



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

### *Aliment*

#### **1 Obligation of aliment**

- (1) From the commencement of this Act, an obligation of aliment shall be owed by, and only by—
  - (a) a husband to his wife ;
  - (b) a wife to her husband ;
  - (c) a father or mother to his or her child ;
  - (d) a person to a child (other than a child who has been boarded out with him by a local or other public authority or a voluntary organisation) who has been accepted by him as a child of his family.
- (2) For the purposes of this Act, an obligation of aliment is an obligation to provide such support as is reasonable in the circumstances, having regard to the matters to which a court is required or entitled to have regard under section 4 of this Act in determining the amount of aliment to award in an action for aliment.
- (3) Any obligation of aliment arising under a decree or by operation of law and subsisting immediately before the commencement of this Act shall, except insofar as consistent with this section, cease to have effect as from the commencement of this Act.
- (4) Nothing in this section shall affect any arrears due under a decree at the date of termination or cessation of an obligation of aliment, nor any rule of law by which a person who is owed an obligation of aliment may claim aliment from the executor of a deceased person or from any person enriched by the succession to the estate of a deceased person.
- (5) In subsection (1) above—

" child " means a person—

  - (a) under the age of 18 years ; or
  - (b) over that age and under the age of 25 years who is reasonably and appropriately undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation;

" husband " and " wife " include the parties to a valid polygamous marriage.

## 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 ;
  - (b) relating to orders for financial provision ;
  - (c) concerning rights and obligations 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 or the curator of a minor who is an incapax ;
  - (c) on behalf of a child under the age of 18 years, by—
    - (i) the father or mother of the child;
    - (ii) the tutor of a pupil;
    - (iii) a person entitled to, seeking or having custody or care of a 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 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.

### **3 Powers of court in action for aliment**

- (1) The court may, if it thinks fit, grant decree in an action for aliment, and in granting such decree shall have power—
- (a) to order the making of periodical payments, whether for a definite or an indefinite period or until the happening of a specified event ;
  - (b) to order the making of alimentary payments of an occasional or special nature, including payments in respect of inlying, funeral or educational expenses;
  - (c) to backdate an award of aliment under this Act—
    - (i) to the date of the bringing of the action or to such later date as the court thinks fit; or
    - (ii) on special cause shown, to a date prior to the bringing of the action;
  - (d) to award less than the amount claimed even if the claim is undisputed.
- (2) Nothing in subsection (1) above shall empower the court to substitute a lump sum for a periodical payment.

### **4 Amount of aliment**

- (1) In determining the amount of aliment to award in an action for aliment, the court shall, subject to subsection (3) below, have regard—
- (a) to the needs and resources of the parties;
  - (b) to the earning capacities of the parties ;
  - (c) generally to all the circumstances of the case.
- (2) Where two or more parties owe an obligation of aliment to another person, there shall be no order of liability, but the court, in deciding how much, if any, aliment to award against any of those persons, shall have regard, among the other circumstances of the case, to the obligation of aliment owed by any other person.
- (3) In having regard under subsection (1)(c) above generally to all the circumstances of the case, the court—
- (a) may, if it thinks fit, take account of any support, financial or otherwise, given by the defender to any person whom he maintains as a dependant in his household, whether or not the defender owes an obligation of aliment to that person; and
  - (b) shall not take account of any conduct of a party unless it would be manifestly inequitable to leave it out of account.

### **5 Variation or recall of decree of aliment**

- (1) A decree granted in an action for aliment brought before or after the commencement of this Act may, on an application by or on behalf of either party to the action, be varied or recalled by an order of the court if since the date of the decree there has been a material change of circumstances.

- (2) The provisions of this Act shall apply to applications and orders under subsection (1) above as they apply to actions for aliment and decrees in such actions, subject to any necessary modifications.
- (3) On an application under subsection (1) above, the court may, pending determination of the application, make such interim order as it thinks fit
- (4) Where the court backdates an order under subsection (1) above, the court may order any sums paid under the decree to be repaid.

## **6 Interim aliment**

- (1) A claim for interim aliment shall be competent—
  - (a) in an action for aliment, by the party who claims aliment against the other party;
  - (b) in an action for divorce, separation, declarator of marriage or declarator of nullity of marriage, by either party against the other party,on behalf of the claimant and any person on whose behalf he is entitled to act under section 2(4) of this Act.
- (2) Where a claim under subsection (1) above has been made, then, whether or not the claim is disputed, the court may award by way of interim aliment the sum claimed or any lesser sum or may refuse to make such an award.
- (3) An award under subsection (2) above shall consist of an award of periodical payments payable only until the date of the disposal of the action in which the award was made or such earlier date as the court may specify.
- (4) An award under subsection (2) above may be varied or recalled by an order of the court; and the provisions of this section shall apply to an award so varied and the claim therefor as they applied to the original award and the claim therefor.

## **7 Agreements on aliment**

- (1) Any provision in an agreement which purports to exclude future liability for aliment or to restrict any right to bring an action for aliment shall have no effect unless the provision was fair and reasonable in all the circumstances of the agreement at the time it was entered into.
- (2) Where a person who owes an obligation of aliment to another person has entered into an agreement to pay aliment to or for the benefit of the other person, on a material change of circumstances application may be made to the court by or on behalf of either person for variation of the amount payable under the agreement or for termination of the agreement.
- (3) Subsections (8) and (9) of section 2 of this Act (which afford a defence to an action for aliment in certain circumstances) shall apply to an action to enforce such an agreement as is referred to in subsection (2) above as they apply to an action for aliment.
- (4) In subsection (2) above " the court" means the court which would have jurisdiction and competence to entertain an action for aliment between the parties to the agreement to which the application under that subsection relates.

- (5) In this section " agreement" means an agreement entered into before or after the commencement of this Act and includes a unilateral voluntary obligation.