

NATIONAL LEGISLATION: SCOTLAND

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1. SUCCESSION (SCOTLAND) ACT 1964

2. – Rights of succession to intestate estate.

(1) Subject to the following provisions of this Part of this Act –

(a) where an intestate is survived by children, they shall have right to the whole of the intestate estate;

(b) where an intestate is survived by either of, or both, his parents and is also survived by brothers or sisters, but is not survived by any prior relative, the surviving parent or parents shall have right to one half of the intestate estate and the surviving brothers and sisters to the other half thereof;

(c) where an intestate is survived by brothers or sisters, but is not survived by any prior relative, the surviving brothers and sisters shall have right to the whole of the intestate estate;

(d) where an intestate is survived by either of, or both, his parents, but is not survived by any prior relative, the surviving parent or parents shall have right to the whole of the intestate estate;

(e) where an intestate is survived by a husband [, wife or civil partner], but is not survived by any prior relative, the surviving spouse [or civil partner] shall have right to the whole of the intestate estate;

(f) where an intestate is survived by uncles or aunts (being brothers or sisters of either parent of the intestate), but is not survived by any prior relative, the surviving uncles and aunts shall have right to the whole of the intestate estate;

(g) where an intestate is survived by a grandparent or grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, the surviving grandparent or grandparents shall have right to the whole of the intestate estate;

(h) where an intestate is survived by brothers or sisters of any of his grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, those surviving brothers and sisters shall have right to the whole of the intestate estate;

(i) where an intestate is not survived by any prior relative, the ancestors of the intestate (being remoter than grandparents) generation by generation successively, without distinction between the paternal and maternal lines, shall have right to the whole of the intestate estate; so however that, failing ancestors of any generation, the brothers and sisters of any of those ancestors shall have right thereto before ancestors of the next more remote generation.

(2) References in the foregoing subsection to brothers or sisters include respectively brothers and sisters of the half blood as well as of the whole blood; and in the said subsection “prior relative”, in relation to any class

of person mentioned in any paragraph of that subsection, means a person of any other class who, if he had survived the intestate, would have had right to the intestate estate or any of it by virtue of an earlier paragraph of that subsection or by virtue of any such paragraph and section 5 of this Act.

8. – Prior rights of surviving spouse, on intestacy, in dwelling house and furniture.

(1) Where a person dies intestate leaving a spouse [or civil partner], and the intestate estate includes a relevant interest in a [dwelling house mentioned in subsection (4)(a) of this section,] 2 the surviving spouse [or civil partner] shall be entitled [, subject to subsection (2B) of this section,] to receive out of the intestate estate –

(a) where the value of the relevant interest does not exceed [[£473,000] 5 or such larger amount as may from time to time be fixed by order of the Secretary of State] –

(i) if subsection (2) of this section does not apply, the relevant interest;

(ii) if the said subsection (2) applies, a sum equal to the value of the relevant interest;

(b) in any other case, the sum of [[£473,000] or such larger amount as may from time to time be fixed by order of the Secretary of State]

(2) This subsection shall apply for the purposes of paragraph (a) of the foregoing subsection if –

(a) the dwelling house forms part only of the subjects comprised in one tenancy or lease under which the intestate was the tenant; or

(b) the dwelling house forms the whole or part of subjects an interest in which is comprised in the intestate estate and which were used by the intestate for carrying on a trade, profession or occupation, and the value of the estate as a whole would be likely to be substantially diminished if the dwelling house were disposed of otherwise than with the assets of the trade, profession or occupation.

[(2A) Where the tenant of a croft dies intestate leaving a spouse or civil partner or, where he dies leaving no spouse or civil partner, leaving a cohabitant, and the intestate estate includes a relevant interest in a dwelling house mentioned in subsection (4)(b) of this section, the surviving spouse, civil partner or, as the case may be, cohabitant shall be entitled, subject to subsection (2B) of this section, to receive out of the intestate estate –

(a) where the value of the relevant interest does not exceed the amount for the time being fixed by order under subsection (1)(a) of this section, the tenancy of the croft;

(b) in any other case, the sum for the time being fixed by order under subsection (1)(b) of this section.

(2B) If the intestate estate comprises –

(a) a relevant interest in two or more dwelling houses mentioned in subsection (4)(a) of this section, subsection (1) of this section shall have effect only in relation to such one of them as the surviving spouse or civil partner may elect for the purposes of subsection (1) within 6 months after the date of death of the intestate;

(b) a relevant interest in two or more dwelling houses mentioned in subsection (4)(b) of this section, subsection (2A) of this section shall have effect only in relation to such one of them as the surviving spouse, civil partner or cohabitant may elect for the purposes of subsection (2A) within 6 months after that date;

(c) a relevant interest in both –

(i) one or more dwelling houses mentioned in subsection (4)(a) of this section; and

(ii) one or more dwelling houses mentioned in subsection (4)(b) of this section,

the surviving spouse or civil partner shall not be entitled to receive both the entitlement under subsection (1) of this section and that under subsection (2A) of this section and must elect within 6 months after that date whether to take the entitlement under the said subsection (1) or under the said subsection (2A).

(3) Where a person dies intestate leaving a spouse [or civil partner], and the intestate estate includes the furniture and plenishings of a dwelling house to which this section applies (whether or not the dwelling house is comprised in the intestate estate), the surviving spouse [or civil partner] shall be entitled to receive out of the intestate estate –

(a) where the value of the furniture and plenishings does not exceed [[£29,000] or such larger amount as may from time to time be fixed by order of the Secretary of State], the whole thereof;

(b) in any other case, such part of the furniture and plenishings, to a value not exceeding [[£29,000] or such larger amount as may from time to time be fixed by order of the Secretary of State], as may be chosen by the surviving spouse [or civil partner]:

Provided that, if the intestate estate comprises the furniture and plenishings of two or more such dwelling houses, this subsection shall have effect only in relation to the furniture and plenishings of such one of them as the surviving spouse [or civil partner] may elect for the purposes of this subsection within six months of the date of death of the intestate.

