

Family Law (Scotland) Act 2006

RIGHTS FOR COHABITING COUPLES

Introduction

The Family Law (Scotland) Act 2006 contains new rights for couples living together. These rights include the right to equal shares in the household property, the right to apply for a financial payment from the other partner when the couple stop living together and the right to apply for a share in the deceased partner's estate.

Definition of a "cohabitant"

- (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.

How long does a couple have to have been living together to qualify?

The Act does not specify a length of time. The courts will look at the nature of the relationship and the couple's financial arrangements during the relevant time period.

Presumption of equal shares in household goods

If there is any question as to the ownership of household goods, either during the relationship or after it has ended, the law automatically assumes that the couple own equal shares of this property.

This presumption does not cover property inherited by one party, gifts, money, motor vehicles or pets and can also be challenged by either party.

Presumption of equal shares in certain money and property

The law assumes that money saved from housekeeping funds or property bought from housekeeping money, but not the house the couple live in, is to be shared equally, regardless of which partner provided the money. Again, this can be challenged by either party.

Right to apply for a financial provision when the parties cease to live together

This section of the Act is not about what happens when the relationship ends. It is about what can happen when the couple stop living with each other. The person who wishes to make a claim for financial provision must apply to the court **within a year** after the day on which the couple stopped cohabiting.

The court can order their partner to pay them a one-off lump sum. If the couple has a child or children under 16, and one partner is responsible for the full-time care of them, the court can also order that the other partner pays them a

specified amount to cover the financial costs of continuing to care for the child or children.

In deciding whether to make one of these orders, the court will firstly consider whether the person against whom the claim is being made has obtained what the Act calls some “economic **advantage**” over the other partner. This might include gains in income or earning capacity, as well as the benefit of any financial contribution to the household made by the other person.

The court will then also consider whether the person making the claim has suffered any “economic **disadvantage**”. This might include whether they gave up their job to look after the couple’s children, financially supported the other person through a course of study or during a time when they weren’t working, gave up their job or made some other personal sacrifice to help the other person’s career.

Claim for financial provision on the death of the other partner where no will was executed (Intestacy)

This claim can be made to the court where a current cohabitant dies without making a will and must be made within 6 months of the date of death.

The court may make an order for the surviving partner to receive payment of a lump sum or to obtain property, which might include land, buildings, money or household furnishings.

These payments cannot exceed the amounts that the surviving partner would have been legally entitled to had they been married to, or in a civil partnership with ,the deceased partner.

Any sums awarded by the court will be subject to the deduction of death-bed expenses, taxes and valid claims by other parties such as the deceased person’s children and also any spouse, if the deceased had been married and had not obtained a divorce.