
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 632

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session
Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005**

Made - - - - *7th December 2005*

Coming into force - - *8th December 2005*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1), and all of the other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005 and shall come into force on 8th December 2005.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(2) shall be amended in accordance with the following sub-paragraphs.

(2) In Chapter 49 (family actions), for rule 49.1(3) (interpretation) there shall be substituted the following:—

“Interpretation of this Chapter

49.1.—(1) In this Chapter, “family action” means—

- (a) an action of divorce;
- (b) an action of dissolution of a civil partnership;
- (c) an action of separation of spouses or of civil partners;
- (d) an action of declarator of nullity of marriage or civil partnership;

(1) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.
(2) S.I. 1994/1443, last amended by S.S.I. 2005/521.
(3) Rule 49.1 was amended by S.I. 1996/2587 and S.S.I. 2005/193.

- (e) an action of declarator of marriage;
 - (f) an action of declarator of legitimacy;
 - (g) an action of declarator of illegitimacy;
 - (h) an action of declarator of parentage;
 - (i) an action of declarator of non-parentage;
 - (j) an action of declarator of legitimation;
 - (k) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995(4) (court orders relating to parental responsibilities etc.) except a petition for the appointment of a judicial factor;
 - (l) an action of, or application for or in respect of, aliment;
 - (m) an action or application for financial provision after a divorce or annulment in an overseas country with the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984(5);
 - (n) an action or application for financial provision after a dissolution or annulment of a civil partnership in an overseas country within the meaning of section 125 of and Schedule 11 to the Civil Partnership Act 2004(6);
 - (o) an action or application for an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981(7);
 - (p) an action or application for an order under Chapter 3 or 4 of Part 3 of the Civil Partnership Act 2004.
- (2) In this Chapter, unless the context otherwise requires—
- “the Act of 1975” means the Children Act 1975(8);
 - “the Act of 1976” means the Divorce (Scotland) Act 1976(9);
 - “the Act of 1973” means the Domicile and Matrimonial Proceedings Act 1973(10);
 - “the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - “the Act of 1985” means the Family Law (Scotland) Act 1985(11);
 - “the Act of 1995” means the Children (Scotland) Act 1995;
 - “the Act of 2004” means the Gender Recognition Act 2004(12);
 - “the CP Act of 2004” means the Civil Partnership Act 2004;
 - “civil partnership” has the same meaning as in section 1(1) of the CP Act of 2004;
 - “contact order” has the same meaning as in section 11(2)(d) of the Act of 1995;
 - “corrected gender recognition certificate” means a certificate issued under section 6(4) of the Act of 2004;
 - “dissolution of a civil partnership” means a decree granted under section 117(2) of the CP Act of 2004;

(4) 1995 c. 36; section 11 was amended by S.S.I. 2005/42.

(5) 1984 c. 42; Part IV was amended by the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraphs 12 and 13 and by S.I. 2001/3929.

(6) 2004 c. 33.

(7) 1981 c. 59.

(8) 1975 c. 72.

(9) 1976 c. 39.

(10) 1973 c. 45.

(11) 1985 c. 37.

(12) 2004 c. 7.

“full gender recognition certificate” and “interim gender recognition certificate” have the same meanings as in section 25 of the Act of 2004;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹³⁾;

“mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁴⁾;

“action for declarator of nullity of a civil partnership” means an action for declarator that a civil partnership is void within the meaning of section 123 of the CP Act of 2004;

“order for financial provision” means, except in Parts VII and VIIA of this Chapter (financial provision after overseas divorce, dissolution of a civil partnership, or annulment of marriage or civil partnership), an order mentioned in section 8(1) of the Act of 1985;

“parental responsibilities” has the same meaning as in section 1(3) of the Act of 1995;

“parental rights” has the same meaning as in section 2(4) of the Act of 1995;

“residence order” has the same meaning as in section 11(2) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995⁽¹⁵⁾;

“action of separation of civil partners” means an action for decree under section 120 of the CP Act of 2004.

(3) For the purposes of rule 49.2⁽¹⁶⁾ (averments in certain family actions about other proceedings) and rule 49.3⁽¹⁷⁾ (averments where section 11 order sought), and in relation to proceedings in another jurisdiction, Schedule 3 to the Act of 1973⁽¹⁸⁾ (sisting of consistorial actions in Scotland) and rule 49.18A (applications for sist in actions involving civil partnerships), proceedings are continuing at any time after they have commenced and before they are finally disposed of.”

(3) In rule 49.2 (averments in certain family actions about other proceedings)–

(a) in paragraph (1), “or” shall be omitted and after “nullity of marriage” there shall be inserted “dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership”;

(b) in paragraph (2)(a) after “in respect of the marriage” there shall be inserted “or civil partnership”;

(c) for paragraph (2)(b)(v) there shall be substituted the following:–

“(v) such other facts as may be relevant to the question of whether or not the action in the Court of Session should be sisted under Schedule 3 to the Act of 1973, or rule 49.18A.”

