



# Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983

## 1983 CHAPTER 12

An Act to extend the jurisdiction of sheriffs in Scotland in relation to actions for divorce; to make provision as regards the sufficiency of evidence in certain actions for divorce in Scotland; to make new provision in Scotland as to the fees and outlays of counsel and solicitors in relation both to legal aid, and to the giving of legal advice and assistance under the Legal Advice and Assistance Act 1972; to make new provision in relation to the regulation of fees payable in the Scottish courts; and for connected purposes. [11th April 1983]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### JURISDICTION AND EVIDENCE IN DIVORCE ACTIONS

#### **1 Sheriffs to have jurisdiction in respect of actions for divorce.**

In section 5 of the <sup>M1</sup>Sheriff Courts (Scotland) Act 1907 (which relates to the jurisdiction of sheriffs), after paragraph (2A) there shall be inserted—

“(2B) Actions for divorce”.

#### **Annotations:**

#### **Marginal Citations**

**M1** 1907 c. 51.

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*Changes to legislation: There are currently no known outstanding effects for the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983. (See end of Document for details)*

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2 ..... F1

**Annotations:**

**Amendments (Textual)**

F1 S. 2 repealed by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 34), s. 10(1)(3), **Sch.**

**PART II**

3 ..... F2

**Annotations:**

**Amendments (Textual)**

F2 S. 3 repealed by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 43, 45, Sch. 4 para. 3(1), **Sch. 5**

**PART III**

COURT FEES

**4 Power of Secretary of State to regulate court fees.**

For section 2 of the <sup>M2</sup>Courts of Law Fees (Scotland) Act 1895 (which enables the High Court of Justiciary and the Court of Session to regulate court fees) there shall be substituted the following section—

**“2 Power of Secretary of State to regulate court fees.**

- (1) The Secretary of State may, with the concurrence of the Treasury, by order regulate the fees payable—
  - (a) to any officer of any office or department connected with the Scottish courts the expenses of which are paid wholly or partly out of the Consolidated Fund or out of moneys provided by Parliament; and
  - (b) to the district court.
- (2) An order under subsection (1) above—
  - (a) may provide as to the times when, places where and persons to whom fees payable by virtue of this section are payable;
  - (b) may, in relation to any such fees, provide—
    - (i) for exemption from the requirement to pay them;
    - (ii) for their remission;
    - (iii) for their modification; and
    - (iv) as to the circumstances in which and persons by whom such exemptions, remissions and modifications may be made; and
  - (c) may make different provision in relation to—
    - (i) different courts; and

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(ii) different cases or classes of case.

(3) In subsection (1) above, “the Scottish courts” means—

- (a) the Court of Session;
- (b) the High Court of Justiciary;
- (c) the sheriff court;
- (d) the court of commissioners for teinds (provision for which is made in section 8 of the Court of Session Act 1839);
- (e) the court for hearing appeals under subsection (8)(b) of section 45 of the Representation of the People Act 1949 (appeals relating to the registration of electors);
- (f) the election court constituted under section 110 of the said Act of 1949;
- (g) the lands valuation appeal court (provision for which is made in section 7 of the Valuation of Lands (Scotland) Amendment Act 1879); and
- (h) any other court specified as a Scottish court for the purposes of this section in an order made by the Secretary of State.

(4) An order under subsection (1) or (3)(h) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

**Annotations:**

**Marginal Citations**

M2 1895 c. 14.

## PART IV

### SUPPLEMENTAL

#### 5 Finance.

There shall be paid out of moneys provided by Parliament any increase in moneys so payable under any other Act which is attributable to the provisions of this Act.

#### 6 Minor and consequential amendments and repeals.

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential upon the provisions of this Act.
- (2) The enactments specified in Schedule 2 to this Act are repealed to the extent specified in the third column of that Schedule.

#### 7 Citation, commencement and extent.

- (1) This Act may be cited as the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.

