
 STATUTORY INSTRUMENTS

1982 No. 1679 (S.181)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 6) (Simplified Divorce Procedure) 1982

Made - - - - - 23rd November 1982
Coming into Operation 11th January 1983

The Lords of Council and Session under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933 (a) and of all other powers enabling them in that behalf, hereby enact and declare—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 6) (Simplified Divorce Procedure) 1982 and shall come into operation on 11th January 1983.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Simplified Divorce Procedure

2. In the Rules of Court (b),—

(a) in Chapter III, in section 3 (Consistorial Actions), insert after rule 170D the following heading and rules—

“
 SIMPLIFIED PROCEDURE
 170E *Applications*

- (1) The provisions of this rule and of the following rules of this section shall have effect in relation to applications for divorce to which this rule applies (“simplified divorce applications”) for the purpose of providing a procedure for obtaining a decree of divorce other than procedure by way of summons.
- (2) This rule applies to an application for divorce by a party to a marriage if, but only if—
- (a) that party applies for divorce in reliance on the facts set out in section 1(2)(d) (2 years non cohabitation and the defender’s consent to decree) or section 1(2)(e) (5 years non cohabitation) of the Act of 1976;
 - (b) in an application for divorce under the said section 1(2)(d), the other party consents to decree of divorce being granted;
 - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
 - (d) there are no children of the marriage under the age of 16 years;
 - (e) neither party applies for an order for financial provision on divorce;
 - (f) neither party suffers from mental disorder.

(a) 1933 c.41.

(b) S.I. 1965/321.

- (3) If an application made under this rule ceases to be an application to which this rule applies at any time before it is finally disposed of, then the application shall cease to have effect and shall be treated as having been abandoned.

170F *Form of application*

- (1) A simplified divorce application relying on the facts set out in the said section 1(2)(d) shall be made in the terms set out in Form 19A.
- (2) A simplified divorce application relying on the facts set out in the said section 1(2)(e) shall be made in the terms set out in Form 19B.
- (3) An application made under paragraph (1) or paragraph (2) must be signed by the applicant, and in an application under paragraph (1) the form of consent must also be signed by the party giving consent, otherwise the application shall not have effect.

170G *Lodging applications.* The applicant shall deliver the application or cause it to be delivered (by post or by hand) duly completed and signed to the Principal Clerk of Session at the Court together with—
(a) an extract or certified copy of the marriage certificate, and
(b) the fee specified in respect of a simplified divorce application in rule 346.

170H *Registration etc.* (1) The Principal Clerk shall give directions in relation to the administrative procedures to be followed on the lodging of simplified divorce applications, for the registration and service of applications, for having them brought before the Court for consideration, and in the event of decree of divorce being granted, for intimation to the parties, and related matters, and such directions shall have effect subject to the provisions of these rules.

- (2) A simplified divorce application shall have effect on registration in accordance with paragraph (1) and shall, subject to the following rules of this section, be treated for all purposes as a summons in an action of divorce that has commenced; without prejudice to this generality the following rules shall apply to such an application as they apply to a summons in an action of divorce, namely rules 158 to 160, 164, and 170(A).

170I *Service*

- (1) *Citation.* On registration of a simplified divorce application, the Principal Clerk or any officer authorised by him in that behalf shall grant warrant for citation or intimation as the case may be, in respect of that application, and citation or intimation may proceed on any such warrant signed by the Principal Clerk or, as the case may be, by any such officer.
- (2) In the application of rule 159 (citation) to the execution of a warrant for citation under paragraph (1),—
 - (a) in paragraph (2), citation shall be executed edictally by the transmission to the Extractor of the Court of Session of such information as he may require;
 - (b) for sub-paragraph (b) of paragraph (3) of that rule substitute—
“(b) the Principal Clerk of Session or an officer duly authorised by him,
posting by registered or recorded delivery letter addressed to the other party and having on the face of the letter the notice set out in

paragraph (4), a copy of the application with citation in the terms set out in Form 19C or 19D as the case may be”;

(c) for the notice set out in paragraph (4) of that rule substitute—
“This letter contains a citation to or intimation from the Court of Session, Scotland. If delivery of the letter cannot be made within 7 days of the date of posting it is to be returned thereafter to the DSP section, Parliament House, Edinburgh EH1 1RQ.”

