



Civil Partnership Act 2004

2004 CHAPTER 33

PART 3

CIVIL PARTNERSHIP: SCOTLAND

CHAPTER 5

DISSOLUTION, SEPARATION AND NULLITY

Dissolution and separation

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- (1) An action for the dissolution of a civil partnership may be brought in the Court of Session or in the sheriff court.
- (2) In such an action the court may grant decree, if, but only if, it is established that—
 - (a) the civil partnership has broken down irretrievably, or
 - (b) an interim gender recognition certificate under the Gender Recognition Act 2004 (c. 7) has, after the date of registration of the civil partnership, been issued to either of the civil partners.
- (3) The irretrievable breakdown of a civil partnership is taken to be established if—
 - (a) since the date of registration of the civil partnership 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,
 - (b) the defender has wilfully and without reasonable cause deserted the pursuer and during a continuous period of two years immediately succeeding the defender's desertion—
 - (i) there has been no cohabitation between the parties, and

Status: This is the original version (as it was originally enacted).

- (ii) the pursuer has not refused a genuine and reasonable offer by the defender to adhere,
 - (c) there has been no cohabitation between the civil partners at any time during a continuous period of two years after the date of registration of the civil partnership and immediately preceding the bringing of the action and the defender consents to the granting of decree of dissolution of the civil partnership, or
 - (d) there has been no cohabitation between the civil partners at any time during a continuous period of 5 years after that date and immediately preceding the bringing of the action.
- (4) Provision is to be made by act of sederunt—
- (a) for the purpose of ensuring that, in an action to which paragraph (c) of subsection (3) relates, the defender has been given such information as enables that civil partner to understand—
 - (i) the consequences of consenting to the granting of decree, and
 - (ii) the steps which must be taken to indicate such consent, and
 - (b) as to the manner in which the defender in such an action is to indicate such consent, and any withdrawal of such consent,
- and where the defender has indicated (and not withdrawn) such consent in the prescribed manner, that indication is sufficient evidence of such consent.
- (5) Provision is to be made by act of sederunt for the purpose of ensuring that, where in an action for the dissolution of a civil partnership the defender is suffering from mental illness, the court appoints a curator ad litem to the defender.
- (6) In an action to which paragraph (d) of subsection (3) relates, even though irretrievable breakdown of the civil partnership is established the court is not bound to grant decree if in its opinion to do so would result in grave financial hardship to the defender.
- (7) For the purposes of subsection (6), hardship includes the loss of the chance of acquiring any benefit.
- (8) In an action for dissolution of a civil partnership the standard of proof required to establish the ground of action is on balance of probability.