[(4) The dwelling house is –

(a) in a case mentioned in subsection (1) of this section, any dwelling house in which the surviving spouse or civil partner of the intestate was ordinarily resident at the date of death of the intestate and which did not, at that date, form part of a croft of which the intestate was tenant;

(b) in a case mentioned in subsection (2A) of this section, any dwelling house in which the surviving spouse, civil partner or cohabitant was ordinarily resident at the date of death of the intestate and which, at that date, formed part of a croft of which the intestate was tenant.]

(5) Where any question arises as to the value of any furniture or plenishings, or of any interest in a dwelling house, for the purposes of any provision of this section the question shall be determined by arbitration by a single arbiter appointed, in default of agreement, by the sheriff of the county in which the intestate was domiciled at the date of his death or, if that county is uncertain or the intestate was domiciled furth of Scotland, the sheriff of the Lothians and Peebles at Edinburgh.

(6) In this section –

[(za) “cohabitant” means a person – (i) who was living with the intestate as if married to him; or

(ii) who was living with the intestate as if in civil partnership with him, and had been so living for at least 2 years.]

(a) “dwelling house” includes a part of a building occupied (at the date of death of the intestate) as a separate dwelling; and any reference to a dwelling house shall be construed as including any garden or portion of ground attached to, and usually occupied with, the dwelling house or otherwise required for the amenity or convenience of the dwelling house;

(b) “furniture and plenishings” includes garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, articles of household use and consumable stores; but does not include any article or animal used at the date of death of the intestate for business purposes, or money or securities for money, or any heirloom;

(c) “heirloom”, in relation to an intestate estate, means any article which has associations with the intestate's family of such nature and extent that it ought to pass to some member of that family other than the surviving spouse of the intestate;

(d) “relevant interest”, in relation to a dwelling house, means the interest therein of an owner, or the interest therein of a tenant, subject in either case to any heritable debt secured over the interest; and for the purposes of this definition “tenant” means a tenant under a tenancy or lease (whether of the dwelling house alone or of the dwelling house together with other subjects) which is not a tenancy to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply.

9.— Prior right of surviving spouse to financial provision on intestacy.

(1) Where a person dies intestate and is survived by a husband [, wife or civil partner the survivor] shall be entitled to receive out of the intestate estate—

(a) if the intestate is survived by issue [...] the sum of [[£50,000] or such larger amount as may from time to time be fixed by order of the Secretary of State, or]

(b) if the intestate is not survived by issue [...] the sum of [[£89,000] or such larger amount as may from time to time be fixed by order of the Secretary of State],

together with, in either case, interest at the rate of [7 per cent. per annum] [or, at such rate as may from time to time be fixed by order of the Secretary of State,] on such sum from the date of the intestate's death until payment: Provided that where the surviving spouse [or civil partner] is entitled to receive a legacy out of the estate of the intestate (other than a legacy of any dwelling house to which the last foregoing section applies or of any furniture and plenishings of any such dwelling house), he or she shall, unless he or she renounces the legacy, be entitled under this subsection to receive only such sum, if any, as remains after deducting from the sum [fixed by virtue of paragraph (a) of this subsection or the sum fixed by virtue of paragraph (b) of this subsection], as the case may be, the amount or value of the legacy.

(2) Where the intestate estate is less than the amount which the surviving spouse [or civil partner] is entitled to receive by virtue of subsection (1) of this section the right conferred by the said subsection on the surviving spouse [or civil partner] shall be satisfied by the transfer to him or her of the whole of the intestate estate.

(3) The amount which the surviving spouse [or civil partner] is entitled to receive by virtue of subsection (1) of this section shall be borne by, and paid out of, the parts of the intestate estate consisting of heritable and moveable property respectively in proportion to the respective amounts of those parts.

(4) Where by virtue of subsection (2) of this section a surviving spouse [or civil partner] has right to the whole of the intestate estate, he or she shall have the right to be appointed executor.

(5) The rights conferred by the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 on a surviving spouse in his or her deceased spouse's estate shall not be exigible out of the estate of any person dying after the commencement of this Act.

(6) For the purposes of this section—

- (a) the expression “intestate estate” means so much of the net intestate estate as remains after the satisfaction of any claims under the last foregoing section; and
- (b) the expression “legacy” includes any payment or benefit to which a surviving spouse [or civil partner] becomes entitled by virtue of any testamentary disposition; and the amount or value of any legacy shall be ascertained as at the date of the intestate's death.

2. MARRIAGE (SCOTLAND) ACT 1977 C. 15

26.— Interpretation.

(2) In this Act, except where the context otherwise requires—

...

[“*marriage*” means marriage between persons of different sexes and marriage between persons of the same sex;]

3. MATRIMONIAL HOMES (FAMILY PROTECTION) (SCOTLAND) ACT 1981 C. 59

Protection of occupancy rights of one spouse against the other

1. – Right of spouse without title to occupy matrimonial home.

(1) Where, apart from the provisions of this Act, one spouse is entitled, or permitted by a third party, to occupy a matrimonial home (an “entitled spouse”) and the other spouse is not so entitled or permitted (a “non-entitled spouse”), the non-entitled spouse shall, subject to the provisions of this Act, have the following rights –

- (a) if in occupation, a right [to continue to occupy the matrimonial home;]
- (b) if not in occupation, a right to enter into and occupy the matrimonial home.