(4) In rule 49.3 (averments where section 11 order sought)–

(a) in paragraph (1)(a), “or” shall be omitted and after “nullity of marriage” there shall be inserted “, dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership”;

(b) in paragraph (1)(b)(ii)–

(i) after “marriage” there shall be inserted “or civil partnership”;

⁽¹³⁾ 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

⁽¹⁴⁾ 2003 asp 13.

⁽¹⁵⁾ Section 11 was amended by S.S.I. 2005/42.

⁽¹⁶⁾ Rule 49.2 was amended by S.I. 1994/2901.

⁽¹⁷⁾ Rule 49.3 was amended by S.I. 1996/2587.

⁽¹⁸⁾ Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

(ii) after “parents” there shall be inserted “or either of the parents”.

(5) In rule 49.8 (warrants for intimation in family actions)–

(a) for paragraph (1)(a) there shall be substituted the following:–

“(a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to–

(i) every child of the marriage between the parties, or child who has been accepted by both partners of a civil partnership as a child of the family, who has reached the age of 16 years, and

(ii) one of the next-of-kin of the defender who has reached that age,

unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, in the following terms:– “Warrant to intimate to (*name and address*) as a child of the marriage [*or to (name and address) as a child who has been accepted by both partners of a civil partnership as a child of the family*] [*or to (name and address) the (relationship to defender), as one of the next-of-kin of the defender*].”;

(b) for paragraph (1)(c) there shall be substituted the following:–

“(c) in an action where the defender is a person who is suffering from a mental disorder, to–

(i) those persons mentioned in sub-paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonable be ascertained;

(ii) any person holding the office of curator bonis to the defender, if one has been appointed; and

(iii) any person holding the office of guardian, or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000(19), if one has been appointed,

in the following terms:– “Warrant to intimate to (*name and address*) as a child of the marriage [*or to (name and address) as a child who has been accepted by both partners of a civil partnership as a child of the family*], (*name and address*) the (*relationship to the defender*) as one of the next-of-kin of the defender and (*name and address*) guardian [*or continuing [or welfare] attorney*] to the defender.”;

(c) for paragraph (1)(e) there shall be substituted the following:–

“(e) in an action of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership where the court may make a section 11 order in respect of a child–

(i) who is in the care of a local authority, to that local authority in the following terms:–“Warrant to intimate to the chief executive of (*name and address of local authority*) as the local authority having care of (*name and address of child*).”;

(ii) who, being a child of one party to the marriage who has been accepted as a child of the family by the other party to the marriage or is a child of one partner in a civil partnership who has been accepted by both partners as a child of the family, and who is liable to be maintained by a third party, to

- that third party in the following terms:—“Warrant to intimate to (name and address) as a person liable to maintain (name and address of child).”; or
- (iii) in relation to whom a third party in fact exercises care or control, to that third party in the following terms:— “Warrant to intimate to (name and address) as a person who in fact exercises care or control of (name and address of child).””;
- (d) for paragraph (1)(k) there shall be substituted the following:—
- “**(k)** in an action where the pursuer makes an application for an order under the Act of 1981—
- (i) where he is a non-entitled partner and the entitled partner has a spouse, or civil partner, to that spouse or civil partner, or
- (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13, or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,
- in the following terms:—“Warrant to intimate to (name and address) as a person with an interest in the order sought in the (number) conclusion of this summons.””;
- (e) after paragraph (1)(l) there shall be inserted the following:—
- “**(m)** in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the CP Act of 2004 where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be, in the following terms:—“Warrant to intimate to (*name and address*) as a person with an interest in the order sought in the (*number*) conclusion of this summons.””;
- (f) for paragraph (2) there shall be substituted the following:—
- “(2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981, and expressions used in paragraph (1)(l) which are also used in the CP Act of 2004, have the meanings given in those Acts, as the case may be.”;
- (g) at the end of paragraph (3) there shall be inserted the following:—
- “**(m)** under paragraph (1)(m) (order sought under Chapter 3 of Part 3 of the CP Act of 2004), in Form 49.8–O.”.
- (6) In rule 49.9(4) (intimation where relevant association) after “homosexual relationship” there shall be inserted “, and where the family action is in relation to a civil partnership shall include any heterosexual relationship.”.
- (7) For rule 49.10(20) (productions in action of divorce or where section 11 order may be made) there shall be substituted the following:—

“Productions in action of divorce, dissolution of civil partnership, or where section 11 order may be made

49.10.—(1) There shall be lodged as a production with the principal writ when first lodged in process—

