

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Cohabitation

Section 28: Financial provision where cohabitation ends otherwise than by death

44. On the break up of a committed cohabiting relationship, one party may find themselves in a position of financial vulnerability and section 28 seeks to make provision for such situations. It provides that one party can apply to the court for a limited financial settlement from their former cohabitant. Subsection (2) states that courts may require the defender to pay a capital sum, payable as described at subsection (7). Courts may also require the defender to make payment in respect of the cost of caring for any child of whom the cohabitants are parents under the age of 16, also payable as described at subsection (7).
45. In considering such applications for financial support, courts will consider, under subsection (3), whether the defender has derived any economic advantage from contributions made by the applicant and conversely whether the applicant has suffered any economic disadvantage. Subsections (4) to (6) provide for a balancing exercise to be carried out by the court when assessing the economic advantage and disadvantage derived and suffered by either or both parties. Subsection (8) specifies that any application to the court under this section would have to be made within a year after the day on which the cohabitation ended. This section also sets out which courts have jurisdiction to deal with such applications. Subsection (10) provides for the definition of the relevant child, namely a child of whom the cohabitants are the parents or a child who is or was accepted by the cohabitants as a child of the family.