[(1A) The rights conferred by subsection (1) above to continue to occupy or as the case may be, to enter and occupy the matrimonial home include, without prejudice to their generality, the right to do so together with any child of the family.]

(2) In subsection (1) above, an “*entitled spouse*” includes a spouse who is entitled, or permitted by a third party, to occupy a matrimonial home along with an individual who is not the other spouse only if that individual has waived his or her right of occupation in favour of the spouse so entitled or permitted...

3.— Regulation by court of rights of occupancy of matrimonial home.

(1) [Subject to section 1(7) of this Act, where] there is an entitled and a non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse may apply to the court for an order—

- (a) declaring the occupancy rights of the applicant spouse;
- (b) enforcing the occupancy rights of the applicant spouse;
- (c) restricting the occupancy rights of the non-applicant spouse;
- (d) regulating the exercise by either spouse of his or her occupancy rights;
- (e) protecting the occupancy rights of the applicant spouse in relation to the other spouse.

(2) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a matrimonial home, the other spouse, if he or she has occupancy rights in that home, may apply to the court for an order granting to the applicant the possession or use in the matrimonial home of any such furniture and plenishings; but, subject to section 2 of this Act, an order under this subsection shall not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.

(3) The court shall grant an application under subsection (1)(a) above if it appears to the court that the application relates to a matrimonial home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2) above, the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—

- (a) the conduct of the spouses in relation to each other and otherwise;
- (b) the respective needs and financial resources of the spouses;
- (c) the needs of any child of the family;
- (d) the extent (if any) to which—
 - (i) the matrimonial home; and
 - (ii) in relation only to an order under subsection (2) above, any item of furniture and plenishings referred to in that subsection,is used in connection with a trade, business or profession of either spouse; and

(e) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation.

(4) Pending the making of an order under subsection (3) above, the court, on the application of either spouse, may make such interim order as it may consider necessary or expedient in relation to—

- (a) the residence of either spouse in the home to which the application relates;
- (b) the personal effects of either spouse or of any child of the family; or

(c) the furniture and plenishings:

Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.

(5) The court shall not make an order under subsection (3) or (4) above if it appears that the effect of the order would be to exclude the non-applicant spouse from the matrimonial home.

(6) If the court makes an order under subsection (3) or (4) above which requires the delivery to one spouse of anything which has been left in or removed from the matrimonial home, it may also grant a warrant authorising a messenger-at-arms or sheriff officer to enter the matrimonial home or other premises occupied by the other spouse and to search for and take possession of the thing required to be delivered, if need be by opening shut and lockfast places, and to deliver the thing in accordance with the said order:

Provided that a warrant granted under this subsection shall be executed only after expiry of the period of a charge, being such period as the court shall specify in the order for delivery.

(7) Where it appears to the court –

(a) on the application of a non-entitled spouse, that that spouse has suffered a loss of occupancy rights or that the quality of the non-entitled spouse's occupation of a matrimonial home has been impaired; or

(b) on the application of a spouse who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3) above, that the applicant has suffered a loss of such possession or use or that the quality of the applicant's possession or use of the furniture and plenishings has been impaired,

in consequence of any act or default on the part of the other spouse which was intended to result in such loss or impairment, it may order that other spouse to pay to the applicant such compensation as the court in the circumstances considers just and reasonable in respect of that loss or impairment.

(8) A spouse may renounce in writing the right to apply under subsection (2) above for the possession or use of any item of furniture and plenishings.

4. – Exclusion orders.

(1) Where there is an entitled and non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse [whether or not that spouse is in occupation at the time of the application] ¹ may apply to the court for an order (in this Act referred to as “*an exclusion order*”) suspending the occupancy rights of the other spouse (“the non-applicant spouse”) in a matrimonial home.

(2) Subject to subsection (3) below, the court shall make an exclusion order if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the non-applicant spouse which is or would be injurious to the physical or mental health of the applicant or child.

(3) The court shall not make an exclusion order if it appears to the court that the making of the order would be unjustified or unreasonable –

(a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act; and

(b) where the matrimonial home –

(i) is or is part of an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1949; or

(ii) is let, or is a home in respect of which possession is given, to the non-applicant spouse or to both spouses by an employer as an incident of employment,

subject to a requirement that the non-applicant spouse or, as the case may be, both spouses must reside in the matrimonial home, having regard to that requirement and the likely consequences of the exclusion of the non-applicant spouse from the matrimonial home.

(4) In making an exclusion order the court shall, on the application of the applicant spouse, –

(a) grant a warrant for the summary ejection of the non-applicant spouse from the matrimonial home;

(b) grant an interdict prohibiting the non-applicant spouse from entering the matrimonial home without the express permission of the applicant;

(c) grant an interdict prohibiting the removal by the non-applicant spouse, except with the written consent of the applicant or by a further order of the court, of any furniture and furnishings in the matrimonial home;

unless, in relation to paragraph (a) or (c) above, the non-applicant spouse satisfies the court that it is unnecessary for it to grant such a remedy.

(5) In making an exclusion order the court may –

(a) grant an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the vicinity of the matrimonial home;

(b) where the warrant for the summary ejection of the non-applicant spouse has been granted in his or her absence, give directions as to the preservation of the non-applicant spouse's goods and effects which remain in the matrimonial home;

(c) on the application of either spouse, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) above or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe;

(d) on application as aforesaid, make such other order as it may consider necessary for the proper enforcement of an order made under subsection (4) above or paragraph (a), (b) or (c) of this subsection.