- (a) in an action of divorce—
- (i) an extract or certified copy of the relevant entry in the register of marriages; and

- (ii) where an action relies on section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate)(**21**), the interim gender recognition certificate or a certified copy of it;
 - (b) in an action of dissolution of a civil partnership—
 - (i) an extract or certified copy of the relevant entry in the civil partnership register; and
 - (ii) where the action relies on section 117(2)(b) of the CP Act of 2004 (grounds for dissolution of civil partnership: interim gender recognition certificate), the interim gender recognition certificate or a certified copy of it; and
 - (c) in a family action in which the court may make a section 11 order, an extract or certified copy of the relevant entry in the register of births.
- (2) In the application of sub-paragraph (a) of paragraph (1) to an action of divorce, or sub-paragraph (b) of paragraph (1) in an action of dissolution of a civil partnership, where the address of the defender is not known, the documents to be lodged under those sub-paragraphs, as the case may be, shall be obtained and dated within three months before the date on which it is lodged.”.
- (8) In rule 49.13 (service in cases of mental disorder of defenders)—
 - (a) for paragraph (1)(a) there shall be substituted the following:—
 - “(a) any notice required by rule 49.14(1) (notices in certain actions of divorce or separation) or by rule 49.14A(1) (notices in certain actions of dissolution of civil partnership or separation of civil partners);”;
 - (b) in paragraph (1)(b)(i) after “rule 49.14(1)” there shall be inserted “or rule 49.14A(1)”.
 - (9) After rule 49.14(**22**) (notices in certain actions of divorce or separation) there shall be inserted the following:—

“Notices in certain actions of dissolution of civil partnership or separation of civil partners

49.14A.—(1) In the following actions of dissolution of civil partnership or separation of civil partners, there shall be attached to the copy of the summons served on the defender—

- (a) in an action relying on section 117(3)(c) of the CP Act of 2004 (no cohabitation for two years with consent of defender to decree)—
 - (i) which is an action of dissolution of a civil partnership, a notice in Form 49.14A–A and a form of notice of consent in Form 49.14A–B;
 - (ii) which is an action of separation of civil partners, a notice in Form 49.14A–C and a form of notice of consent in Form 49.14A–D;
- (b) in an action relying on section 117(3)(d) of the CP Act of 2004 (no cohabitation for five years)—
 - (i) which is an action of dissolution of a civil partnership, a notice in Form 49.14A–E;
 - (ii) which is an action of separation of civil partners, a notice in Form 49.14A–F;
- (c) in an action relying on section 117(2)(b) of the CP Act of 2004 (grounds of dissolution: interim gender recognition certificate), a notice in Form 49.14A–G.

(21) Section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 (c. 7).

(22) Rule 14.14 was amended by S.S.I. 2005/193.

(2) The certificate of service of a summons in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been included with the summons.”.

(10) In rule 49.15(2)(23) (orders for intimation by the court) for “or annulment” there shall be substituted “, annulment, dissolution of civil partnership, separation of civil partners, or annulment of civil partnership”.

(11) In rule 49.17 (appointment of curators ad litem to defenders)–

(a) in paragraph (1) for “or separation” there shall be substituted “, separation, dissolution of a civil partnership, or separation of civil partners,”;

(b) in paragraph (2)(b) after “Act of 1976” there shall be inserted “or section 117(3)(c) of the CP Act of 2004”.

(12) After rule 49.18 (applications for sist) there shall be inserted the following:–

“Applications for sist in actions involving civil partnerships

49.18A.—(1) Schedule 3 to the Act of 1973(24) (sisting of consistorial actions in Scotland) shall apply to actions for dissolution of civil partnerships, separation of civil partners or declarator of nullity of civil partnerships subject to the following modifications:–

(a) for “consistorial action”, wherever it appears, there shall be substituted “action concerning a civil partnership”;

(b) for “divorce”, wherever it appears there shall be substituted “dissolution of a civil partnership”;

(c) for “separation”, wherever it appears, there shall be substituted “separation of civil partners”;

(d) for “declarator of nullity of marriage”, wherever it appears, there shall be substituted “declarator of nullity of a civil partnership”;

(e) for “marriage”, wherever it appears, there shall be substituted “civil partnership”;

(f) for “spouse”, wherever it appears, there shall be substituted “civil partner”;

(g) in paragraph 2 “declarator of marriage” shall be omitted;

(h) in paragraph 8(b) for “marriage was contracted” there shall be substituted “civil partnership was registered”;

(i) in paragraphs 4(a), 7, and 9(4) “or in a sheriff court” shall be omitted;

(j) in paragraph 8 “or in the Sheriff Court” shall be omitted;

(k) in paragraph 9(1) “or in a sheriff court” shall be omitted.

