



Family Law (Scotland) Act 1985

1985 CHAPTER 37

General

27 Interpretation. **S**

(1) In this Act, unless the context otherwise requires—

“action” means an action brought after the commencement of this Act;

“action for aliment” has the meaning assigned to it by section 2(3) of this Act;

“aliment” does not include aliment *pendente lite* or interim aliment under section 6 of this Act;

[^{F1}“benefits under a pension arrangement” includes any benefits by way of pension, including relevant state scheme rights, whether under a pension arrangement or not;]

“caravan” means a caravan which is mobile or affixed to the land;

“child” includes [^{F2}a child whether or not his parents have ever been married to one another], and any reference to the child of a marriage (whether or not subsisting) includes a child (other than a child who has been boarded out with the parties, or one of them, by a local or other public authority or a voluntary organisation) who has been accepted by the parties as a child of the family;

[^{F3}“civil partnership”, in relation to an action for declarator of nullity of a civil partnership, means purported civil partnership,]

[^{F4}“child support maintenance” has the meaning assigned to it by section 3(6) of the Child Support Act 1991;]

“the court” means the Court of Session or the sheriff, as the case may require;

“decree” in an action for aliment includes an order of the court awarding aliment;

“family” includes a one-parent family [^{F5}and in relation to a civil partnership means the members of the civil partnership together with any child accepted by them both as a child of the family][^{F6}or in respect of whom they are, by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents];

“incidental order” has the meaning assigned to it by section 14(2) of this Act;

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[^{F4}“^{F7}maintenance assessment”][^{F7}maintenance calculation]” has the meaning assigned to it by section 54 of the Child Support Act 1991;]

“marriage”, in relation to an action for declarator of nullity of marriage, means purported marriage;

^{M1}“matrimonial home” has the meaning assigned to it by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 [^{F8}as amended by section 13(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985];

“needs” means present and foreseeable needs;

“obligation of aliment” shall be construed in accordance with section 1(2) of this Act;

^{M2}“order for financial provision” means an order under section 8(2) of this Act and, in sections 18(1) and 22(c) of this Act, also includes an order under section 5(2) of the Divorce (Scotland) Act 1976;

[^{F3}“partner”, in relation to a civil partnership, includes a person who [^{F9}was] a partner in a civil partnership which has been terminated and an ostensible partner in a civil partnership which has been annulled,]

“party to a marriage” and “party to the marriage” include a party to a marriage which has been terminated or annulled;

[^{F10}“pension arrangement” means—

- (a) ^{M3}any occupational pension scheme within the meaning of the Pension Schemes Act 1993;
- (b) a personal pension scheme within the meaning of that Act;
- (c) a retirement annuity contract;
- (d) an annuity or insurance policy purchased or transferred for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme;
- (e) an annuity purchased or entered into for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;]

[^{F11}“pension compensation sharing order” is an order which—

- (a) provides that one party's shareable rights to PPF compensation that derive from rights under a specified compensation scheme (that is, specified in the order) are to be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value or amount to be transferred;]

[^{F12}“pension sharing order” is an order which—

- (a) provides that one party's—
 - (i) shareable rights under a specified pension arrangement, or
 - (ii) shareable state scheme rights,

be subject to pension sharing for the benefit of the other party, and

- (b) specifies the percentage value, or the amount, to be transferred;]

[^{F13}“person responsible for a pension arrangement” means—

- (a) in the case of an occupational pension scheme or a personal pension scheme, the trustees or managers of the scheme;

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- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement” above, the provider of the annuity;
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer;]

“property” in sections 8, 12, 13 and 15 of this Act does not include a tenancy transferable under section 13 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

^{F14}[“relevant state scheme rights” means—

- (a) ^{M4}entitlement, or prospective entitlement, to a Category A retirement pension by virtue of section 44(3)(b) of the Social Security Contributions and Benefits Act 1992 or under corresponding Northern Ireland legislation; and
- (b) ^{M5}entitlement, or prospective entitlement, to a pension under section 55A of the Social Security Contributions and Benefits Act 1992 (shared additional pension) or under corresponding Northern Ireland legislation;]

“resources” means present and foreseeable resources;

^{M6}^{F15}“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;]

^{F16}“trustees or managers” in relation to an occupational pension scheme or a personal pension scheme means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme; and
- (b) in any other case, the managers of the scheme;]

“voluntary organisation” means a body, other than a local or other public authority, the activities of which are not carried on for profit.