(6) Pending the making of an exclusion order, the court may, on the application of the applicant spouse, make an interim order suspending the occupancy rights of the non-applicant spouse in the matrimonial home to which the application for the exclusion order relates; and subsections (4) and (5) above shall apply to such interim order as they apply to an exclusion order:

Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.

(7) Without prejudice to subsections (1) and (6) above, where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, it shall be incompetent for one spouse to bring an action of ejection from the matrimonial home against the other spouse.

6. – Continued exercise of occupancy rights after dealing.

(1) Subject to subsection (3) below –

(a) the continued exercise of the rights conferred on a non-entitled spouse by the provisions of this Act in respect of a matrimonial home shall not be prejudiced by reason only of any dealing of the entitled spouse relating to that home; and

(b) a third party shall not by reason only of such a dealing be entitled to occupy that matrimonial home or any part of it.

[(1A) The occupancy rights of a non-entitled spouse in relation to a matrimonial home shall not be exercisable in relation to the home where, following a dealing of the entitled spouse relating to the home –

(a) a person acquires the home, or an interest in it, in good faith and for value from a person other than the person who is or, as the case may be, was the entitled spouse; or

(b) a person derives title to the home from a person who acquired title as mentioned in paragraph (a).]

(2) In this section and section 7 of this Act –

“dealing” includes the grant of a heritable security and the creation of a trust but does not include a conveyance under section 80 of the Lands Clauses Consolidation (Scotland) Act 1845;

“entitled spouse” does not include a spouse who, apart from the provisions of this Act, –

(a) is permitted by a third party to occupy a matrimonial home; or

(b) is entitled to occupy a matrimonial home along with an individual who is not the other spouse, whether or not that individual has waived his or her right of occupation in favour of the spouse so entitled; and “non-entitled spouse” shall be construed accordingly.

(3) This section shall not apply in any case where –

(a) the non-entitled spouse in writing either –

(i) consents or has consented to the dealing, and any consent shall be in such form as the Secretary of State may, by regulations made by statutory instrument, prescribe; or

(ii) renounces or has renounced his or her occupancy rights in relation to the matrimonial home or property to which the dealing relates;

(b) the court has made an order under section 7 of this Act dispensing with the consent of the non-entitled spouse to the dealing;

(c) the dealing occurred, or implements, a binding obligation entered into by the entitled spouse before his or her marriage to the non-entitled spouse;

(d) the dealing occurred, or implements, a binding obligation entered into before the commencement of this Act; [...]

(e) the dealing comprises a transfer for value to a third party who has acted in good faith if there is produced to the third party by the transferor –

(i) a written declaration signed by the transferor, or a person acting on behalf of the transferor under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)), that the subjects of the transfer are not, or were not at the time of the dealing, a matrimonial home in relation to which a spouse of the transferor has or had occupancy rights; or

(ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled spouse or a person acting on behalf of the non-entitled spouse under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).]

[(f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of [2] years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.]

13. – Transfer of tenancy.

(1) The court may, on the application of a non-entitled spouse, make an order transferring the tenancy of a matrimonial home to that spouse and providing, subject to subsection (11) below, for the payment by the non-entitled spouse to the entitled spouse of such compensation as seems just and reasonable in all the circumstances of the case.

[(2) In an action –

(a) for divorce, the Court of Session or a sheriff;

(b) for nullity of marriage, the Court of Session,

may, on granting decree or within such period as the court may specify on granting decree, make an order granting an application under subsection (1) above.]

(3) In determining whether to grant an application under subsection (1) above, the court shall have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act and the suitability of the applicant to become the tenant and the applicant's capacity to perform the obligations under the lease of the matrimonial home.

(4) The non-entitled spouse shall serve a copy of an application under subsection (1) above on the landlord and, before making an order under subsection (1) above, the court shall give the landlord an opportunity of being heard by it.

(5) On the making of an order granting an application under subsection (1) above, the tenancy shall vest in the non-entitled spouse without intimation to the landlord, subject to all the liabilities under the lease (other than any arrears of rent for the period before the making of the order, which shall remain the liability of the original entitled spouse).

(6) The clerk of court shall notify the landlord of the making of an order granting an application under subsection (1) above.

(7) It shall not be competent for a non-entitled spouse to apply for an order under subsection (1) above where the matrimonial home –

(a) is let to the entitled spouse by his or her employer as an incident of employment, and the lease is subject to a requirement that the entitled spouse must reside therein;

[(b) is on or pertains to land comprised in an agricultural lease;]

(c) is on or pertains to a croft or the subject of a cottar or the holding of a landholder or a statutory small tenant;

(d) is let on a long lease;

(e) is part of the tenancy land of a tenant-at-will.

(8) In subsection (6) above –

["*agricultural lease*" means a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or a lease constituting a limited duration tenancy or a short limited duration tenancy (within the meaning of that Act);]

"*cottar*" has the same meaning as in section 28(4) of the Crofters (Scotland) Act 1955;

"*croft*" has the same meaning as in the Crofters (Scotland) Act 1955;

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“holding”, in relation to a landholder and a statutory small tenant, *“landholder”* and *“statutory small tenant”* have the same meanings respectively as in sections 2(1), 2(2) and 32(1) of the Small Landholders (Scotland) Act 1911;

“long lease” has the same meaning as in [section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 5)];

“tenant-at-will” has the same meaning as in section 20(8) of the Land Registration (Scotland) Act 1979.

(9) Where both spouses are joint or common tenants of a matrimonial home, the court may, on the application of one of the spouses, make an order vesting the tenancy in that spouse solely and providing, subject to subsection (11) below, for the payment by the applicant to the other spouse of such compensation as seems just and reasonable in the circumstances of the case.

