



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

*Financial provision on divorce, etc.*

### **[<sup>F1</sup>12A Orders for payment of capital sum: pensions lump sums.**

- (1) This section applies where the court makes an order under section 8(2) of this Act for payment of a capital sum (a “capital sum order”) by a party to the marriage [<sup>F2</sup>or a partner in a civil partnership (“the liable person”)] in circumstances where—
  - (a) the matrimonial property [<sup>F3</sup>or the partnership property] within the meaning of section 10 of this Act includes any rights or interests in benefits under a pension [<sup>F4</sup>arrangement] which the liable [<sup>F5</sup>person] has or may have (whether such benefits are payable to him or in respect of his death); and
  - (b) those benefits include a lump sum payable to him or in respect of his death.
- (2) Where the benefits referred to in subsection (1) above include a lump sum payable to the liable party, the court, on making the capital sum order, may make an order requiring the [<sup>F6</sup>person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, to the other party to the marriage [<sup>F7</sup>or as the case may be to the other partner (“the other person”)].
- (3) Where the benefits referred to in subsection (1) above include a lump sum payable in respect of the death of the liable [<sup>F8</sup>person], the court, on making the capital sum order, may make an order—
  - (a) if the [<sup>F9</sup>person responsible for the pension arrangement] in question [<sup>F10</sup>has] power to determine the person to whom the sum, or any part of it, is to be paid, requiring them to pay the whole or part of that sum, when it becomes due, to the other [<sup>F8</sup>person];
  - (b) if the liable [<sup>F8</sup>person] has power to nominate the person to whom the sum, or any part of it, is to be paid, requiring the liable [<sup>F8</sup>person] to nominate the other [<sup>F8</sup>person] in respect of the whole or part of that sum;
  - (c) in any other case, requiring the [<sup>F9</sup>person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, to the other [<sup>F8</sup>person] instead of to the person to whom, apart from the order, it would be paid.

*Status: Point in time view as at 05/12/2005. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Family Law (Scotland) Act 1985, Section 12A. (See end of Document for details)*

- (4) Any payment by the <sup>F11</sup>[person responsible for the pension arrangement] under an order under subsection (2) or (3) above—
- (a) shall discharge so much of the <sup>F12</sup>liability of the person responsible for the pension arrangement] to or in respect of the liable <sup>F8</sup>person] as corresponds to the amount of the payment; and
  - (b) shall be treated for all purposes as a payment made by the liable <sup>F8</sup>person] in or towards the discharge of his liability under the capital sum order.
- (5) Where the liability of the liable <sup>F8</sup>person] under the capital sum order has been discharged in whole or in part, other than by a payment by the <sup>F13</sup>person responsible for the pension arrangement] under an order under subsection (2) or (3) above, the court may, on an application by any person having an interest, recall any order under either of those subsections or vary the amount specified in such an order, as appears to the court appropriate in the circumstances.
- (6) Where—
- (a) an order under subsection (2) or (3) above imposes any requirement on the <sup>F14</sup>person responsible for] a pension <sup>F15</sup>arrangement] (“the first [arrangement]”) and the liable <sup>F8</sup>person] acquires transfer credits under another [arrangement] (“the new <sup>F15</sup>arrangement]”) which are derived (directly or indirectly) from a transfer from the first [arrangement] of all his accrued rights under that ; and
  - (b) the <sup>F14</sup>person responsible for] the new [arrangement]]<sup>F16</sup>has] been given notice in accordance with regulations under subsection (8) below,  
the order shall have effect as if it had been made instead in respect of the <sup>F14</sup>person responsible for] the new <sup>F15</sup>arrangement]; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.
- (7) Without prejudice to subsection (6) above, the court may, on an application by any person having an interest, vary an order under subsection (2) or (3) above by substituting for the <sup>F17</sup>person responsible for the pension arrangement] specified in the order the <sup>F17</sup>person responsible for] any other pension [arrangement] under which any lump sum referred to in subsection (1) above is payable to the liable <sup>F8</sup>person] or in respect of his death.
- (8) The Secretary of State may by regulations—
- (a) require notices to be given in respect of changes of circumstances relevant to orders under subsection (2) or (3) above;
  - <sup>F18</sup>(b) [ make provision for the recovery of the administrative expenses of complying with such orders from the liable <sup>F8</sup>person] or the other <sup>F8</sup>person]].
- (9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>F19</sup>[ The definition of “benefits under a pension scheme” in section 27 of this Act does not
- (10) apply to this section.]]

#### Textual Amendments

- F1** S. 12A inserted (15.7.1996 for certain purposes only and 19.8.1996 otherwise) by 1995 c. 26, s. 167(3); S.I. 1996/1843, art. 3 (with art. 4)

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*Changes to legislation: There are currently no known outstanding effects for the  
Family Law (Scotland) Act 1985, Section 12A. (See end of Document for details)*

- F2** Words in s. 12A(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F3** Words in s. 12A(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F4** Word in s. 12A(1)(a) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(2)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F5** Word in s. 12A(1)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F6** Words in s. 12A(2) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(3)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F7** Words in s. 12A(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(3)**; S.S.I. 2005/604, arts. 2(c), 4
- F8** Word in ss. 12A(3)-(8) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 19(4)**; S.S.I. 2005/604, arts. 2(c), 4
- F9** Words in s. 12A(3)(a)(c) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(4)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F10** Word in s. 12A(3)(a) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(3)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F11** Words in s. 12A(4) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(5)(a)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F12** Words in s. 12A(4) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(5)(b)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F13** Words in s. 12A(5) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(6)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F14** Words in s. 12A(6) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(a)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F15** Words in s. 12A(6) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(b)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F16** Word in s. 12A(6)(b) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(7)(c)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F17** Words in s. 12A(7) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 9(1)(8)(a)-(c)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F18** S. 12A(8)(b) repealed (1.12.2000) by 1999 c. 30, s. 88, **Sch. 13 Pt. II**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F19** S. 12A(10) substituted (1.12.2000) by 1999 c. 30, ss. 84, **Sch. 12 Pt. I para. 9(1)(9)**

**Status:**

Point in time view as at 05/12/2005. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the Family Law (Scotland) Act 1985, Section 12A.