



Family Law (Scotland) Act 2006

2006 asp 2

Cohabitation

28 Financial provision where cohabitation ends otherwise than by death

- (1) Subsection (2) applies where cohabitants cease to cohabit otherwise than by reason of the death of one (or both) of them.
- (2) On the application of a cohabitant (the “applicant”), the appropriate court may, after having regard to the matters mentioned in subsection (3)—
 - (a) make an order requiring the other cohabitant (the “defender”) to pay a capital sum of an amount specified in the order to the applicant;
 - (b) make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;
 - (c) make such interim order as it thinks fit.
- (3) Those matters are—
 - (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
 - (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—
 - (i) the defender; or
 - (ii) any relevant child.
- (4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).
- (5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—
 - (a) the applicant; or
 - (b) any relevant child.
- (6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—
 - (a) the defender; or

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- (b) any relevant child,
is offset by any economic advantage the applicant has derived from contributions made by the defender.
- (7) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—
- (a) on such date as may be specified;
 - (b) in instalments.
- (8) ^{F1}... Any application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit.
- (9) In this section—
- “appropriate court” means—
- (a) where the cohabitants are a man and a woman, the court which would have jurisdiction to hear an action of divorce in relation to them if they were married to each other;
 - (b) where the cohabitants are of the same sex, the court which would have jurisdiction to hear an action for the dissolution of the civil partnership if they were civil partners of each other;
- “child” means a person under 16 years of age;
- “contributions” includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and
- “economic advantage” includes gains in—
- (a) capital;
 - (b) income; and
 - (c) earning capacity;
- and “economic disadvantage” shall be construed accordingly.
- (10) For the purposes of this section, a child is “relevant” if the child is—
- (a) a child of whom the cohabitants are the parents;
 - (b) a child who is or was accepted by the cohabitants as a child of the family.

Textual Amendments

F1 Words in s. 28(8) omitted (31.12.2020) by virtue of [The Civil and Family Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/441\)](#), regs. 1(2)(b), **5(2)** (with reg. 7)

Commencement Information

I1 S. 28 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with art. 6)

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