(10) Subsections (2) to (8) above shall apply for the purposes of an order under subsection (9) above as they apply for the purposes of an order under subsection (1) above subject to the following modifications –

(a) in subsection (3) for the word *“tenant”* there shall be substituted the words *“sole tenant”*;

(b) in subsection (4) for the words *“non-entitled”* there should be substituted the word *“applicant”*;

(c) in subsection (5) for the words *“non-entitled”* and *“liability of the original entitled spouse”* there shall be substituted respectively the words *“applicant”* and *“joint and several liability of both spouses”*;

(d) in subsection (7) –

(i) for the words *“a non-entitled”* there shall be substituted the words *“an applicant”*;

(ii) for paragraph (a) there shall be substituted the following paragraph –
“(a) is let to both spouses by their employer as an incident of employment, and the lease is subject to a requirement that both spouses must reside there”;

(iii) paragraphs (c) and (e) shall be omitted.

(11) Where the matrimonial home is a [Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10)], no account shall be taken, in assessing the amount of any compensation to be awarded under subsection (1) or (9) above, of the loss, by virtue of the transfer of the tenancy of the home, of a right to purchase the home under [Part III of the Housing (Scotland) Act 1987 (c.26)].

18. – Occupancy rights of cohabiting couples.

(1) If a man and a woman are living with each other as if they were man and wife [or two persons of the same sex are living together as if they were

civil partners] (“ [in either case] a cohabiting couple”) in a house which, apart from the provisions of this section –

(a) one of them (an “entitled partner”) is entitled, or permitted by a third party, to occupy; and

(b) the other (a “non-entitled partner”) is not so entitled or permitted to occupy,

the court may, on the application of the non-entitled partner, if it appears that the [entitled partner and the non-entitled partner] ³ are a cohabiting couple in that house, grant occupancy rights therein to the applicant for such period, not exceeding [6] months, as the court may specify:

Provided that the court may extend the said period for a further period or periods, no such period exceeding 6 months.

(2) In determining whether for the purpose of subsection (1) above [two person] ⁵ are a cohabiting couple the court shall have regard to all the circumstances of the case including –

(a) the time for which it appears they have been living together; and

(b) [whether there is any child –

(i) of whom they are the parents; or

(ii) who they have treated as a child of theirs.]

(3) While an order granting an application under subsection (1) above or an extension of such an order is in force, or where both partners of a cohabiting couple are entitled, or permitted by a third party, to occupy the house where they are cohabiting, the following provisions of this Act shall subject to any necessary modifications –

(a) apply to the cohabiting couple as they apply to parties to a marriage;

and

(b) have effect in relation to any child residing with the cohabiting couple as they have effect in relation to a child of the family,

section 2;

section 3, except subsection (1)(a);

section 4;

in section 5(1), the words from the beginning to “ Act” where it first occurs;

[section 13; and]

section 22,

and any reference in these provisions to a matrimonial home shall be construed as a reference to a house.

(4) Any order under section 3 or 4 of this Act as applied to a cohabiting couple by subsection (3) above shall have effect –

(a) if one of them is a non-entitled partner, for such a period, not exceeding the period or periods which from time to time may be specified in any order under subsection (1) above for which occupancy rights have been granted under that subsection, as may be specified in the order;

(b) if they are both entitled, or permitted by a third party, to occupy the house, until a further order of the court.

(5) Nothing in this section shall prejudice the rights of any third party having an interest in the house referred to in subsection (1) above.

(6) In this section –

“house” includes a caravan, houseboat or other structure in which the couple are cohabiting and any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure;

“occupancy rights” means the following rights of a non-entitled partner –

(a) if in occupation, a right [to continue to occupy the house;]

(b) if not in occupation, a right to enter into and occupy the house;

[and, without prejudice to the generality of these rights, includes the right to continue to occupy or, as the case may be, to enter and occupy the house together with any child residing with the cohabiting couple]

“entitled partner” includes a partner who is entitled, or permitted by a third party, to occupy the house along with an individual who is not the other partner only if that individual has waived his or her right of occupation in favour of the partner so entitled or permitted.

19. Rights of occupancy in relation to division and sale.

Where a spouse brings an action for the division and sale of a matrimonial home which the spouses own in common, the court, after having regard to all the circumstances of the case including –

(a) the matters specified in paragraphs (a) to (d) of section 3(3) of this Act; and

(b) whether the spouse bringing the action offers or has offered to make available to the other spouse any suitable alternative accommodation, may refuse to grant decree in that action or may postpone the granting of decree for such period as it may consider reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.

4. FAMILY LAW (SCOTLAND) ACT 1985 C.37

1. – Obligation of aliment.

(1) From the commencement of this Act, an obligation of aliment shall be owed by, and only by –

(a) a husband to his wife;

(b) a wife to her husband;

[(bb) a partner in a civil partnership to the other partner;]

(c) a father or mother to his or her child;

(d) a person to a child (other than a child who has been boarded out with him by a local or other public authority or a voluntary organisation) who has been accepted by him as a child of his family.

(2) For the purposes of this Act, an obligation of aliment is an obligation to provide such support as is reasonable in the circumstances, having regard to the matters to which a court is required or entitled to have regard under section 4 of this Act in determining the amount of aliment to award in an action for aliment.

(3) Any obligation of aliment arising under a decree or by operation of law and subsisting immediately before the commencement of this Act shall, except insofar as consistent with this section, cease to have effect as from the commencement of this Act.

