Family Law (Scotland) Act 1985

1985 CHAPTER 37

Financial provision on divorce, etc.

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 **[**[F1]or of dissolution of a civil partnership**]**;

(b) within such period as the court on granting **[**[F2]the decree**]** may specify; or

(c) after **[**[F3]such decree**]** where—

(i) no such order has been made previously;

(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**[**[F4], or a pension sharing order **[**[F5]or pension compensation 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**[**[F6], 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.

[[F7](4A) Without prejudice to the generality of subsection (4) above, the making of a **[**[F8]maintenance assessment**]**[F8]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 **[**[F9]person**]** making the payment, continue to operate against that **[**[F9]person's**]** estate, but without prejudice to the making of an order under subsection (4) above;

[[F10](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

F1 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

F2 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

F3 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

F4 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**

F5 Words in s. 13(2)(b) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 7 para. 7**; S.I. 2011/664, art. 2(3), Sch. Pt. 2

F6 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

F7 S. 13(4A) inserted (5.4.1993) by S.I. 1993/660, **art. 2(4)**.

F8 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.**

F9 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

F10 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

Changes to legislation:
There are currently no known outstanding effects for the Family Law (Scotland) Act 1985, Section 13.