

**“OFFSETTING” PRIVATE SCHOOL FEES
V ALIMENT / FINANCIAL PROVISION
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Where one party has wanted children to attend a private school and the other party has not, to what extent can you offset school fees against any aliment and financial provision?

Aliment

Family Law Scotland Act 1985 Ss. 1-7

A parent is obliged to aliment a child (to 16, 25 if in education)

Aliment shall be reasonable in the circumstances (s.1(1)(c) & (5))

With reference to needs and resources and earning capacity of the parties and generally to all the circumstances of the case (s.4(1))

Educational expenses are specially provided for (s.3(1)(b))

Financial Provision

Family Law Scotland Act 1985 Ss. 8 – 17

Capital sum / transfer of property / periodical allowance - all with reference to the s. 9 principles – fairness - 50/50 unless reason not to - and what is reasonable (s.8).

The court shall have regard to— Section 11(3)(a) any decree / arrangement for aliment for the child and (e) the educational, financial and other circumstances of the child. (g) the needs and resources of the and (h) all the other circumstances of the case.

Child Support Act 1991

S8 (7) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

(a) the child is... receiving instruction at an educational establishment or undergoing... and

(b) the order is made solely for the purposes of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of the expenses incurred in connection with the provision of the instruction or training.

Aliment / Financial Provision shall be reasonable - 1985 Act - s.1(1)(c) & (5) and s.1(2) and s.2(8) s.4(4) and s. 8(2)(b) and s.9... &c.

Fairness too is common, as are other and special circumstances and needs and resources &c.

McGeoch v McGeoch 1998 Fam. L.R. 13 referred to F v F [1995] 2 FLR 45 (when determining a party's reasonable needs the court should endeavour to determine reasonableness according to the standards of the ultra-rich) but this did not appear necessarily to be a safe guide in *McGeoch*.