



# Family Law (Scotland) Act 2006

## 2006 asp 2

### *Marriage*

#### **1 Marriage to parent of former spouse: removal of special requirements**

In the Marriage (Scotland) Act 1977 (c. 15)—

- (a) in section 2 (marriage of related persons)—
  - (i) in subsection (1), for “subsections (1A) and (1B)” there shall be substituted “subsection (1A)”; and
  - (ii) subsection (1B) shall be repealed; and
- (b) in Schedule 1 (relationships by affinity referred to in section 2(1B)), paragraph 2A shall be repealed.

#### **2 Void marriages**

After section 20 of the Marriage (Scotland) Act 1977 (c. 15) there shall be inserted—

##### *“Void marriages*

##### **20A Grounds on which marriage void**

- (1) Where subsection (2) or (3) applies in relation to a marriage solemnised in Scotland, the marriage shall be void.
- (2) This subsection applies if at the time of the marriage ceremony a party to the marriage who was capable of consenting to the marriage purported to give consent but did so by reason only of duress or error.
- (3) This subsection applies if at the time of the marriage ceremony a party to the marriage was incapable of—
  - (a) understanding the nature of marriage; and
  - (b) consenting to the marriage.
- (4) If a party to a marriage purported to give consent to the marriage other than by reason only of duress or error, the marriage shall not be void by reason only

of that party's having tacitly withheld consent to the marriage at the time when it was solemnised.

- (5) In this section "error" means—
- (a) error as to the nature of the ceremony; or
  - (b) a mistaken belief held by a person ("A") that the other party at the ceremony with whom A purported to enter into a marriage was the person whom A had agreed to marry."

### **3 Abolition of marriage by cohabitation with habit and repute**

- (1) The rule of law by which marriage may be constituted by cohabitation with habit and repute shall cease to have effect.
- (2) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where the cohabitation with habit and repute—
- (a) ended before the commencement of this section ("commencement");
  - (b) began before, but ended after, commencement; or
  - (c) began before, and continues after, commencement.
- (3) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where—
- (a) the cohabitation with habit and repute began after commencement; and
  - (b) the conditions in subsection (4) are met.
- (4) Those conditions are—
- (a) that the cohabitation with habit and repute was between two persons, one of whom, ("A"), is domiciled in Scotland;
  - (b) that the person with whom A was cohabiting, ("B"), died domiciled in Scotland;
  - (c) that, before the cohabitation with habit and repute began, A and B purported to enter into a marriage ("the purported marriage") outwith the United Kingdom;
  - (d) that, in consequence of the purported marriage, A and B believed themselves to be married to each other and continued in that belief until B's death;
  - (e) that the purported marriage was invalid under the law of the place where the purported marriage was entered into; and
  - (f) that A became aware of the invalidity of the purported marriage only after B's death.

### **4 Extension of jurisdiction of sheriff**

In subsection (1) of section 5 of the Sheriff Courts (Scotland) Act 1907 (c. 51) (extension of jurisdiction), the words "(except declarators of marriage or nullity of marriage)" shall be repealed.