



# Family Law (Scotland) Act 1985

## 1985 CHAPTER 37

*Financial provision on divorce, etc.*

### **14 Incidental orders.**

- (1) Subject to subsection (3) below, an incidental order may be made under section 8(2) of this Act before, on or after the granting or refusal of decree of divorce.
- (2) In this Act, “an incidental order” means one or more of the following orders—
  - (a) an order for the sale of property;
  - (b) an order for the valuation of property;
  - (c) an order determining any dispute between the parties to the marriage as to their respective property rights by means of a declarator thereof or otherwise;
  - (d) an order regulating the occupation of the matrimonial home or the use of furniture and furnishings therein or excluding either party to the marriage from such occupation;
  - (e) an order regulating liability, as between the parties, for outgoings in respect of the matrimonial home or furniture or furnishings therein;
  - (f) an order that security shall be given for any financial provision;
  - (g) an order that payments shall be made or property transferred to any curator bonis or trustee or other person for the benefit of the party to the marriage by whom or on whose behalf application has been made under section 8(1) of this Act for an incidental order;
  - (h) an order setting aside or varying any term in an antenuptial or postnuptial marriage settlement;
  - (j) an order as to the date from which any interest on any amount awarded shall run;
  - (k) any ancillary order which is expedient to give effect to the principles set out in section 9 of this Act or to any order made under section 8(2) of this Act.
- (3) An incidental order referred to in subsection (2)(d) or (e) above may be made only on or after the granting of decree of divorce.
- (4) An incidental order may be varied or recalled by subsequent order on cause shown.

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*Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.*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 14. (See end of Document for details)*

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- (5) So long as an incidental order granting a party to a marriage the right to occupy a matrimonial home or the right to use furniture and plenishings therein remains in force then—
- (a) section 2(1), (2), (5)(a) and (9) of the <sup>M1</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981 (which confer certain general powers of management on a spouse in relation to a matrimonial home), and
  - (b) subject to section 15 (3) of this Act, section 12 of the said Act of 1981 and [<sup>F1</sup>section 41 of the Bankruptcy (Scotland) Act 1985] (which protect the occupancy rights of a spouse against arrangements intended to defeat them),
- shall, except to the extent that the order otherwise provides, apply in relation to the order—
- (i) as if that party were a non-entitled spouse and the other party were an entitled spouse within the meaning of section 1(1) or 6(2) of the said Act of 1981 as the case may require;
  - (ii) as if the right to occupy a matrimonial home under that order were “occupancy rights” with the meaning of the said Act of 1981; and
  - (iii) with any other necessary modifications; and
- subject to section 15(3) of this Act, section 11 of the said Act of 1981 (protection of spouse in relation to furniture and plenishings) shall apply in relation to the order as if that party were a spouse within the meaning of the said section 11 and the order were an order under section 3(3) or (4) of the said Act of 1981.
- (6) In subsection (2)(h) above, “settlement” includes a settlement by way of a policy of assurance to which section 2 of the <sup>M2</sup>Married Women’s Policies of Assurance (Scotland) Act 1880 relates.
- (7) Notwithstanding subsection (1) above, the Court of Session may by Act of Sederunt make rules restricting the categories of incidental order which may be made under section 8(2) of this Act before the granting of decree of divorce.

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#### Textual Amendments

**F1** Words substituted by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), ss. 75(1)(5)(6), [Sch. 7 para. 23](#)

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#### Marginal Citations

**M1** 1981 c. 59.

**M2** 1880 c. 26.

**Status:**

Point in time view as at 01/02/1991. 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 14.