



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 [^{F1}or of dissolution of a civil partnership].
- (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^{F2}, or as the case may be the partners,] as to their respective property rights by means of a declarator thereof or otherwise;
 - (d) an order regulating the occupation of
 - [^{F3}(i)] the matrimonial home [^{F4}or
 - [^{F4}(ii)] the family home of the partnership,]or the use of furniture and plenishings therein or excluding either [^{F5}person] from such occupation;
 - (e) an order regulating liability, as between the [^{F6}persons], for outgoings in respect of
 - [^{F7}(i)] the matrimonial home [^{F8}or
 - [^{F8}(ii)] the family home of the partnership,]or furniture or plenishings 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 [^{F9}person] by whom or on whose behalf application has been made under section 8(1) of this Act for an incidental order;

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- (h) an order setting aside or varying any term in an antenuptial or postnuptial marriage settlement [^{F10}or in any corresponding settlement in respect of the civil partnership];
 - (j) an order as to the date from which any interest on any amount awarded shall run;
 - [^{F11}(ja) in relation to a deed relating to moveable property, an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed;]
 - (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 [^{F12}the decree].
- (4) An incidental order may be varied or recalled by subsequent order on cause shown.
- (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 ^{M1}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 [^{F13}section [^{F14}114 of the Bankruptcy (Scotland) Act 2016]] (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.
- [^{F15}(5A) So long as an incidental order granting a partner in a civil partnership the right to occupy a family home or the right to use furnishings and plenishings therein remains in force then—
- (a) section 102(1), (2), (5)(a) and (9) of the Civil Partnership Act 2004, and
 - (b) subject to section 15(3) of this Act, section 111 of that Act,
- shall, except to the extent that the order otherwise provides, apply in relation to the order in accordance with subsection (5B).
- (5B) Those provisions apply—
- (a) as if that partner were a non-entitled partner and the other partner were an entitled partner within the meaning of section 101 or 106(2) of that Act as the case may require,
 - (b) as if the right to occupy a family home under that order were a right specified in paragraph (a) or (b) of section 101(1) of that Act, and

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- (c) with any other necessary modification.]
- (6) In subsection (2)(h) above, “settlement” includes a settlement by way of a policy of assurance to which section 2 of the ^{M2}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 [^{F16}or of dissolution of a civil partnership].

Textual Amendments

- F1** Words in s. 14(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(2)**; S.S.I. 2005/604, arts. 2(c), 4
- F2** Words in s. 14(2)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F3** S. 14(2)(d)(i) formed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F4** S. 14(2)(d)(ii) and preceding word inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F5** Word in s. 14(2)(d) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F6** Word in s. 14(2)(e) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F7** S. 14(2)(e)(i) formed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F8** S. 14(2)(e)(ii) and preceding word inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F9** Words in s. 14(2)(g) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(d)**; S.S.I. 2005/604, arts. 2(c), 4
- F10** Words in s. 14(2)(h) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(3)(e)**; S.S.I. 2005/604, arts. 2(c), 4
- F11** S. 14(2)(ja) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 18, 46(2)**; S.S.I. 2006/212, art. 2
- F12** Words in s. 14(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(4)**; S.S.I. 2005/604, arts. 2(c), 4
- F13** Words substituted by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), **ss. 75(1)(5)(6), Sch. 7 para. 23**
- F14** Words in s. 14(5)(b) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **Sch. 8 para. 9(2)** (with **ss. 232, 234(3), 235, 236**); S.S.I. 2016/294, reg. 2
- F15** S. 14(5A)(5B) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(5)**; S.S.I. 2005/604, arts. 2(c), 4
- F16** Words in s. 14(7) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 21(6)**; S.S.I. 2005/604, arts. 2(c), 4

Marginal Citations

- M1** 1981 c. 59.
M2 1880 c. 26.

Changes to legislation:

There are currently no known outstanding effects for the Family Law (Scotland) Act 1985, Section 14.