



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

### *Financial provision on divorce, etc.*

#### **11 Factors to be taken into account.**

- (1) In applying the principles set out in section 9 of this Act, the following provisions of this section shall have effect.
- (2) For the purposes of section 9(1)(b) of this Act, the court shall have regard to the extent to which—
  - (a) the economic advantages or disadvantages sustained by either [<sup>F1</sup>person] have been balanced by the economic advantages or disadvantages sustained by the other [<sup>F1</sup>person], and
  - (b) any resulting imbalance has been or will be corrected by a sharing of the value of the matrimonial property [<sup>F2</sup>or the partnership property] or otherwise.
- (3) For the purposes of section 9(1)(c) of this Act, the court shall have regard to—
  - (a) any decree or arrangement for aliment for the child;
  - (b) any expenditure or loss of earning capacity caused by the need to care for the child;
  - (c) the need to provide suitable accommodation for the child;
  - (d) the age and health of the child;
  - (e) the educational, financial and other circumstances of the child;
  - (f) the availability and cost of suitable child-care facilities or services;
  - (g) the needs and resources of the [<sup>F3</sup>persons]; and
  - (h) all the other circumstances of the case.
- (4) For the purposes of section 9(1)(d) of this Act, the court shall have regard to—
  - (a) the age, health and earning capacity of the [<sup>F4</sup>person] who is claiming the financial provision;
  - (b) the duration and extent of the dependence of that [<sup>F5</sup>person prior to divorce or to the dissolution of the civil partnership];
  - (c) any intention of that [<sup>F4</sup>person] to undertake a course of education or training;

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- (d) the needs and resources of the [<sup>F6</sup>persons]; and
  - (e) all the other circumstances of the case.
- (5) For the purposes of section 9(1)(e) of this Act, the court shall have regard to—
- (a) the age, health and earning capacity of the [<sup>F7</sup>person] who is claiming the financial provision;
  - (b) the duration of the marriage [<sup>F8</sup>or of the civil partnership];
  - (c) the standard of living of the [<sup>F9</sup>persons during the marriage or civil partnership];
  - (d) the needs and resources of the [<sup>F10</sup>persons]; and
  - (e) all the other circumstances of the case.
- (6) In having regard under subsections (3) to (5) above to all the other circumstances of the case, the court may, if it thinks fit, take account of any support, financial or otherwise, given by the [<sup>F11</sup>person] who is to make the financial provision to any person whom he maintains as a dependant in his household whether or not he owes an obligation of aliment to that person.
- (7) In applying the principles set out in section 9 of this Act, the court shall not take account of the conduct of either party [<sup>F12</sup>to the marriage or as the case may be of either partner] unless—
- (a) the conduct has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision; or
  - (b) in relation to section 9(1)(d) or (e), it would be manifestly inequitable to leave the conduct out of account.

#### Textual Amendments

- F1** Word in s. 11(2)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F2** Words in s. 11(2)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(2\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F3** Word in s. 11(3)(g) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(3\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F4** Word in s. 11(4)(a)(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(4\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F5** Words in s. 11(4)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(4\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F6** Word in s. 11(4)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(4\)\(c\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F7** Word in s. 11(5)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(5\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F8** Words in s. 11(5)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(5\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F9** Words in s. 11(5)(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(5\)\(c\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F10** Word in s. 11(5)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(5\)\(d\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F11** Word in s. 11(6) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(6\)](#); S.S.I. 2005/604, arts. 2(c), 4

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**F12** Words in s. 11(7) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 17\(7\)](#); [S.S.I. 2005/604, arts. 2\(c\), 4](#)

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