(2) An application for a sist or a recall of a sist under Schedule 3 to the Act of 1973 as it applies under paragraph (1) shall be made by motion.”.

(13) In rule 49.19 (notices of consent to divorce or separation)–

(a) for the heading there shall be substituted “Notices of consent to divorce, separation, dissolution of civil partnership or separation of civil partners”;

(b) for paragraph (1) there shall be substituted the following:–

“(1) Where, in an action of divorce, or separation in which the facts in section 1(2) (d) of the Act of 1976, or dissolution of a civil partnership or separation of civil partners in which the facts in section 117(3)(d) of the CP Act of 2004, (no cohabitation for two

(23) Rule 49.15 was amended by S.I. 1996/2587.

(24) Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree—

- (a) of divorce or separation he shall do so by giving notice in writing in Form 49.14–B (divorce) or Form 49.14–D (separation), as the case may be; or
- (b) of dissolution of a civil partnership or separation of civil partners, he shall do so by giving notice in writing in Form 49.14A–B (dissolution) or Form 49.14A–D (separation of civil partners), as the case may be;

to the Deputy Principal Clerk.”;

- (c) for paragraph (3) there shall be substituted the following:—

“(3) In an action of divorce, separation, dissolution of a civil partnership, or separation of civil partners where the summons includes for the purposes of section 1(2)(d) of the Act of 1976, or section 117(3)(d) of the CP Act of 2004, as the case may be, an averment that the defender consents to the grant of decree, the defender may give notice by letter to the Deputy Principal Clerk stating that he has not so consented or that he withdraws any consent which he has already given.”;

- (d) in paragraph (5) after “the Act of 1976” there shall be inserted “or section 117(3) of the CP Act of 2004, as the case may be,”.

(14) At the end of rule 49.28(1)(a) (evidence in certain undefended family actions) there shall be inserted the following:—

“(iv) for financial provision after overseas proceedings to dissolve or annul a civil partnership within the meaning of Schedule 11 to the CP Act of 2004; or

- (v) for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004;”.

(15) In rule 49.30 (no suspension in undefended divorce actions)—

- (a) for the heading there shall be substituted “No suspension in undefended actions of divorce or dissolution of civil partnerships”;
- (b) after “decree of divorce” there shall be inserted “or dissolution of a civil partnership”.

(16) At the end of rule 49.31(1)(c) (defences in family actions) there shall be inserted the following:—

“(iv) under Chapter 3 or 4 of Part 3 of the CP Act of 2004”.

(17) In rule 49.33(5)(a) (adjustment and further procedure) after “the Act of 1981” there shall be inserted “or rule 49.71E(25) (procedure for minutes in causes under Chapters 3 and 4 of Part 3 of the CP Act of 2004) as the case may be”.

(18) For rule 49.35(26) (application and interpretation) of Part IV (applications and orders relating to children in certain actions) there shall be substituted the following:—

“Application of this Part

49.35. This Part applies to actions of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners and declarator of nullity of a civil partnership.”.

(19) For rule 49.45(1) (application and interpretation) of Part V (orders relating to financial provision etc.) there shall be substituted the following:—

“**49.45.**—(1) This Part applies to an action of divorce, declarator of nullity of marriage, dissolution of a civil partnership, or declarator of nullity of a civil partnership.”.

(25) Rule 49.71E is inserted by paragraph 2(23) of this Act of Sederunt.

(26) Rule 49.35 was amended by S.I. 1996/2587.

(20) At the end of rule 49.46(2) (applications in actions to which this Part applies) there shall be inserted the following:—

“(e) an order under section 112 of the CP Act of 2004.”.

(21) After Part VII(27) (financial provision after overseas divorce or annulment) there shall be inserted the following:—

“PART VIIA

FINANCIAL PROVISION AFTER OVERSEAS DISSOLUTION OR ANNULMENT OF A CIVIL PARTNERSHIP

Interpretation of this Part

49.53A. In this Part—

“order for financial provision” has the meaning given in paragraph 4 of Part 4 of Schedule 11 to the CP Act of 2004;

“overseas proceedings” means proceedings in a country or territory outside the British Islands.

Applications for financial provision after overseas dissolution or annulment of civil partnership

49.53B.—(1) An application under paragraph 2 of Schedule 11 to the CP Act of 2004 for an order for financial provision after a dissolution or annulment of a civil partnership in overseas proceedings shall be made by summons.

(2) An application for an order in an action to which paragraph (1) applies—

(a) made before or after final decree under—

(i) section 112 of the CP Act of 2004 (transfer of tenancy of family home);

(ii) paragraph 3(4) of Schedule 11 to the CP Act of 2004 (interim periodical allowance);

(iii) section 14(4) of the Act of 1985 (variation or recall of an incidental order); or

(b) made after final decree under—

(i) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum of date of transfer of property);

(ii) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion of periodical allowance); or

(iii) section 14(4) of the Act of 1985 (variation or recall of incidental orders);

shall be made by motion.