(d) in paragraph (7) of that rule, for the word “Solicitor” substitute “the Principal Clerk or officer duly authorised by him”, and after “Form 3” add the words “with any necessary modifications”.

- (3) *Intimation.* In any simplified divorce application where the facts set out in the said section 1(2)(e) are relied on and the address of the other party is unknown, warrant for intimation shall be made to—
- (a) every child of the marriage between the parties, and
- (b) one of the next-of-kin of the other party who has reached the age of 12 years in the case of a girl and 14 years in the case of a boy.
- (4) If the address of any person mentioned in sub-paragraphs (a) or (b) of that paragraph is unknown to the applicant, intimation shall be made edictally by the transmission to the Extractor of such information as he may require.
- (5) Rule 160 shall apply to the execution of any such warrant as it applies to the execution of a warrant on a summons, the reference in that rule to rule 159 being a reference to rule 159 as applied by this rule, and the references to Forms 16 to 18C being a reference to Form 19E.

170J *Third parties entering process.* Any person upon whom intimation of an application for divorce has been made under rule 170I may oppose the granting of decree of divorce by way of a letter to the Court giving reasons for his opposition to the application.

170K *Extract decree.* On decree of divorce being granted in a simplified divorce application, an extract of the decree shall be granted immediately.

170L *Applications after decree.* For the purpose of a party to a simplified divorce application making an application to the Court in respect of any matter after decree of divorce has been granted, the application shall be made by way of minute in the form and in the manner in which it would have been made if the decree of divorce had been granted in an action of divorce commenced by summons, together with a process.”;

- (b) in the Appendix, after Form 19 insert the forms numbered 19A to 19E as set out in the Schedule to this Act of Sederunt.

Consequential Amendments

3. In rule 13(a)(i), at the end add the words “and simplified divorce application”.

Emslie,
Lord President.
I.P.D.

Edinburgh,
23rd November, 1982.

SCHEDULE

FORM 19A

Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
Simplified Procedure

Court of Session
Divorce Section (SP)
Parliament House
Edinburgh EH1 1RQ

Tel: 031-225 2595 Ext 316

**APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO
THE MARRIAGE) HUSBAND AND WIFE HAVING LIVED APART FOR AT
LEAST 2 YEARS**

Before completing this form, you should have read the accompanying leaflet entitled "Do it yourself divorce—a guide to the new simplified divorce procedure in Scotland", which explains the circumstances in which a divorce may be sought by that method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact the Court's Divorce Section at the above address, or any Sheriff Clerk's Office or Citizens Advice Bureau.

Directions for making Application

WRITE IN INK, USING BLOCK CAPITALS

- | | |
|--|---|
| Application
(Part 1) | 1. Complete and sign Part 1 of the form (pages 3–7), paying particular attention to the notes opposite each section. |
| Consent of
Husband/Wife
(Part 2) | 2. When you have filled in Part 1 of the form, attach the (blue) Instruction Sheet SP3 to it and send both documents to your husband/wife for completion of the consent at part 2 (page 9).

NOTE: If your husband/wife does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor. |
| Affidavits
(Parts 3A
and 3B) | 3. When the application has been returned to you with the Consent (part 2) duly completed and signed, you should then take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 3A (page 10) can be completed and sworn.

4. At Part 3B of the form, (page 10) the affidavit of a witness requires to be similarly completed and sworn. If convenient, both your own and the witness's affidavits may be completed and sworn at the same time before the same Justice of the Peace or Notary Public, etc. |
| Despatch of
completed
Application
Form to Court | 5. When directions 1–4 above have all been carried out, your application is now ready to be sent to the Court. With it you must enclose:
(i) Your marriage certificate (which will be returned to you in due course), and
(ii) A cheque or postal order for the sum of £ in respect of the Court fee, crossed and made payable to "Court of Session".

6. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the Court immediately. |

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname Other name(s) in full
Present Address Telephone Number (if any)

2. NAME AND ADDRESS OF HUSBAND/WIFE*

Surname Other name(s) in full
Present Address Telephone Number (if any)

3. JURISDICTION

Please indicate with a tick (V) in the appropriate box or boxes which of the following apply:

- (i) I consider myself to be domiciled in Scotland []
or
(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application []
or
(iii) My husband/wife considers himself/herself to be domiciled in Scotland []
or
(iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application []

4. DETAILS OF PRESENT MARRIAGE

Place of Marriage.....(Registration District)
Date of Marriage: Day..... month..... year.....

*Delete as appropriate

PART 1 (continued)

5.
PERIOD OF SEPARATION

- (i) Please state the date on which you ceased to live with your husband/wife. (If more than 2½ years, just give the month and year) Daymonthyear
- (ii) Have you lived with your husband/wife since that date? * YES/NO
- (iii) If yes, for how long in total did you live together before finally separating again? months

6.
RECONCILIATION

- Is there any reasonable prospect of reconciliation with your husband/wife? *YES/NO
- Do you consider that the marriage has broken down irretrievably? *YES/NO

7.
MENTAL DISABILITY

- Is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? *YES/NO
 (If yes, give details)

8.
CONSENT

- Does your husband/wife consent to a divorce being granted? *YES/NO

9.
CHILDREN

- Are there any children of the marriage under the age of 16? *YES/NO

10.
OTHER COURT ACTIONS

- Are you aware of any Court actions currently proceeding in any country (including Scotland) which may affect your marriage? *YES/NO

If yes, give details

11.

PART 1
(continued)

REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in Sections 1–10 above apply to my marriage.

I do NOT ask the Court to make any financial awards in connection with this application.

I request the Court to grant decree of divorce from my husband/wife.

.....
(Date)

.....
(Signature)

PART 2

CONSENT BY APPLICANT'S HUSBAND/WIFE TO DIVORCE

NOTE: Before completing this Part of the form, please read the notes opposite (page 8).

I, (Full names, in BLOCK letters, of Applicant's husband/wife)

residing at

..... (Address, also in BLOCK letters)

.....

.....

HEREBY STATE THAT

- a. I have read Part 1 of this application;
b. The Applicant has lived apart from me for a continuous period of 2 years immediately preceding the date of the application (Section 11 of Part 1);
c. I do not ask the Court to make any order for payment to me by the Applicant of a periodical allowance (ie a regular payment of money weekly or monthly, etc for maintenance);
d. I do not ask the Court to make any order for payment to me by the Applicant of a capital sum (ie a lump sum payment);
e. I understand that divorce may result in the loss to me of property rights; and
f. I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.

..... (Date)

..... (Signature)

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the Court. Should you wish to do so, you must immediately advise:

The Court of Session
Divorce Section (SP)
Parliament House
Edinburgh EH1 1RQ

PART 3

AFFIDAVITS

A APPLICANT'S AFFIDAVIT

I, (insert full name)
residing at (insert present home address)

Town Country
swear that to the best of my knowledge and belief the facts stated in Part 1 of this Application are true and that the signature in Part 2 of this Application is that of my *husband/wife.

Signed..... APPLICANT

Sworn at (Place)

this day of..... 19.....

before me (full name)

(full address)

*Justice of Peace
OR
*Notary Public Signature.....
OR
*Commissioner for Oaths *Delete as appropriate

B WITNESS'S AFFIDAVIT

I, (insert full name)
residing at (insert present home address)

Town Country.....

swear as follows:

- (i) I have known the applicant since(insert date)
(only year required)
(ii) To the best of my knowledge and belief the Applicant has lived apart from his/her husband/wife for a continuous period of 2 years before the date of the signing of this application as shown in Section 11 of Part 1.

