



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

### *Aliment*

#### **2 Actions for aliment.**

- (1) A claim for aliment only (whether or not expenses are also sought) may be made, against any person owing an obligation of aliment, in the Court of Session or the sheriff court.
- (2) Unless the court considers it inappropriate in any particular case, a claim for aliment may also be made, against any person owing an obligation of aliment, in proceedings—
  - (a) for divorce, separation, declarator of marriage or declarator of nullity of marriage;
  - [<sup>F1</sup>(aa) for dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership,]
  - (b) relating to orders for financial provision;
  - <sup>F2</sup>[(c) concerning parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) or guardianship in relation to children;]
  - (d) concerning parentage or legitimacy;
  - (e) of any other kind, where the court considers it appropriate to include a claim for aliment.
- (3) In this Act “action for aliment” means a claim for aliment in proceedings referred to in subsection (1) or (2) above.
- (4) An action for aliment may be brought—
  - (a) by a person (including a child) to whom the obligation of aliment is owed;
  - (b) by the curator bonis of an incapax <sup>F3</sup>... ;
  - (c) on behalf of a child under the age of 18 years, by—
    - (i) the [<sup>F4</sup>parent or guardian] of the child;
    - <sup>F5</sup>(ii) .....

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*Changes to legislation: There are currently no known outstanding effects for the Family Law (Scotland) Act 1985, Section 2. (See end of Document for details)*

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- <sup>F6</sup>[(iii) a person with whom the child lives or who is seeking a residence order (within the meaning of section 11(2)(c) of the Children (Scotland) Act 1995) in respect of the child.]
- (5) A woman (whether married or not) may bring an action for aliment on behalf of her unborn child as if the child had been born, but no such action shall be heard or disposed of prior to the birth of the child.
- (6) It shall be competent to bring an action for aliment, notwithstanding that the person for or on behalf of whom aliment is being claimed is living in the same household as the defender.
- (7) It shall be a defence to an action for aliment brought by virtue of subsection (6) above that the defender is fulfilling the obligation of aliment, and intends to continue doing so.
- (8) It shall be a defence to an action for aliment by or on behalf of a person other than a child under the age of 16 years that the defender is making an offer, which it is reasonable to expect the person concerned to accept, to receive that person into his household and to fulfil the obligation of aliment.
- (9) For the purposes of subsection (8) above, in considering whether it is reasonable to expect a person to accept an offer, the court shall have regard among other things to any conduct, decree or other circumstances which appear to the court to be relevant: but the fact that a husband and wife [<sup>F7</sup>or the partners in a civil partnership] have agreed to live apart shall not of itself be regarded as making it unreasonable to expect a person to accept such an offer.
- (10) A person bringing an action for aliment under subsection (4)(c) above may give a good receipt for aliment paid under the decree in the action.

#### Textual Amendments

- F1** S. 2(2)(aa) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 12(2)**; S.S.I. 2005/604, arts. 2(c), 4
- F2** S. 2(2)(c) substituted (1.11.1996) by [1995 c. 36](#), s. 105(4), **Sch. 4 para. 36(a)** (with s. 103); S.I. 1996/2203, art. 3(3), **Sch.**
- F3** Words in s. 2(4)(b) repealed (25.7.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50\)](#), SIF 49:8), ss. 10(2), 11(2), **Sch. 2**.
- F4** Words in s. 2(4)(c)(i) substituted (25.7.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50\)](#), SIF 49:8), ss. 10, 11(2), **Sch. 1 para.40**.
- F5** S. 2(4)(c)(ii) repealed (25.7.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50\)](#), SIF 49:8), ss. 10(2), 11(2), **Sch. 2**.
- F6** S. 2(4)(c)(iii) substituted (1.11.1996) by [1995 c. 36](#), s. 105(4), **Sch. 4 para. 36(b)** (with s. 103); S.I. 1996/2203, art. 3(3), **Sch.**
- F7** Words in s. 2(9) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 12(3)**; 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 2.