(4) Nothing in this section shall affect any arrears due under a decree at the date of termination or cessation of an obligation of aliment, nor any rule of law by which a person who is owed an obligation of aliment may claim aliment from the executor of a deceased person or from any person enriched by the succession to the estate of a deceased person.

(5) In subsection (1) above –

“child” means a person –

(a) under the age of 18 years; or

(b) over that age and under the age of 25 years who is reasonably and appropriately undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation;

“husband” and “wife” include the parties to a valid polygamous marriage.

8. – Orders for financial provision.

(1) In an action for divorce, either party to the marriage [and in an action for dissolution of a civil partnership, either partner] may apply to the court for one or more of the following orders –

(a) an order for the payment of a capital sum [...]to him by the other party to the [action];

[(aa) an order for the transfer of property to him by the other party to the [action]

(b) an order for the making of a periodical allowance to him by the other party to the [action] ;

[(baa) a pension sharing order;]

[(bab) a pension compensation sharing order;]

[(ba) an order under section 12A(2) or (3) of this Act;]

[(bb) an order under section 12B(2);]

(c) an incidental order within the meaning of section 14(2) of this Act.

(2) Subject to sections 12 to 15 of this Act, where an application has been made under subsection (1) above, the court shall make such order, if any, as is –

(a) justified by the principles set out in section 9 of this Act; and

(b) reasonable having regard to the resources of the parties.

(3) An order under subsection (2) above is in this Act referred to as an “order for financial provision”.

[(4) The court shall not, in the same proceedings, make both a pension sharing order and an order under section 12A(2) or (3) of this Act in relation to the same pension arrangement.

(5) Where, as regards a pension arrangement, the parties to a marriage [or the partners in a civil partnership] have in effect a qualifying agreement which contains a term relating to pension sharing, the court shall not –

(a) make an order under section 12A(2) or (3) of this Act; or

(b) make a pension sharing order,

relating to the arrangement unless it also sets aside the agreement or term under section 16(1)(b) of this Act.

(6) The court shall not make a pension sharing order in relation to the rights of a person under a pension arrangement if there is in force an order under section 12A(2) or (3) of this Act which relates to benefits or future benefits to which he is entitled under the pension arrangement.

(7) In subsection (5) above –

(a) “term relating to pension sharing” shall be construed in accordance with section 16(2A) of this Act; and

(b) “qualifying agreement” has the same meaning as in section 28(3) of the Welfare Reform and Pensions Act 1999.]

[(8) The court shall not, in the same proceedings, make both a pension compensation sharing order and an order under section 12B(2) in relation to the same PPF compensation.

(9) The court shall not make a pension compensation sharing order in relation to rights to PPF compensation that –

(a) derive from rights under a pension scheme which is subject to an order made under section 12A(2) or (3) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,

(b) derive from rights under a pension scheme which were at any time the subject of a pension sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,

(c) are or have been the subject of a pension compensation sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, or

(d) are the subject of an order made under section 12B(2) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons.

(10) Where, as regards PPF compensation, the parties to a marriage or the partners in a civil partnership have in effect a qualifying agreement which contains a term relating to pension compensation sharing, the court shall not –

(a) make an order under section 12B(2); or

(b) make a pension compensation sharing order,

relating to the compensation unless it also sets aside the agreement or term under section 16(1)(b) of this Act.

(11) For the purposes of subsection (10) –

(a) the expression “term relating to pension compensation sharing” is to be construed by reference to section 16(2AA) of this Act; and

(b) a qualifying agreement is one to which section 110(1) of the Pensions Act 2008 relates.]

9. – Principles to be applied.

(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that –

(a) the net value of the matrimonial property should be shared fairly between the parties to the marriage [or as the case may be the net value of the partnership property should be so shared between the partners in the civil partnership] ;

(b) fair account should be taken of any economic advantage derived by either [person] from contributions by the other, and of any economic disadvantage suffered by either [person] in the interests of the other [person] or of the family;

[(c) any economic burden of caring, should be shared fairly between the persons–

(i) after divorce, for a child of the marriage under the age of 16 years;

(ii) after dissolution of the civil partnership, for a child under that age who has been accepted by both partners as a child of the family [or in respect of whom they are, by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents].

(d) a person who has been dependent to a substantial degree on the financial support of the other person should be awarded such financial provision as is reasonable to enable him to adjust, over a period of not more than three years from–

(i) the date of the decree of divorce, to the loss of that support on divorce;

(ii) the date of the decree of dissolution of the civil partnership, to the loss of that support on dissolution.

(e) a [person] who at the time of the divorce [or of the dissolution of the civil partnership,] seems likely to suffer serious financial hardship as a result of the divorce [or dissolution] should be awarded such financial provision as is reasonable to relieve him of hardship over a reasonable period.

(2) In subsection (1)(b) above and section 11(2) of this Act –

“economic advantage” means advantage gained whether before or during the marriage [or civil partnership] and includes gains in capital, in income and in earning capacity , and “economic disadvantage” shall be construed accordingly;

“contributions” means contributions made whether before or during the marriage [or civil partnership]; and includes indirect and non-financial contributions and, in particular, any such contribution made by looking after the family home or caring for the family.

16. – Agreements on financial provision.

(1) Where the parties to a marriage [or the partners in a civil partnership] 1 have entered into an agreement as to financial provision to be made on divorce [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 [or of dissolution of the civil partnership]; and

[(b) under subsection (1)(b) above, if the agreement [contains neither a term relating to pension sharing nor a term relating to pension compensation sharing] , on granting decree of divorce [or of dissolution of the civil partnership] or within such time as the court may specify on granting decree of divorce [or of dissolution of the civil partnership]; or

(c) under subsection (1)(b) above, if the agreement contains a term relating to pension sharing [or pension compensation sharing] –

(i) where the order sets aside the agreement or sets aside or varies the term relating to pension sharing [or (as the case may be) the term relating to pension compensation sharing], on granting decree of divorce [or of dissolution of the civil partnership]; and

(ii) where the order sets aside or varies any other term of the agreement, on granting decree of divorce [or of dissolution of the civil partnership] or

within such time thereafter as the court may specify on granting decree of divorce [or of dissolution of the civil partnership].

