



Family Law (Scotland) Act 2006

2006 asp 2

Divorce

11 Divorce: reduction in separation periods

In subsection (2) of section 1 of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce)—

- (a) in paragraph (d), for “two years” there shall be substituted “one year”; and
- (b) in paragraph (e), for “five” there shall be substituted “two”.

12 Irretrievable breakdown of marriage: desertion no longer to be ground

Paragraph (c) of section 1(2) of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce) shall be repealed.

13 Non-cohabitation without consent: removal of bar to divorce

Subsection (5) of section 1 of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce) shall be repealed.

14 Collusion no longer to be bar to divorce

- (1) Any rule of law by which collusion between parties is a bar to their divorce shall cease to have effect.
- (2) Section 9 of the 1976 Act (abolition of the oath of calumny) shall be repealed.

15 Postponement of decree of divorce where religious impediment to remarry exists

After section 3 of the 1976 Act (action for divorce following on decree of separation) there shall be inserted—

“3A Postponement of decree of divorce where religious impediment to remarry exists

- (1) Notwithstanding that irretrievable breakdown of a marriage has been established in an action for divorce, the court may—
 - (a) on the application of a party (“the applicant”); and
 - (b) if satisfied—
 - (i) that subsection (2) applies; and
 - (ii) that it is just and reasonable to do so,postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).
- (2) This subsection applies where—
 - (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage; and
 - (b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.
- (3) A party complies with this subsection by acting in the way described in subsection (2)(b).
- (4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).
- (5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described in subsection 2(b).
- (6) For the purposes of subsection (5), a religious body is “relevant” if the applicant considers the body competent to provide the confirmation referred to in that subsection.
- (7) In this section—

“religious marriage” means a marriage solemnised by a marriage celebrant of a prescribed religious body, and “religion of that marriage” shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Scottish Ministers.
- (8) Any reference in this section to a marriage celebrant of a prescribed religious body is a reference to—
 - (a) a minister, clergyman, pastor or priest of such a body;
 - (b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 (c. 15) as empowered to solemnise marriages; or
 - (c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.
- (9) Regulations under subsection (7) shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.