(3) Rule 49.43 (applications after decree relating to aliment) shall apply to a motion under paragraph (2) of this rule as it applies to a motion under that rule.

(4) An application under—

(a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum); or

- (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute person responsible for the pension arrangement);

shall be made by minute in the process of the motion to which the application relates.”.

(22) For rule 49.58(28) (application) of Part IX (applications for orders under section 11 of the Children (Scotland) Act 1995) there shall be substituted the following:—

“Application of this Part

49.58. This Part applies to an application for a section 11 order in a family action other than in an action of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners, or declarator of nullity of a civil partnership.”.

(23) After Part X (causes under the Matrimonial Homes (Family Protection) (Scotland) Act 1981) there shall be inserted the following:—

“PART XA

CAUSES UNDER CHAPTERS 3 AND 4 OF PART 3 OF THE CIVIL PARTNERSHIP ACT 2004

Interpretation of this Part

49.71A.—(1) In this Part, unless the context otherwise requires, words and expressions used in this Part which are also used in Chapters 3 and 4 of Part 3 of the CP Act of 2004 have the meaning given in those Chapters.

Forms of applications under Chapters 3 and 4 of Part 3 of the Act of 2004

49.71B. Subject to any other provision in this Chapter, an application for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004 shall be made—

- (a) by an action for such an order;
- (b) by a conclusion in the summons or in defences, as the case may be, in any other family action; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

Defenders in causes under Chapters 3 and 4 of Part 3 of the CP Act of 2004

49.71C. The applicant for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004 shall call as a defender—

- (a) where he is seeking an order as a civil partner, the other civil partner; and
- (b) where he is a third party making an application under section 107(1) (dispensing with the consent of non-entitled partner to a dealing), or section 108(1) (payment from non-entitled partner in respect of loan) of the CP Act of 2004, both partners.

Applications by motion under Chapters 3 and 4 of the CP Act of 2004

49.71D.—(1) An application under any of the following provisions of the CP Act of 2004 shall be made by motion—

- (a) section 103(4) (interim order for regulation of rights of occupancy etc.);
- (b) section 104(6) (interim order suspending occupancy rights);
- (c) section 105 (variation and recall or orders regulating occupancy rights and exclusion orders);
- (d) section 114(1) (order attaching a power of arrest), if made after application of relevant interdict; and
- (e) section 114(3) and (6) (variation and recall of relevant interdict and power of arrest).

(2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled—

- (a) to the other civil partner;
- (b) where the motion is under paragraph (1)(a), (b), or (c) and the entitled partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be, and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 49.8(1)(m)(**29**) (warrant for intimation to certain persons in actions for orders (warrant for intimation to certain persons in actions for orders under Chapters 3 and 4 of Part 3 of the CP Act of 2004) or rule 49.15 (orders for intimation by the court).

Procedure for minutes

49.71E. Where an application is made by minute under rule 49.71B(c) (form of application under Chapter 3 or 4 of Part 3 of the CP Act of 2004) by a person other than a party and answers to that minute are lodged, the minute and answers shall not be included with the other pleadings in the action in any record, but shall be made up separately in the form of a record; and rule 49.33(5)(b) and (c) (lodging etc. of records) shall apply to that record as it applies to a record under that rule.

Sist of actions to enforce occupancy rights

49.71F. Unless the court otherwise directs, the sist of an action by virtue of section 107(4) of the CP Act 2004 (where the action raised by non-entitled partner to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled partner.

Certificates of execution of delivery to the chief constable

49.71G.—(1) Where an applicant is required to comply with section 114(5) or (6), as the case may be, of the Act of 2004 (delivery of documents to chief constable where power of arrest attached to a relevant interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form 49.70.

(2) Where a relevant interdict to which a power of arrest under section 114(1) of the CP Act of 2004 has been attached ceases to have effect by reason of a decree of dissolution of

a civil partnership being pronounced by the court, the pursuer in the action for dissolution of the civil partnership shall send—

- (a) to the chief constable of the police area in which the family home is situated, and
 - (b) if the applicant civil partner (within the meaning of section 114(7) of the CP Act of 2004) resides in another police area, to the chief constable of that other police area,
- a copy of the interlocutor granting decree, and lodge in process a certificate of delivery in Form 49.70.

Evidence in causes under Chapter 3 or 4 of Part 3 of the Act of 2004

49.71H.—(1) For the purposes of proof in any application for an order under Chapter 3 or 4 of the CP Act of 2004, evidence by affidavit shall be admissible in place of parole evidence.

