](#) (“the Act”) and makes transitional and savings provisions.

Article 2 brings the provisions of the Act into force on 4th May 2006.

Article 3 provides that the amendments made by the Act to the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) and the Civil Partnership Act 2004 (c. 33), which reduce the period of non cohabitation after which spouses and civil partners cease to have occupancy rights, will not apply where spouses or civil partners stop cohabiting before 4th May 2006.

Article 4 provides that where proceedings are pending on 4th May 2006, the amendments and other provisions made by the sections referred to in the article will not apply in relation to those proceedings.

Article 5 provides that the provisions made by the sections referred to in the article in relation to special destinations will not apply where parties end their marriage or civil partnership before 4th May 2006.

Articles 6 and 7 provide that the provisions of the sections referred to in those articles will only be available to cohabitants who separate, or where one cohabitant dies on and after 4th May 2006.

Article 8 provides that the amendments to the Damages (Scotland) Act 1976 (c. 13) by the section referred to in the article will not apply where a person dies before 4th May 2006.

Articles 9 to 12 save the competence of actions of declarator of legitimacy, legitimation or illegitimacy, the effect of the Legitimation (Scotland) Act 1968 (c. 22), and rules of evidence in the Civil Evidence (Scotland) Act 1988 (c. 36) relating to such declarators for the limited purposes of establishing questions in relation to rights to titles of honour, coats of arms or the construction or effect of enactments or deeds dated from before 4th May 2006.

Article 13 saves the effect of sections 15 to 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and sections 114 to 116 of the Civil Partnership Act 2004 so that those provisions can continue to be applied in relation to enforcement of powers of arrest granted before 4th May 2006.