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- (2) The following provisions of this Act, that is to say, section 2, this section, and paragraph 2 of Schedule 1 (together with so much of section 6(1) above as relates to that paragraph) shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) The remaining provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions or for different purposes of the same provision.
- (4) This Act shall extend to Scotland only.

**Annotations:**

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**Modifications etc. (not altering text)**

- C1** Power of appointment conferred by s. 7(3) fully exercised by [S.I. 1984/253](#):1.4.1984 appointed for specified provisions and 1.5.1984 appointed for all provisions so far as not then already in force

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## SCHEDULES

### SCHEDULE 1

Section 6(1)

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Court of Session Act 1830 c. 69*

- 1 In section 33 (which provides for the Court of Session to have exclusive jurisdiction in respect of certain consistorial actions), for the word “All” there shall be substituted the words “ Subject to section 5(2B) of the <sup>M3</sup>Sheriff Courts (Scotland) Act 1907, all ”.

**Annotations:**

**Marginal Citations**

M3 1907 c. 51.

- 2 . . . F3

**Annotations:**

**Amendments (Textual)**

F3 Sch. 1 para. 2 repealed by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), s. 10(1)(3), Sch.

- 3, 4. . . . F4

**Annotations:**

**Amendments (Textual)**

F4 Sch. 1 paras. 3, 4 repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), Sch. 2

- 5 . . . . . F5

**Annotations:**

**Amendments (Textual)**

F5 Sch. 1 para. 5 repealed by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pts. I, III

##### *The Crofters Holdings (Scotland) Act 1886 c. 29*

- 6 At the end of section 29 (which provides, among other things, for the fixing of scales of costs and fees, and for their taxation) there shall be added the following—

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“Provided that no scale of costs and fees fixed by the Commission, and no regulations made by them as to the taxation of such costs and fees, shall apply in respect of any of the matters which the Secretary of State may regulate under or by virtue of section 14A of the Legal Aid (Scotland) Act 1967”.

*The Sheriff Courts (Scotland) Act 1907 c. 51*

[<sup>F6</sup>7 In section 40 (which relates to the power of the Court of Session to regulate fees etc.), after the word “agents” there shall be inserted the words “ (other than such of the fees of agents as the Secretary of State may regulate under or by virtue of section 14A of the <sup>M4</sup>Legal Aid (Scotland) Act 1967) ”.]

**Annotations:**

**Amendments (Textual)**

**F6** Sch. 1 para. 7 repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(2), 75(2), **Sch. 9**

**Marginal Citations**

**M4** 1967 c. 43.

8 . . . <sup>F7</sup>

**Annotations:**

**Amendments (Textual)**

**F7** Sch. 1 para. 8 repealed and re-enacted by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pts. I, II

*The Juries Act 1949 c. 27*

9 In subsection (1) of section 26 (which provides for fees payable by a party applying for a jury trial in a civil cause)—  
(a) for the words “Act of Sederunt”, where they appear for the first time, there shall be substituted the words “ an order made by the Secretary of State ”;  
(b) after the words “as may be”, where they appear for the second time, there shall be inserted the word “ so ”;  
(c) the words “by Act of Sederunt”, where they appear for the second time, shall cease to have effect.

*The Summary Jurisdiction (Scotland) Act 1954 c. 48*

10 In subsection (3) of section 76 (which relates to the regulation of fees by the High Court of Justiciary), for the words “affect the regulations enacted” there shall be substituted the words “ empower the High Court to make any regulation which the Secretary of State is empowered to make ”.

11 . . . . . <sup>F8</sup>

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**Annotations:**

**Amendments (Textual)**

- F8** Sch. 1 para. 11 repealed by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 43, 45, Sch. 4 para. 3(1), [Sch. 5](#)

*The Sheriff Courts (Scotland) Act 1971 c. 58*

- 12 In subsection (2A) of section 37 (which relates to remits from the sheriff court to the Court of Session), after the words “sheriff court” there shall be inserted the words “, being an action for divorce or an action ”.