Signed..... WITNESS

Sworn at (Place)

this day of..... 19.....

before me (full name)

(full address)

*Justice of Peace
OR
*Notary Public Signature.....
OR
*Commissioner for Oaths *Delete as appropriate

FORM 19B

Under the Divorce (Scotland) Act 1976, Section 1(2)(e)
Simplified Procedure

Court of Session
Divorce Section (SP)
Parliament House
Edinburgh EH1 1RQ

Tel: 031-225 2595 Ext 316

APPLICATION FOR DIVORCE

HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 5 YEARS

Before completing this form, you should have read the accompanying leaflet entitled "Do it yourself divorce—a guide to the new simplified divorce procedure in Scotland", which explains the circumstances in which a divorce may be sought by that method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact the Court's Divorce Section at the above address, or any Sheriff Clerk's Office or Citizens Advice Bureau.

Directions for making Application

WRITE IN INK, USING BLOCK CAPITALS

- | | |
|--|---|
| Application
(Part 1) | 1. Complete and sign Part 1 of the form (pages 3–7), paying particular attention to the notes opposite each section. |
| Affidavits
(Parts 2A & 2B) | 2. When you have completed Part 1, you should take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 2A (page 8) can be completed and sworn. |
| | 3. At Part 2B of the form, (page 8) the affidavit of a witness requires to be similarly completed and sworn. If convenient, both your own and the witness's affidavits may be completed and sworn at the same time before the same Justice of the Peace or Notary Public, etc. |
| Despatch of
completed
Application
Form to Court | 4. When directions 1–3 above have all been carried out, your application is now ready to be sent to the Court. With it you must enclose: <ul style="list-style-type: none"> (i) Your marriage certificate (which will be returned to you in due course), and (ii) A cheque or postal order for the sum of £ in respect of the Court fee, crossed and made payable to "Court of Session". |
| | 5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the Court immediately. |

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname Other name(s)
in full
Present Address Telephone Number (if any)

2. NAME OF HUSBAND/WIFE*

Surname Other name(s)
in full

3. ADDRESS OF HUSBAND/WIFE (if the address of your husband/wife is not known, please enter "not known" in this section and proceed to section 4)

Present Address Telephone Number (if any)

4. Only complete this section if you do not know the present address of your husband/wife

NEXT-OF-KIN

Name Address
Relationship to your husband/wife

CHILDREN OF THE MARRIAGE Names and dates of birth

Addresses

.....
.....
.....
.....

If insufficient space is available here to list all the children of the marriage, please continue on a separate sheet and attach to this form.

*delete as appropriate

PART 1
(continued)

5.
JURISDICTION

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

(i) I consider myself to be domiciled in Scotland

or

(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application

or

(iii) My husband/wife considers himself/herself to be domiciled in Scotland

or

(iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

6.
DETAILS OF PRESENT MARRIAGE

Place of marriage(Registration District)

Date of Marriage (Day)..... (Month) (Year).....

7.
PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your husband/wife. (If more than 5½ years, just give the month and year) Day.....month..... year.....

(ii) Have you lived with your husband/wife since that date? *YES/NO

(iii) If yes, for how long in total did you live together before finally separating again?months

*delete as appropriate

PART 1 (continued)

8.
RECONCILIATION

Is there any reasonable prospect of reconciliation with your husband/wife? *YES/NO

Do you consider that the marriage has broken down irretrievably? *YES/NO

9.
MENTAL DISABILITY

Is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? *YES/NO
(If yes, give details)

10.
CHILDREN

Are there any children of the marriage under the age of 16? *YES/NO

11.
OTHER COURT ACTIONS

Are you aware of any Court actions currently proceeding in any country (including Scotland) which may affect your marriage? *YES/NO

If yes, give details

12.
DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in sections 1-11 above apply to my marriage.

I do not ask the Court to make any financial awards in connection with this application.

I believe that no grave financial hardship will be caused to my husband/wife as a result of the granting of this application.

I request the Court to grant decree of divorce from my husband/wife.

.....
(Date)

.....
(Signature of Applicant)

*delete as appropriate

PART 2

AFFIDAVITS

A APPLICANT'S AFFIDAVIT

I, (insert full name)
residing at (insert present home address)

Town Country
swear that to the best of my knowledge and belief the facts stated in Part 1 of this Application are true.

