



Family Law (Scotland) Act 1985

1985 CHAPTER 37

Financial provision on divorce, etc.

16 Agreements on financial provision.

- (1) Where the parties to a marriage [^{F1}or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [^{F2}or on dissolution of the civil partnership], the court may make an order setting aside or varying—
- (a) any term of the agreement relating to a periodical allowance where the agreement expressly provides for the subsequent setting aside or variation by the court of that term; or
 - (b) the agreement or any term of it where the agreement was not fair and reasonable at the time it was entered into.
- (2) The court may make an order—
- (a) under subsection (1)(a) above at any time after granting decree of divorce; and
 - [^{F3}(b) under subsection (1)(b) above, if the agreement does not contain a term relating to pension sharing, on granting decree of divorce or within such time as the court may specify on granting decree of divorce; or
 - (c) under subsection (1)(b) above, if the agreement contains a term relating to pension sharing—
 - (i) where the order sets aside the agreement or sets aside or varies the term relating to pension sharing, on granting decree of divorce; and
 - (ii) where the order sets aside or varies any other term of the agreement, on granting decree of divorce or within such time thereafter as the court may specify on granting decree of divorce.]
- [^{F4}(2A) In subsection (2) above, a term relating to pension sharing is a term corresponding to provision which may be made in a pension sharing order and satisfying the requirements set out in section 28(1)(f) or 48(1)(f) of the Welfare Reform and Pensions Act 1999.]

Status: Point in time view as at 05/12/2005. This version of this provision has been superseded.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 16. (See end of Document for details)

- (3) Without prejudice to subsections (1) and (2) above, where the parties to a marriage [F⁵or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [F⁶or on dissolution of the civil partnership] and—
- (a) the estate of the [F⁷person] by whom any periodical allowance is payable under the agreement has, since the date when the agreement was entered into, been sequestrated, the award of sequestration has not been recalled and the [F⁷person] has not been discharged;
 - (b) an analogous remedy within the meaning of section 10(5) of the Bankruptcy (Scotland) Act 1985 has, since that date, come into force and remains in force in respect of that [F⁷person's] estate; F⁸ ...
 - (c) that [F⁷person's] estate is being administered by a trustee acting under a voluntary trust deed granted since that date by the [F⁷person] for the benefit of his creditors generally or is subject to an analogous arrangement, [F⁹; or
 - (d) by virtue of the making of a [F¹⁰maintenance calculation][F¹⁰maintenance calculation], child support maintenance has become payable by either party to the agreement with respect to a child to whom or for whose benefit periodical allowance is paid under that agreement,]
- the court may, on or at any time after granting decree of divorce [F¹¹or of dissolution of the civil partnership], make an order setting aside or varying any term of the agreement relating to the periodical allowance.
- (4) Any term of an agreement purporting to exclude the right to apply for an order under subsection (1)(b) or (3) above shall be void.
- (5) In this section, “agreement” means an agreement entered into before or after the commencement of this Act.

Textual Amendments

- F1** Words in s. 16(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(2)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F2** Words in s. 16(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(2)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F3** S. 16(2)(b)(c) substituted for s. 16(2)(b) (1.12.2000) by [1999 c. 30](#), s. 84, **Sch. 12 Pt. I para. 11**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F4** S. 16(2A) inserted (1.12.2000) by [1999 c. 30](#), s. 84, **Sch. 12 Pt. I para. 11**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**
- F5** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(a)**; S.S.I. 2005/604, arts. 2(c), 4
- F6** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(b)**; S.S.I. 2005/604, arts. 2(c), 4
- F7** Words in s. 16(3)(a)-(c) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(c)**; S.S.I. 2005/604, arts. 2(c), 4
- F8** Word in s. 16(3)(b) deleted (5.4.1993) by [S.I. 1993/660](#), **art. 2(5)(a)**.
- F9** S. 16(3)(d) and preceding word inserted (5.4.1993) by [S.I. 1993/660](#), **art 2(5)(b)**.
- F10** Words in s. 16(3)(d) 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(5)** (with s. 83(6)); S.I. 2003/192, art. 3, **Sch.**
- F11** Words in s. 16(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 22(3)(d)**; S.S.I. 2005/604, arts. 2(c), 4

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