



# Family Law (Scotland) Act 2006

## 2006 asp 2

### *Financial provision*

#### **16 Financial provision: valuation of matrimonial property**

In section 10 of the Family Law (Scotland) Act 1985 (c. 37) (which provides for the sharing of the value of matrimonial property and fixes the date of its valuation)—

- (a) in subsection (2), at the beginning there shall be inserted “Subject to subsection (3A) below,”; and
- (b) after subsection (3), there shall be inserted—

“(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—

- (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.”.

**17 Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund**

(1) The Family Law (Scotland) Act 1985 (c. 37) shall be amended in accordance with subsections (2) to (5).

(2) In section 8 (orders for financial provision), after subsection (4) there shall be inserted—

“(4A) The court shall not make a pension sharing order, or an order under section 12A(2) or (3) of this Act, in relation to matrimonial property, or partnership property, consisting of compensation such as is mentioned in section 10(5A).”.

(3) In section 10 (sharing of value of property)—

- (a) in each of subsections (4) and (4A), for “subsection (5)” there shall be substituted “subsections (5) and (5A)”;
- (b) in subsection (5), after “(4)(b)” there shall be inserted “or (4A)(b)”;
- (c) after subsection (5) there shall be inserted—

“(5A) Where either person is entitled to compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 (c. 35) or any provision in force in Northern Ireland corresponding to that Chapter, 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.”;

(d) after subsection (8A) there shall be inserted—

“(8B) The Scottish Ministers may by regulations make provision for or in connection with the verification, or apportionment, of compensation such as is mentioned in subsection (5A).”; and

(e) in subsection (9), after “(8)” there shall be inserted “or (8B)”.

(4) In section 12A (orders for payment of capital sum: pensions lump sum)—

(a) after subsection (7) there shall be inserted—

“(7A) Where—

- (a) the court makes an order under subsection (3); and
- (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the Pensions Act 2004 (c. 35) (“the 2004 Act”), or the Northern Ireland provision, in relation to the scheme,

the order shall, on the giving of such notice, be recalled.

(7B) Subsection (7C) applies where—

- (a) the court makes an order under subsection (2) imposing requirements on the trustees or managers of an occupational pension scheme; and
- (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the 2004 Act, or the Northern Ireland provision, in relation to the scheme.

(7C) The order shall have effect from the time when the notice is given—

- (a) as if—
    - (i) references to the trustees or managers of the scheme were references to the Board; and
    - (ii) references to any lump sum to which the person with benefits under a pension arrangement is or might become entitled under the scheme were references to the amount of any compensation payable under that Chapter of the 2004 Act, or the Northern Ireland provision, to which that person is or might become entitled in respect of the lump sum; and
  - (b) subject to such other modifications as may be prescribed by regulations by the Scottish Ministers.”;
  - (b) in subsection (9), for “subsection” there shall be substituted “subsections (7C) (b) and”; and
  - (c) after subsection (10) there shall be added—

“(11) In subsections (7A) to (7C) “the Northern Ireland provision”, in relation to a provision of the 2004 Act, means any provision in force in Northern Ireland corresponding to the provision of that Act.”.
- (5) In section 16 (agreements on financial provision), after subsection (2A) there shall be inserted—
- “(2B) Subsection (2C) applies where—
- (a) the parties to a marriage or the partners in a civil partnership have entered into an agreement as to financial provision to be made on divorce or on dissolution of the civil partnership; and
  - (b) the agreement includes provision in respect of a person’s rights or interests or benefits under an occupational pension scheme.
- (2C) The Board of the Pension Protection Fund’s subsequently assuming responsibility for the occupational pension scheme in accordance with Chapter 3 of Part 2 of the Pension Act 2004 (c. 35) or any provision in force in Northern Ireland corresponding to that Chapter shall not affect—
- (a) the power of the court under subsection (1)(b) to make an order setting aside or varying the agreement or any term of it;
  - (b) on an appeal, the powers of the appeal court in relation to the order.”.

## 18 Financial provision: incidental orders

In subsection (2) of section 14 of the Family Law (Scotland) Act 1985 (c. 37) (incidental orders), after paragraph (j) there shall be inserted—

- “(ja) in relation to a deed relating to moveable property, an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed;”.