



# Divorce (Scotland) Act 1976

## 1976 CHAPTER 39

### *Divorce*

#### **1** [<sup>F1</sup>Grounds of divorce.]

- (1) In an action for divorce the court may grant decree of divorce if, but only if, it is established in accordance with the following provisions of this Act that .
- [<sup>F2</sup>(a)] the marriage has broken down irretrievably [<sup>F3</sup>or
  - (b) [<sup>F4</sup>subject to subsection (3B),] an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the date of the marriage, been issued to either party to the marriage.]

References in this Act (other than in sections 5(1) and 13 of this Act) to an action for divorce are to be construed as references to such an action brought after the commencement of this Act.

- (2) The irretrievable breakdown of a marriage shall, subject to the following provisions of this Act, be taken to be established in an action for divorce if—
- (a) since the date of the marriage the defender has committed adultery; or
  - (b) since the date of the marriage the defender has at any time behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender; or
  - [<sup>F5</sup>(c) .....
  - (d) there has been no cohabitation between the parties at any time during a continuous period of [<sup>F6</sup>one year] after the date of the marriage and immediately preceding the bringing of the action and the defender consents to the granting of decree of divorce; or
  - (e) there has been no cohabitation between the parties at any time during a continuous period of [<sup>F7</sup>two] years after the date of the marriage and immediately preceding the bringing of the action.
- (3) The irretrievable breakdown of a marriage shall not be taken to be established in an action for divorce by reason of subsection (2)(a) of this section if the adultery

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mentioned in the said subsection (2)(a) has been connived at in such a way as to raise the defence of *lenocinium* has been condoned by the pursuer's cohabitation with the defender in the knowledge or belief that the defender has committed the adultery.

[<sup>F8</sup>(3A) For the avoidance of doubt, in relation to marriage between persons of the same sex, adultery has the same meaning as it has in relation to marriage between persons of different sexes.]

[<sup>F9</sup>(3B) Subsection (1)(b)—

- (a) does not apply where, under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued, but
- (b) continues to apply despite a full gender recognition certificate being issued to that person by the sheriff under section 4E of that Act.]

(4) Provision shall be made by act of sederunt—

- (a) for the purpose of ensuring that, where in an action for divorce to which subsection (2)(d) of this section relates the defender consents to the granting of decree, he has been given such information as will enable him to understand—
  - (i) the consequences to him of his consenting as aforesaid; and
  - (ii) the steps which he must take to indicate his consent; and
- (b) prescribing the manner in which the defender in such an action shall indicate his consent, and any withdrawal of such consent, to the granting of decree; and where the defender has indicated (and not withdrawn) his consent in the prescribed manner, such indication shall be sufficient evidence of such consent.

<sup>F10</sup>(5) . . . . .

(6) In an action for divorce the standard of proof required to establish the ground of the action shall be on balance of probability.

#### Textual Amendments

- F1** S. 1 title substituted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(2)**; S.I. 2005/54, art. 2
- F2** Words in s. 1(1) renumbered as s. 1(1)(a) (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(1)(a)**; S.I. 2005/54, art. 2
- F3** S. 1(1)(b) inserted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(1)(b)**; S.I. 2005/54, art. 2
- F4** Words in s. 1(1)(b) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 31(2)**, 36; S.S.I. 2014/287, art. 3, Sch.
- F5** S. 1(2)(c) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 12**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F6** Words in s. 1(2)(d) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 11(a)**, 46(2); S.S.I. 2006/212, art. 2
- F7** Word in s. 1(2)(e) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 11(b)**, 46(2); S.S.I. 2006/212, art. 2
- F8** S. 1(3A) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 5(2)**, 36; S.S.I. 2014/287, art. 3, Sch.
- F9** S. 1(3B) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 31(3)**, 36; S.S.I. 2014/287, art. 3, Sch.

**F10** S. 1(5) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 13**, 46(2); [S.S.I. 2006/212](#), art. 2

## 2 Encouragement of reconciliation.

(1) At any time before granting decree <sup>F11</sup>under paragraph (a) of section 1(1)], if it appears to the court that there is a reasonable prospect of a reconciliation between the parties, it shall continue, or further continue, the action for such period as it thinks proper to enable attempts to be made to effect such a reconciliation; and if during any such continuation the parties cohabit with one another, no account shall be taken of such cohabitation for the purposes of that action.

(2) Adultery shall not be held to have been condoned within the meaning of section 1(3) of this Act by reason only of the fact that after the commission of the adultery the pursuer has continued or resumed cohabitation with the defender, provided that the pursuer has not cohabited with the defender at any time after the end of the period of three months from the date on which such cohabitation as is referred to in the said section 1(3) was continued or resumed as aforesaid.

<sup>F12</sup>(3) .....

(4) In considering whether any period mentioned in paragraph <sup>F13</sup>..., (d), or (e) of section 1(2) of this Act has been continuous no account shall be taken of any period or periods not exceeding six months in all during which the parties cohabited with one another; but no such period or periods during which the parties cohabited with one another shall count as part of the period of non-cohabitation required by any of those paragraphs.

### Textual Amendments

**F11** Words in s. 2(1) substituted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 7**; [S.I. 2005/54](#), art. 2

**F12** S. 2(3) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), **Sch. 3**; [S.S.I. 2006/212](#), art. 2

**F13** Word in s. 2(4) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), **Sch. 3**; [S.S.I. 2006/212](#), art. 2

## 3 Action for divorce following on decree of separation.

(1) The court may grant decree in an action for divorce notwithstanding that decree of separation has previously been granted to the pursuer on the same, or substantially the same, facts as those averred in support of the action for divorce; and in any such action (other than an action for divorce by reason of section 1(2)(a) of this Act) the court may treat an extract decree of separation lodged in process as sufficient proof of the facts upon which such decree was granted.

(2) Nothing in this section shall entitle the court to grant decree of divorce without receiving evidence from the pursuer.

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**[<sup>F14</sup>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.]

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**Changes to legislation:** There are currently no known outstanding effects for the  
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**Textual Amendments**

**F14** S. 3A inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 15, 46(2); S.S.I. 2006/212,  
art. 2

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