(2) Rule 36.8 (conditions for receiving certain written statements in evidence) shall not apply in a cause to which paragraph (1) of this rule applies.”.

(24) Part XI (simplified divorce applications) is amended as follows:—

- (a) In rule 49.72(1)(a)—
 - (i) “or” shall be omitted; and
 - (ii) after “five years)” there shall be inserted “or section (1)(1)(b)(issue of interim gender recognition certificate)”;
- (b) in rule 49.73, after paragraph (2) there shall be inserted—

“(3) A simplified divorce application in which the facts set out in section 1(1)(b) of the Act of 1976(30) (grounds of divorce: interim gender recognition certificate) are relied on shall be made in Form 49.73– C and shall only be of effect if signed by the applicant.”;
- (c) in rule 49.74—
 - (i) in paragraph (1)(a) “and” shall be omitted; and
 - (ii) after paragraph (1)(b) there shall be inserted—

“; and

 - (c) n an application under section 1(1)(b) of the Act of 1976, the interim gender recognition certificate or a certified copy.”;
- (d) in rule 49.75, in paragraph (2), after “five years)” there shall be inserted “or section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate)”;
- (e) in rule 49.76(3)—
 - (i) “or” shall be omitted; and
 - (ii) after “five years)” there shall be inserted “or Form 49.76–BA (interim gender recognition certificate)”.

(25) After Part XI (simplified divorce applications) there shall be inserted the following:—

(30) 1976 c. 39; section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 c. 7.

“PART XIA

SIMPLIFIED APPLICATIONS FOR DISSOLUTION OF CIVIL PARTNERSHIPS

Application and interpretation of, and directions under, this Part

49.80A.—(1) In this Part—

“child of family” has the meaning given in section 12(4)(b) of the Act of 1995;

“simplified dissolution application” means an application mentioned in paragraph (2).

(2) This Part applies to an application for dissolution of a civil partnership by a party to a civil partnership made in the manner prescribed in rule 49.80B (form of application for simplified dissolution of a civil partnership) if, but only if—

- (a) that party relies on the facts set out in section 117(3)(c) (no cohabitation for two years with consent of defender to decree), section 117(3)(d) (no cohabitation for five years), or section 117(2)(b) (issue of a gender recognition certificate) of the CP Act of 2004,
- (b) in an application under section 117(3)(c) of the CP Act of 2004, the other party consents to a decree of dissolution being granted;
- (c) no other proceedings are pending in any court which could have the effect of bringing the civil partnership to an end;
- (d) there are no children of the family under the age of 16 years;
- (e) neither party to the civil partnership applies for an order for financial provision on dissolution of the civil partnership; and
- (f) neither party to the civil partnership suffers from a mental disorder.

(3) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.

(4) The Principal Clerk shall give directions in relation to the administrative procedures to be followed on the lodging of a simplified dissolution application for—

- (a) the registration and service of such an application;
- (b) having it brought before the court for consideration;
- (c) in the event of decree of dissolution of the civil partnership being granted, for notification to the parties; and
- (d) connected purposes;

and such directions shall have effect subject to the provisions of this Part.

Form of application for simplified dissolution of a civil partnership

49.80B.—(1) A simplified dissolution application in which the facts set out in section 117(3)(c) of the CP Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form 49.80B–A and shall only be of effect if—

- (a) it is signed by the applicant; and
- (b) the form of consent in Part 2 of Form 49.80B–A is signed by the party to the civil partnership giving consent.

(2) A simplified dissolution application in which the facts set out in section 117(3)(d) of the CP Act of 2004 (no cohabitation for five years) are relied on shall be made in Form 49.80B–B and shall only be of effect if signed by the applicant.

(3) A simplified dissolution application in which the facts set out in section 117(2)(b) of the CP Act of 2004 (issue of interim gender recognition certificate) are relied on shall be made in Form 49.80B–C and shall only be of effect if signed by the applicant.

Lodging and registration of simplified dissolution applications

49.80C.—(1) The applicant shall send a simplified dissolution application to the Deputy Principal Clerk with—

- (a) an extract or certified copy of the certificate of civil partnership;
- (b) the appropriate fee; and
- (c) in an application under section 117(2)(b) of the CP Act of 2004, the interim gender recognition certificate or a certified copy.

(2) Subject to the following rules of this Part, a simplified dissolution application shall, on being registered in accordance with any directions made under rule 49.80A(4), be treated as a summons in an action of dissolution of a civil partnership which has commenced.

Warrants for service or intimation of simplified dissolution applications

49.80D.—(1) On registration of a simplified dissolution application where the address of the other party to the civil partnership is known, a clerk of session shall grant warrant for service of the application.