[(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.]

[(2AA) For the purpose of subsection (2), a term relating to pension compensation sharing is a term corresponding to provision which may be made in a pension compensation sharing order and satisfying the requirements set out in section 109(g) of the Pensions Act 2008.]

[(2B) Subsection (2C) applies where –

(a) the parties to a marriage or the partners in a civil partnership have entered into an agreement as to financial provision to be made on divorce or on dissolution of the civil partnership; and

(b) the agreement includes provision in respect of a person's rights or interests or benefits under an occupational pension scheme.

(2C) The Board of the Pension Protection Fund's subsequently assuming responsibility for the occupational pension scheme in accordance with Chapter 3 of Part 2 of the Pension Act 2004 (c.35) or any provision in force in Northern Ireland corresponding to that Chapter shall not affect –

(a) the power of the court under subsection (1)(b) to make an order setting aside or varying the agreement or any term of it;

(b) on an appeal, the powers of the appeal court in relation to the order.]

(3) Without prejudice to subsections (1) and (2) above, where the parties to a marriage [or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [or on dissolution of the civil partnership] and –

(a) the estate of the [person] 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 [person] 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 [person's] estate; [...]

(c) that [person's] estate is being administered by a trustee acting under a voluntary trust deed granted since that date by the [person] for the benefit of his creditors generally or is subject to an analogous arrangement [; or]

[(d) by virtue of the making of a [maintenance 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 [or 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.

24. – Marriage not to affect property rights or legal capacity.

(1) Subject to the provisions of any enactment (including this Act), marriage [or civil partnership] shall not of itself affect –

(a) the respective rights of the parties to the marriage [, or as the case may be the partners in the civil partnership,] in relation to their property;

(b) the legal capacity of [those parties or partners].

(2) Nothing in subsection (1) above affects the law of succession.

25. – Presumption of equal shares in household goods.

(1) If any question arises (whether during or after a marriage [or civil partnership]) as to the respective rights of ownership of the parties to a marriage [or the partners in a civil partnership] in any household goods obtained in prospect of or during the marriage [or civil partnership] other than by gift or succession from a third party, it shall be presumed, unless the contrary is proved, that each has a right to an equal share in the goods in question.

(2) [For the purposes of subsection (1) above, the contrary shall not be treated as proved by reason only that while –

(a) the parties were married

(b) the partners were in civil partnership,

and living together the goods in question were purchased from a third party by either party alone or by both in unequal shares.]

(3) In this section “household goods” means any goods (including decorative or ornamental goods) kept or used at any time during the marriage in any matrimonial [or civil partnership in any family] home for the joint domestic purposes of the parties to the marriage [or the partners], other than –

(a) money or securities;

(b) any motor car, caravan or other road vehicle;

(c) any domestic animal.

26. Presumption of equal shares in money and property derived from housekeeping allowance.

If any question arises (whether during or after a marriage [or civil partnership]) as to the right of a party to a marriage [or as the case may be of a partner in a civil partnership] to money derived from any allowance made by either party [or partner] for their joint household expenses or for similar purposes, or to any property acquired out such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to each party [or partner] in equal shares.

5. CIVIL PARTNERSHIP ACT 2004 C.33

85 Formation of civil partnership by registration

(1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule, in the presence of–

- (a) each other,
 - (b) two witnesses both of whom have attained the age of 16, and
 - [(c) the approved celebrant or, as the case may be, the authorised registrar.]
- (all being present at a registration office or at a place agreed under section 93).

(2) But the two people must be eligible to be so registered.

(3) Subsection (1) applies regardless of whether subsection (4) is complied with.

(4) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other by–

- (a) each of the two witnesses, and
- (b) [the approved celebrant or, as the case may be,] the authorised registrar.

86 Eligibility

(1) Two people are not eligible to register in Scotland as civil partners of each other if–

- (a) they are not of the same sex,
- (b) they are related in a forbidden degree,
- (c) either has not attained the age of 16,
- (d) either is married or already in civil partnership, or
- (e) either is incapable of–
 - (i) understanding the nature of civil partnership, or
 - (ii) validly consenting to its formation.

[(2) Subject to subsection (3), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 10.]

(3) [A person who is related to another person in a degree specified in paragraph 2 of Schedule 10 (relationships by affinity) is not related to that person] in a forbidden degree if–

- (a) both persons have attained the age of 21, and
- (b) the younger has not at any time before attaining the age of 18 lived in the same household as the elder and been treated by the elder as a child of the elder's family.

[(3A) For the purposes of paragraph 2 of Schedule 10, “spouse” means –

- (a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife, and
- (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.]

6. FAMILY LAW (SCOTLAND) ACT 2006

3 Abolition of marriage by cohabitation with habit and repute

(1) The rule of law by which marriage may be constituted by cohabitation with habit and repute shall cease to have effect.

(2) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where the cohabitation with habit and repute –

- (a) ended before the commencement of this section (“commencement”);
- (b) began before, but ended after, commencement; or
- (c) began before, and continues after, commencement.

(3) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where –

- (a) the cohabitation with habit and repute began after commencement; and
- (b) the conditions in subsection (4) are met.

