



Divorce (Scotland) Act 1976

1976 CHAPTER 39

Supplemental

9 Abolition of oath of calumny

In a consistorial action (whether brought before or after the commencement of this Act) the oath of calumny shall not be administered to the pursuer, and accordingly that oath is hereby abolished, but nothing in this section shall affect any rule of law relating to collusion.

10 Right of husband to cite paramour as a co-defender and to sue for damages abolished

- (1) After the commencement of this Act the following rights of a husband shall be abolished, that is to say—
 - (a) the right to cite a paramour of his wife as a co-defender in an action for divorce, and
 - (b) the right to claim or to obtain damages (including solatium) from a paramour by way of reparation.
- (2) Nothing in the provisions of the foregoing subsection shall preclude the court from awarding the expenses of the action for or against the paramour or alleged paramour in accordance with the practice of the court.
- (3) Section 7 of the Conjugal Rights (Scotland) Amendment Act 1861 (citation of a co-defender in an action for divorce and decree for expenses against him) shall cease to have effect.

11 Curator *ad litem* to be appointed in certain cases

Provision shall be made by act of sederunt for the purpose of securing that, where in an action for divorce the defender is suffering from mental illness, the court shall appoint a curator *ad litem* to the defender.

12 Amendments, repeals and transitional provisions

- (1) The enactments described in Schedule 1 to this Act shall have effect subject to the amendments specified therein in relation to them respectively.
- (2) The enactments specified in columns 1 and 2 of Schedule 2 to this Act are hereby repealed to the extent specified in relation to them respectively in column 3 of that Schedule.
- (3) Subject to the following provisions of this section and without prejudice to the operation of section 38 of the Interpretation Act 1889 (effect of repeals), nothing in this section shall affect any proceedings brought, anything done, or the operation of any order made, under any enactment repealed by this section; nor shall anything in this Act be taken to revive any rule of law superseded by any enactment repealed by this section.
- (4) Anything which, prior to the commencement of this Act, could have been done under section 2 of the Divorce (Scotland) Act 1938 or section 26 or 27 of the Succession (Scotland) Act 1964 may, after the commencement of this Act, be done under the corresponding provision of section 5 or 6 of this Act.
- (5) An order under section 2 of the Divorce (Scotland) Act 1938 for the payment of an annual or periodical allowance to or for the behoof of a child of the marriage may, after the commencement of this Act, be varied or recalled by a subsequent order under subsection (2) of that section as if that section had not been repealed by this Act.
- (6) Subsection (5) of section 5 of this Act shall apply in relation to an order for the payment of an annual or periodical allowance under section 2 of the Divorce (Scotland) Act 1938 or of a periodical allowance under section 26 of the Succession (Scotland) Act 1964 as it applies in relation to an order for the payment of a periodical allowance under the said section 5.

13 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - " action for divorce " has the meaning assigned to it by section 1(1) of this Act;
 - " the court " means—
 - (a) in relation to an action for divorce or an order under section 5 or 6 of this Act, the Court of Session ;
 - (b) in relation to any other action, the Court of Session or the sheriff, as the case may require.
- (2) For the purposes of this Act, the parties to a marriage shall be held to cohabit with one another only when they are in fact living together as man and wife ; and " cohabitation " shall be construed accordingly.
- (3) References in this Act to any enactment are references to that enactment as amended, and include references thereto as applied, by any other enactment, including, except where the context otherwise requires, this Act.

14 Citation, commencement and extent

- (1) This Act may be cited as the Divorce (Scotland) Act 1976.

- (2) This Act except section 8 shall come into operation on 1st January 1977.
- (3) So much of section 12 of, and Schedule 1 to, this Act as affects the operation of section 16 of the Maintenance Orders Act 1950 shall extend to England and Wales and to Northern Ireland as well as Scotland, but save as aforesaid this Act shall extend to Scotland only.