(2) On registration of an application in which the facts set out in section 117(3)(d) (no cohabitation for five years) or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004 are relied on where the address of the other party to the civil partnership is not known to the applicant and cannot reasonably be ascertained—

- (a) the Deputy Principal Clerk shall grant warrant for intimation of the application to—
 - (i) every child of the family, and
 - (ii) one of the next-of-kin of the other party who has reached the age of 16 years, unless the address of such person is not known and cannot reasonably be ascertained; and
- (b) the application shall thereafter be placed before the Lord Ordinary for such order under rule 16.5 (service where address of person is not known) as he thinks fit.

(3) A warrant granted under paragraph (1) or (2)(a) shall be sufficient authority for such service and intimation.

Execution of service or intimation of simplified dissolution application

49.80E.—(1) Subject to the following paragraphs, service or intimation of a simplified dissolution application on a warrant granted under rule 49.80D on any person whose address is known to the applicant shall be made—

- (a) by the Deputy Principal Clerk by post in accordance with rule 16.4 (service by post); or
- (b) by a messenger-at-arms.

(2) In the application of Part I of Chapter 16 (service and intimations) to service and intimation under this rule, the following provisions of that Part of that Chapter shall not apply:—

- rule 16.1(3) (which relates to party lodging a certificate of service in process),
- rule 16.3(1)(b) (form of citation and certificate of service by messenger-at-arms),
- rule 16.4(2)(b) (service by post by agent),

rule 16.4(4) (form of citation in service by post).

(3) In the case of service of a simplified dissolution application on the other party to the civil partnership under paragraph (1), the person executing service shall complete a citation in Form 49.80E–A (no cohabitation for two years with consent to divorce), Form 49.80E–B (no cohabitation for five years), or Form 49.80E–C (interim gender recognition certificate) as the case may be.

(4) In the case of intimation of a simplified dissolution application on a person under paragraph (1) the person giving intimation shall complete a notice of intimation in Form 49.80E–D.

(5) A certificate of service or intimation in Form 49.80E–E (certificate by Deputy Principal Clerk) or Form 49.80E–F (certificate by messenger-at-arms), as the case may be, shall be—

- (a) completed by the person executing service or giving intimation;
- (b) in the case of a certificate completed by a messenger-at-arms, sent to the Deputy Principal Clerk; and
- (c) attached to the application by the Deputy Principal Clerk.

Opposition to simplified dissolution application

49.80F.—(1) Any person on whom service or intimation of a simplified dissolution application has been made may give notice by letter sent to the Deputy Principal Clerk within the period of notice that he challenges the jurisdiction of the court or opposes the grant of the decree of dissolution and giving the reasons for his opposition to the application.

(2) Where opposition to a simplified dissolution application is made under paragraph (1), the court shall dismiss the application unless it is satisfied that the reasons given for the opposition are frivolous.

(3) The Deputy Principal Clerk shall give written intimation of the decision under paragraph (2) to the applicant and the respondent.

(4) The sending of a letter under paragraph (1) shall not imply acceptance of jurisdiction of the court.

Evidence in simplified dissolution applications

49.80G.—(1) Parole evidence shall not be given in a simplified dissolution application.

(2) Rule 36.8(31) (conditions for receiving certain written statements in evidence) shall not apply in a simplified dissolution application.

No reclaiming in simplified dissolution applications

49.80H. A decree pronounced in a simplified dissolution application may not be reclaimed against.

Applications after decree in simplified dissolution applications

49.80I.—(1) Any application to the court after decree of dissolution has been granted in a simplified dissolution application which could not have been made if it had been an action of dissolution of a civil partnership shall be made by minute.

(2) On lodging a minute under paragraph (1), the minuter shall lodge a process.”.

(26) For rule 50.2(4)(a)(i) (causes under the Presumption of Death (Scotland) Act 1977)(32) there shall be substituted the following:—

“(i) spouse or civil partner, and”

(27) In the appendix—

- (a) in Form 49.8–M (notice of intimation in divorce: pension lump sum) after “matrimonial” there shall be inserted “[or family]”;
- (b) after Form 49.8–N (notice of intimation: child in family action) there shall be inserted the form set out in Part 1 of the Schedule to this Act of Sederunt;
- (c) in Form 49.13–A (request for medical officer of hospital or similar institution) after “rule 49.14(1)” there shall be inserted “[or rule 49.14A(1)]”;
- (d) after Form 49.14–G (notice to defender in divorce: interim gender recognition certificate) there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Sederunt;
- (e) in Form 49.70 (certificate of delivery of documents to chief constable) after “Rule 49.70(1) and (2)” there shall be inserted “and 49.71G(1)”;
- (f) in Forms 49.73–A, 49.73–B, 49.76–A and 49.76–B, for “Divorce Section” wherever it appears, there shall be substituted “Extracts Department”;
- (g) in Form 49.73–A—

(i) in the Note on Section 3 of Part 1—

(aa) the words “at item (i) or (iii) opposite” shall be omitted; and

(bb) at the end there shall be inserted—

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (O.J. No L. 338, 23.12.2003, p.1)”;

(ii) in paragraph (i) of Part B of Section 3, for the words “consider myself to be” there shall be substituted “am”;

(iii) in paragraph (ii) of Part B of Section 3, for the words “considers himself or herself to be there shall be substituted “is”; and

(iv) Part C of Section 3 of Part 1 shall be omitted.