13 . . . <sup>F9</sup>

**Annotations:**

**Amendments (Textual)**

- F9** Sch. 1 para. 13 repealed by [Statute Law \(Repeals\) Act 1986 \(c. 12\)](#), s. 1(1), [Sch. 1 Pt. 1 Gp. 4](#)

14—17. . . . <sup>F10</sup>

**Annotations:**

**Amendments (Textual)**

- F10** Sch. 1 paras. 14–17 repealed by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 43, 45, Sch. 4 para. 3(1), [Sch. 5](#)

*The Domicile and Matrimonial Proceedings Act 1973 c. 45*

- 18 In section 8 (which relates to the jurisdiction of the sheriff court),—  
(a) in subsection (1), at the end there shall be added the words “ or divorce ”;  
(b) in subsection (2) of the said section, after the word “separation” there shall be inserted the words “ or divorce ”;  
(c) in subsection (3) of the said section, after the word “separation” there shall be inserted the words “ or divorce ”; and  
(d) in subsection (4) of the said section, after the word “separation” there shall be inserted the words “ or divorce ”.

- 19 In paragraph 8 of Schedule 3 (which relates to the sisting of consistorial actions)—  
(a) after the words “in the Court of Session” there shall be inserted the words “ or in the sheriff court ”;  
(b) after the word “Court” where it appears for the second time there shall be inserted the word “ concerned ”.

- 20 In paragraph 9(3) of the said Schedule the words “on the Court of Session” shall cease to have effect.

*The Divorce (Scotland) Act 1976 c. 39*

21 . . . . . <sup>F11</sup>

*Changes to legislation:* There are currently no known outstanding effects for the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983. (See end of Document for details)

**Annotations:**

**Amendments (Textual)**

**F11** Sch. 1 paras. 21, 23 repealed by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), s. 28(2), **Sch. 2**

22 In section 13(1) (which defines terms used in the Act), in the definition of “court” for the words from “—(a)” to “require” there shall be substituted the words “ , in relation to any action, the Court of Session or the sheriff court, as the case may require. ”.

23 . . . **F12**

**Annotations:**

**Amendments (Textual)**

**F12** Sch. 1 paras. 21, 23 repealed by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), s. 28(2), **Sch. 2**

*The Civil Jurisdiction and Judgments Act 1982 c. 27*

24 In Schedule 14 (repeals) in the entry relating to the <sup>M5</sup>Sheriff Courts (Scotland) Act 1907, for the words “the first “Provided”” there shall be substituted the words “ Provided that actions ”.

**Annotations:**

**Marginal Citations**

**M5** 1907 c. 51.

SCHEDULE 2

*Enactments Repealed*

Chapter	Short title	Extent of repeal
1 & 2 Geo. 4. c. 38.	The Court of Session Act 1821.	Section 31.
7 Edw. 7. c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 40, the words from “and, with the” to “fees of court”.
15 & 16 Geo. 5. c. 33.	The Church of Scotland (Property and Endowments) Act 1925.	In section 11(3), the words from “The Court of Session” to “the said fees.”.
1 & 2 Geo. 6. c. 50.	The Divorce (Scotland) Act 1938.	The whole Act.
12 & 13 Geo. 6. c. 27.	The Juries Act 1949.	In section 26(1), the words “by Act of Sederunt” where

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		they appear for the second time.
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	Section 16(1)(b)(i), (2) and (4), and Schedule 2.
1972 c. 50.	The Legal Advice and Assistance Act 1972.	In section 3(3) the words “charges or” in both places where they occur. Section 5(6).
1973 c. 45.	The Domicile and Matrimonial Proceedings Act 1973.	In Schedule 3, in paragraph 9(3) the words “on the Court of Session”.

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**Changes to legislation:**

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