Signed..... APPLICANT

Sworn at (Place)

this day of..... 19.....

before me (full name)
(full address)

*Justice of Peace
or
*Notary Public Signature
or
*Commissioner for Oaths *Delete as appropriate

B WITNESS'S AFFIDAVIT

I, (insert full name)
residing at (insert present home address)

Town Country
swear as follows:

- (i) I have known the applicant since(insert date)
(only year required)
(ii) To the best of my knowledge and belief the Applicant has lived apart from his/her husband/wife for a continuous period of 5 years before the date of the signing of this application as shown in Section 12 of Part 1.

Signed..... WITNESS

Sworn at (Place)

this day of..... 19.....

before me (full name)
(full address)

*Justice of Peace
or
*Notary Public Signature
or
*Commissioner for Oaths *Delete as appropriate

FORM 19C

CITATION IN SECTION 1(2)(d) CASES

Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
Simplified Procedure

M.....

.....

.....

Edinburgh

19

APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO THE MARRIAGE) HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 2 YEARS.

You are hereby served with an application by your husband/wife which asks the Court to grant a decree of divorce.

If you wish to oppose the granting of such decree, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the Court before

Assistant Clerk of Session/Messenger-at-Arms

Court of Session
Divorce Section (SP)
Parliament House
EDINBURGH EH1 1RQ
Tel: 031-225 2595 Ext 316

FORM 19D

CITATION IN SECTION 1(2)(e) CASES

Under the Divorce (Scotland) Act 1976, Section 1(2)(e)
Simplified Procedure

M.....
.....
.....

Edinburgh

19

APPLICATION FOR DIVORCE
HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 5 YEARS

Your husband/wife has applied to the Court for divorce on the ground that the marriage has broken down irretrievably *because you and (s)he have lived apart for a period of at least 5 years.*

A copy of the application is hereby served upon you.

1. Please note:
 - a) that the Court may not make financial awards under this procedure and that your husband/wife is making no claim against you for payment of a periodical allowance (ie regular payment of money weekly, monthly etc for his/her maintenance) or a capital sum (ie lump sum).
 - b) that your husband/wife states that you will not suffer grave financial hardship in the event of decree of divorce being granted.
2. Divorce may result in the loss to you of property rights (eg the right to succeed to the Applicant's estate on his/her death) or the right, where appropriate, to a widow's pension.
3. If you wish to oppose the granting of a divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the Court before
4. In the event of the divorce being granted, you will be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the Court immediately.)

Assistant Clerk of Session/
Messenger-at-Arms

Court of Session
Divorce Section (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 031-225 2595 Ext 316

FORM 19E

INTIMATION ON CHILDREN/NEXT OF KIN
IN SIMPLIFIED DIVORCE
APPLICATION

Under the Divorce (Scotland) Act 1976, Section 1(2)(e)
Simplified Procedure

M.....

.....

..... Edinburgh 19

APPLICATION FOR DIVORCE HUSBAND AND WIFE HAVING LIVED
APART FOR AT LEAST 5 YEARS

..... (Applicant)..... (Respondent)

1. In the above application, a copy of which is enclosed, the Applicant has indicated that you are the _____ of _____ whose present address is unknown to the Applicant.
2. Should you know the present address of your _____ or how he/she may be contacted, you are requested to give this information at once to:

Court of Session
Divorce Section (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 031-225 2595 Ext 316

This will enable the Court to inform the Respondent that the Application has been made.

3. If you are unable to provide the above information, and/or you desire for your own interest to oppose the application for divorce, you should write to the above address not later than _____ stating the reason for your opposition.

Assistant Clerk of Session/Messenger-at-Arms.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt amends the Rules of the Court of Session to make provision for a simplified divorce procedure in certain cases where no question relating to children or financial provision arises based upon forms of application for divorce by a party to the marriage, the forms being served by court officials or messengers-at-arms on the other party, and makes consequential amendments.

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