^{F17}(1A) In subsection (1), in the definition of “pension sharing order”—

- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
- (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation.]

^{F18}(1B) In subsection (1), in the definition of “pension compensation sharing order”, the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation.

(1C) In this Act—

“PPF compensation” means compensation payable under the pension compensation provisions,

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 2 of the Pensions Act 2004 and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions Act 2008 and any regulations or order made under it,
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.]

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- (2) For the purposes of this Act, the parties to a marriage shall be held to cohabit with one another only when they are in fact living together as man and wife.

Textual Amendments

- F1** S. 27(1): definition of “benefits under a pension arrangement” inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt I para. 12**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F2** Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 21**
- F3** Words in s. 27(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 30(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F4** Definitions in s. 27(1) inserted (5.4.1993) by S.I. 1993/660, **art. 2(6)**.
- F5** Words in s. 27(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 30(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F6** Words in s. 27(1) inserted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by Human Fertilisation and Embryology Act 2008 (c. 22), s. 68(2), **Sch. 6 para. 47**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7Sch.)
- F7** Words in s. 27(1) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 5(6)** (with s. 83(6)); S.I. 2003/192, art. 3, **Sch. 3**.
- F8** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), ss. 23, 59, 60(6), **Sch 2 para. 31**
- F9** Word in s. 27(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 5(4)**; S.S.I. 2006/212, art. 2
- F10** S. 27(1): definition of “pension arrangement” inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 12**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F11** Words in s. 27(1) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 7 para. 9(a)**; S.I. 2011/664, art. 2(3), **Sch. Pt. 2**
- F12** S. 27(1): definition of “pension sharing order” inserted (1.12.2000) by 1999 c. 30, s. 20(3); S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F13** S. 27(1): definition of “person responsible for a pension arrangement” inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 12**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F14** S. 27(1): definition of “relevant state scheme rights” inserted (1.12.2000) by 1999 c. 30, ss. 84, 89(1), **Sch. 12 Pt. I para. 12**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F15** S. 27(1): definition of “retirement annuity contract” inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 12**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F16** S.27(1): definition of “trustees or managers” inserted (1.12.2000) by 1999 C. 30, ss. 84, 89(1), **Sch. 12 Pt. I para. 12**
- F17** S. 27(1A) inserted (1.12.2000) by 1999 c. 30, s. 20(4); S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F18** S. 27(1B)(1C) inserted (6.4.2011) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 7 para. 9(b)**; S.I. 2011/664, art. 2(3), **Sch. Pt. 2**

Marginal Citations

- M1** 1981 c. 59.
M2 1976 c. 39.
M3 1993 c. 48.
M4 1992 c. 4.
M5 1992 c. 4.
M6 1988 c. 1.

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28 Amendments, repeals and savings. **U.K.**

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out therein.
- (2) The enactments specified in columns 1 and 2 of Schedule 2 to this Act are repealed to the extent specified in column 3 of that Schedule.
- (3) Nothing in subsection (2) above shall affect the operation of section 5 (orders for financial provision) of the ^{M7}Divorce (Scotland) Act 1976 in relation to an action for divorce brought before the commencement of this Act; but in the continued operation of that section the powers of the court—
 - (a) to make an order for payment of periodical allowance under subsection (2) thereof; and
 - (b) to vary such an order under subsection (4) thereof,shall include power to make such an order for a definite or an indefinite period or until the happening of a specified event.

Extent Information

E1 Sch. 1: so much of s. 28 and Sch. 1 as affects the operation of 1950 c. 37 and 1972 c. 18 extends to England, Wales, Scotland and Northern Ireland, see s. 29(4)

Marginal Citations

M7 1976 c. 39.

29 Citation, commencement and extent. **S**

- (1) This Act may be cited as the Family Law (Scotland) Act 1985.
- (2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different purposes.
- (3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force (whether wholly or partly) by the order.
- (4) So much of section 28 of, and Schedule 1 to, this Act as affects the operation of the ^{M8}Maintenance Orders Act 1950 and the ^{M9}Maintenance Orders (Reciprocal Enforcement) Act 1972 shall extend to England and Wales and to Northern Ireland as well as to Scotland, but save as aforesaid this Act shall extend to Scotland only.

Modifications etc. (not altering text)

C1 S. 29(2): power of appointment conferred by s. 29(2) wholly exercised: S.I. 1986/1237, 1988/1887

Marginal Citations

M8 1950 c. 37.

M9 1972 c. 18.

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