

Draft Order laid before the Scottish Parliament under section 8(5) of the Civil Evidence (Scotland) Act 1988 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

EVIDENCE

**The Evidence in Civil Partnership and
Divorce Actions (Scotland) Order 2012**

Made - - - -

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 8(4) of the Civil Evidence (Scotland) Act 1988(1) and all other powers enabling them to do so.

In accordance with section 8(5) of that Act(2), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 and comes into force on the day after the day on which it is made.

Specification of class of actions

2.—(1) Section 8(3A) of the Civil Evidence (Scotland) Act 1988 does not apply in respect of the class of actions specified in paragraph (2).

(2) The class of action referred to in paragraph (1) is actions for dissolution of civil partnership in which—

- (a) the action is undefended;
- (b) the action is brought in reliance on the facts set out in section 117(3)(c) (1 year non-cohabitation and the defender's consent to decree) or in section 117(3)(d) (2 years non-cohabitation) of the Civil Partnership Act 2004(3);

(1) 1988 c.32. The functions of the Lord Advocate were transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1996/678) and to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 8(4) has been modified by paragraph 55(4) of Schedule 28 to the Civil Partnership Act 2004 (c.33).

(2) Section 8(5) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 2004 c.33.

- (c) no other proceedings are pending in any court which could have the effect of bringing the civil partnership to an end;
 - (d) there is no child of the family, as defined in section 12(4)(b) of the Children (Scotland) Act 1995⁽⁴⁾, under the age of 16 years;
 - (e) neither party applies for an order for financial provision on dissolution of civil partnership; and
 - (f) neither party suffers from mental disorder as defined in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁵⁾.
- (3) For the purpose of this Order an action is to be treated as undefended when the defender has not entered appearance or, having entered appearance, has not lodged defences or has withdrawn them.

Amendment of the Evidence in Divorce Actions (Scotland) Order 1989

- 3.—**(1) The Evidence in Divorce Actions (Scotland) Order 1989⁽⁶⁾ is amended as follows.
- (2) In article 2(1)(b)—
- (a) for “2 years” substitute “1 year”; and
 - (b) for “5 years” substitute “2 years”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Executive

⁽⁴⁾ 1995 c.36.
⁽⁵⁾ 2003 asp 13.
⁽⁶⁾ S.I. 1989/582.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that the requirement of section 8(3A) of the Civil Evidence (Scotland) Act 1988 (“the 1988 Act”) does not apply to a specified class of civil partnership action.

Section 8 of the 1988 Act sets out what evidence is required before the court can grant decree or judgment in certain family cases. Section 8(3A) provides that for certain types of action, including actions for dissolution of a civil partnership, the evidence must consist of or include evidence from a person who is not a party to the civil partnership. The effect of this Order is to remove that requirement in an action for dissolution of civil partnership brought on the basis of 1 year non-cohabitation and with the consent of the defender or of 2 years non-cohabitation where in both cases the action is undefended and certain other criteria are fulfilled. These are actions in which a simplified dissolution procedure is available either in the Court of Session under Rule 49.80A-I of the Rules of the Court of Session 1994 ([S.I. 1994/1443](#)) or in the sheriff court under Rule 33A.66-75 of the Ordinary Cause Rules 1993 (the First Schedule to the Sheriff Courts (Scotland) Act [1907 \(c.51\)](#)).

This Order also amends the time frames referred to in article 2 of the Evidence in Divorce Actions (Scotland) Order 1989 in consequence of changes made by the Family Law (Scotland) Act [2006 \(asp 2\)](#).