(4) Those conditions are –

- (a) that the cohabitation with habit and repute was between two persons, one of whom, (“A”), is domiciled in Scotland;
- (b) that the person with whom A was cohabiting, (“B”), died domiciled in Scotland;
- (c) that, before the cohabitation with habit and repute began, A and B purported to enter into a marriage (“the purported marriage”) outwith the United Kingdom;

(d) that, in consequence of the purported marriage, A and B believed themselves to be married to each other and continued in that belief until B's death;

(e) that the purported marriage was invalid under the law of the place where the purported marriage was entered into; and

(f) that A became aware of the invalidity of the purported marriage only after B's death.

25 Meaning of “cohabitant” in sections 26 to 29

(1) In sections 26 to 29, “cohabitant” means either member of a couple consisting of –

(a) a man and a woman who are (or were) living together as if they were husband and wife; or

(b) two persons of the same sex who are (or were) living together as if they were civil partners.

(2) In determining for the purposes of any of sections 26 to 29 whether a person (“A”) is a cohabitant of another person (“B”), the court shall have regard to –

(a) the length of the period during which A and B have been living together (or lived together);

(b) the nature of their relationship during that period; and

(c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.

(3) In subsection (2) and section 28, “court” means Court of Session or sheriff.

26 Rights in certain household goods

(1) Subsection (2) applies where any question arises (whether during or after the cohabitation) as to the respective rights of ownership of cohabitants in any household goods.

(2) It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.

(3) The presumption in subsection (2) shall be rebuttable.

(4) In this section, “household goods” means any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include –

(a) money;

(b) securities;

(c) any motor car, caravan or other road vehicle; or

(d) any domestic animal.

27 Rights in certain money and property

(1) Subsection (2) applies where, in relation to cohabitants, any question arises (whether during or after the cohabitation) as to the right of a cohabitant to –

- (a) money derived from any allowance made by either cohabitant for their joint household expenses or for similar purposes; or
 - (b) any property acquired out of such money.
- (2) Subject to any agreement between the cohabitants to the contrary, the money or property shall be treated as belonging to each cohabitant in equal shares.
- (3) In this section “property” does not include a residence used by the cohabitants as the sole or main residence in which they live (or lived) together.

28 Financial provision where cohabitation ends otherwise than by death

- (1) Subsection (2) applies where cohabitants cease to cohabit otherwise than by reason of the death of one (or both) of them.
- (2) On the application of a cohabitant (the “applicant”), the appropriate court may, after having regard to the matters mentioned in subsection (3) –
- (a) make an order requiring the other cohabitant (the “defender”) to pay a capital sum of an amount specified in the order to the applicant;
 - (b) make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;
 - (c) make such interim order as it thinks fit.
- (3) Those matters are –
- (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
 - (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of –
 - (i) the defender; or
 - (ii) any relevant child.
- (4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).
- (5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of –
- (a) the applicant; or
 - (b) any relevant child.
- (6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of –
- (a) the defender; or
 - (b) any relevant child,

is offset by any economic advantage the applicant has derived from contributions made by the defender.

(7) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable –

(a) on such date as may be specified;

(b) in instalments.

(8) [Subject to section 29A, any] application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit.

(9) In this section –

“appropriate court” means –

(a) where the cohabitants are a man and a woman, the court which would have jurisdiction to hear an action of divorce in relation to them if they were married to each other;

(b) where the cohabitants are of the same sex, the court which would have jurisdiction to hear an action for the dissolution of the civil partnership if they were civil partners of each other;

“child” means a person under 16 years of age;

“contributions” includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and

“economic advantage” includes gains in –

(a) capital;

(b) income; and

(c) earning capacity;

and “economic disadvantage” shall be construed accordingly.

(10) For the purposes of this section, a child is “relevant” if the child is –

(a) a child of whom the cohabitants are the parents;

(b) a child who is or was accepted by the cohabitants as a child of the family.

29 Application to court by survivor for provision on intestacy

(1) This section applies where –

(a) a cohabitant (the “deceased”) dies intestate; and

(b) immediately before the death the deceased was –

(i) domiciled in Scotland; and

(ii) cohabiting with another cohabitant (the “survivor”).

(2) Subject to subsection (4), on the application of the survivor, the court may –

(a) after having regard to the matters mentioned in subsection (3), make an order –

- (i) for payment to the survivor out of the deceased's net intestate estate of a capital sum of such amount as may be specified in the order;
- (ii) for transfer to the survivor of such property (whether heritable or moveable) from that estate as may be so specified;
- (b) make such interim order as it thinks fit.
- (3) Those matters are –
 - (a) the size and nature of the deceased's net intestate estate;
 - (b) any benefit received, or to be received, by the survivor –
 - (i) on, or in consequence of, the deceased's death; and
 - (ii) from somewhere other than the deceased's net intestate estate;
 - (c) the nature and extent of any other rights against, or claims on, the deceased's net intestate estate; and
 - (d) any other matter the court considers appropriate.
- (4) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor an amount which would exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased.
- (5) An application under this section may be made to –
 - (a) the Court of Session;
 - (b) a sheriff in the sheriffdom in which the deceased was habitually resident at the date of death;
 - (c) if at the date of death it is uncertain in which sheriffdom the deceased was habitually resident, the sheriff at Edinburgh.
- (6) [Subject to section 29A, any] application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died.
- (7) In making an order under paragraph (a)(i) of subsection (2), the court may specify that the capital sum shall be payable –
 - (a) on such date as may be specified;
 - (b) in instalments.
- (8) In making an order under paragraph (a)(ii) of subsection (2), the court may specify that the transfer shall be effective on such date as may be specified.