



Divorce (Scotland) Act 1976

1976 CHAPTER 39

Financial provision for spouses and children

5 Orders for financial provision

- (1) In an action for divorce (whether brought before or after the commencement of this Act), either party to the marriage may, at any time prior to decree being granted, apply to the court for any one or more of the following orders—
- (a) an order for the payment to him or for his benefit by the other party to the marriage of a periodical allowance;
 - (b) an order for the payment to him or for his benefit by the other party to the marriage of a capital sum;
 - (c) an order varying the terms of any settlement made in contemplation of or during the marriage so far as taking effect on or after the termination of the marriage:

Provided that any reference in this subsection to payment by the other party to the marriage shall include a reference to payment out of any estate belonging to that party or held for his benefit.

- (2) Where an application under the foregoing subsection has been made in an action, the court, on granting decree in that action, shall make with respect to the application such order, if any, as it thinks fit, having regard to the respective means of the parties to the marriage and to all the circumstances of the case, including any settlement or other arrangements made for financial provision for any child of the marriage.
- (3) Where an application for an order for the payment of a periodical allowance under subsection (1)(a) of this section has been withdrawn or refused, or where no such application has been made, either party to the marriage may apply to the court for such an order after the date of the granting of decree of divorce if since that date there has been a change in the circumstances of either of the parties to the marriage; and the court shall make with respect to that application such order, if any, as it thinks fit, having regard to the factors mentioned in subsection (2) of this section.

- (4) Any order made under this section relating to the payment of a periodical allowance may, on an application by or on behalf of either party to the marriage (or his executor) on a change of circumstances, be varied or recalled by a subsequent order.
- (5) Any order made under this section relating to payment of a periodical allowance—
- (a) shall, on the death of the person by whom the periodical allowance is payable, continue to operate against that person's estate, but without prejudice to the making of an order under the last foregoing subsection ;
 - (b) shall cease to have effect on the remarriage or death of the person to whom or for whose benefit the periodical allowance is payable, except in relation to any arrears due under it on the date of such remarriage or death.
- (6) Provision shall be made by act of sederunt to impose upon the pursuer in an action for divorce to which section 1(2)(d) or 1(2)(e) of this Act relates a duty to inform the defender of his right to apply for—
- (a) financial provision under this Act,
 - (b) an order providing for the custody, maintenance and education of any child of the marriage under section 9 of the Conjugal Rights (Scotland) Amendment Act 1861,
- in such form and manner as the act of sederunt may require, and, for the purposes of this subsection, where the pursuer alleges that the address of the defender is unknown to him, he shall satisfy the court that all reasonable steps have been taken to ascertain it.
- (7) Any reference in this section to a settlement shall be construed as including a settlement by way of a policy of assurance to which section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 relates.

6 Orders relating to settlements and other dealings

- (1) Where a claim has been made, being—
- (a) an application under subsection (1)(a) or (1)(b) or (3) or (4) of section 5 of this Act which has been made by either party to the marriage, or
 - (b) an action for separation and aliment, adherence and aliment or interim aliment which has been brought by either party to the marriage, or
 - (c) an application for variation of an award of aliment (other than an interim award) in such an action which has been made by the party of the marriage who has brought that action,
- that party may, at any time before the expiration of a period of one year from the disposal of the said claim, apply to the court for an order—
- (i) reducing or varying any settlement or disposition of property belonging to the other party to the marriage made by him in favour of any third party at any time after the date occurring three years before the making of the said claim ; or
 - (ii) interdicting the other party to the marriage from making any such settlement or disposition, or transferring out of the jurisdiction of the court, or otherwise dealing with, any property belonging to him.
- (2) On an application for an order under the foregoing subsection the court may make such an order if it is shown to its satisfaction that the settlement or disposition was made or is about to be made, or that the property is about to be transferred or otherwise dealt with, wholly or partly for the purpose of defeating in whole or in part any claim referred to in the foregoing subsection which has been made or might be made:

Provided that an order under this subsection shall not prejudice the rights (if any) in that property of any third party who has in good faith acquired it or any of it for value, or who derives title to the property or any of it from any person who has done so.

7 Power of court to award aliment

- (1) Without prejudice to its other powers to award aliment, it shall be competent for the court, in an action for interim aliment brought after the commencement of this Act, to grant decree therein if it is satisfied that—
- (a) the pursuer and the defender are not cohabiting with one another, and
 - (b) the pursuer is unwilling to cohabit with the defender whether or not the pursuer has reasonable cause for not so cohabiting by virtue of the circumstances set out in paragraph (a), (b) or (c) of section 1(2) of this Act:

Provided that, where the pursuer does not have reasonable cause for not cohabiting as aforesaid, the court shall not grant decree if it is satisfied that the defender is willing to cohabit with the pursuer.

- (2) In determining the amount of aliment, if any, to be awarded in a decree of separation and aliment, adherence and aliment or interim aliment, the court shall have regard to the factors mentioned in section 5(2) of this Act.

This subsection shall apply to actions brought before the commencement of this Act as well as to actions brought after such commencement.

8 Amendment of Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963

Section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 is amended as follows—

- (a) For subsection (1) there shall be substituted the following subsection—
- “(1) An action of interim aliment by one party to a marriage against the other may competently be brought before the sheriff as a summary cause if the aliment claimed in the action does not exceed—
- (i) the sum of £25 per week in respect of the pursuer; and
 - (ii) the sum of £7.50 in respect of each child (if any) of the marriage;
- and any provision in any enactment limiting the jurisdiction of the sheriff in a summary cause by reference to any amount, or limiting the period for which a decree granted by him shall have effect, shall not apply in relation to such an action of interim aliment as is described in this subsection.”
- (b) In subsection (2) for the words " in the small debt court " there shall be substituted the words " as a summary cause ".
- (c) After subsection (2) there shall be added the following subsections—
- “(2A) The Lord Advocate may by order vary the amounts prescribed in paragraphs (i) and (ii) of subsection (1) above.
- (2B) The power to make an order under the last foregoing subsection shall be exercisable by statutory instrument subject to annulment in

Status: This is the original version (as it was originally enacted).

pursuance of a resolution of either House of Parliament, and shall include power to vary or revoke any order made thereunder.”.

(d) Subsection (3) is hereby repealed,
and this section shall come into force on 1st September 1976.