(h) in Form 49.73–B—

(i) in the Note on Section 5 of Part 1—

(aa) the words “at Item (i) or (iii) opposite” shall be omitted; and

(bb) at the end there shall be inserted—

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (O.J. No L. 338, 23.12.2003, p.1)”;

(ii) in paragraph (i) of Part B of Section 5, for the words “consider myself to be” there shall be substituted “am”;

(iii) in paragraph (ii) of Part B of Section 5, for the words “considers himself or herself to be there shall be substituted “is”; and

- (iv) Part C of Section 5 of Part 1 shall be omitted.
- (i) after Form 49.73–B (under the Divorce (Scotland) Act 1976, section 1(2)(e) simplified procedure) there shall be inserted the Form 49.73–C set out in Part 3 of the Schedule to this Act of Sederunt;
- (j) after Form 49.76–B (form of citation in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976) there shall be inserted the Form 49.76–BA set out in Part 3 of the Schedule to this Act of Sederunt;
- (k) for Form 49.76–C (form of intimation to child or next of kin in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976) there shall be substituted the Form 49.76–C set out in Part 3 of the Schedule to this Act of Sederunt; and
- (l) after Form 49.76–E (simplified divorce: certificate of service by messenger-at-arms) there shall be inserted the forms set out in Part 4 of the Schedule to this Act of Sederunt.

Edinburgh
7th December 2005

A.C. Hamilton
Lord President I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Part 1

Rule 49.8(3)(m)

FORM 49.8-O

Form of notice of intimation to third party or person having an interest in an application under Chapter 3 or 4 of Part 3 of the Civil Partnership Act 2004

FORM 49.8-O

Rule 49.8(3)(m)

Form of notice of intimation to third party or person having an interest in an application under Chapter 3 or 4 of Part 3 of the Civil Partnership Act 2004

Date: *(date of posting or other method of intimation)*

To: *(name and address as in warrant for intimation)*

TAKE NOTICE

(Pursuer's name and address), pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. In the action, the court may make an order affecting occupancy rights in property at *(address of property)* in which you have an interest.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [*or if the warrant for intimation is executed before the calling of the summons*, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date situated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[*or Solicitor [or Agent] for pursuer*]

(Address)

Part 2

Rule 49.14A(1)(i)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A–A

Form of notice to defender where it is stated that he consents to decree of dissolution of civil partnership

FORM 49.14A-A

Rule 49.14A(1)(i)

Form of notice to defender where it is stated that he consents to decree of dissolution of civil partnership

Date: (date of posting or other method of service)

To: (name and address of defender in summons)

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks dissolution of your civil partnership. A copy of the summons in the action is attached.

1. The summons states that you consent to a decree of dissolution of your civil partnership. If you do consent your civil partner will obtain a decree of dissolution of your civil partnership if he [or she] shows that you have not cohabited with him [or her] at any time during a continuous period of two years after the registration of your civil partnership and immediately before this action.

2. If the pursuer obtains a decree of dissolution of your civil partnership, the consequences may be as follows:–

(a) you may lose your rights of inheritance in your civil partner's property;

(b) you may lose the right to any pensions which depends on the civil partnership continuing or on your civil partner dying;

(c) apart from these consequences there may be others depending on your particular circumstances.

3. If you consent to the grant of decree of dissolution of your civil partnership, you are still entitled to apply to the court—

(a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;

(b) to make an order under section 11 of the Children (Scotland) Act 1995 or for maintenance in respect of any child of the family, or any child accepted as such, who is under 16 years of age.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

4. If after considering the above you wish to consent to decree of dissolution of your civil partnership, you should complete and sign the attached notice of consent form, and send it to—

The Deputy Principal Clerk of Session
2 Parliament Square
Edinburgh EH1 1RQ

You may do so within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

5. If after consent you wish to withdraw your consent, you must immediately inform the Deputy Principal Clerk of Session at the above address in writing. Please state the name of court action in your letter.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[*or* Solicitor [*or* Agent] for pursuer]

(Address)

Rule 49.14A(1)(i)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A-B

Form of notice of consent in action of dissolution of a civil partnership under section 117(3)(c) of the Civil Partnership Act 2004

FORM 49.14A-B

Rule 49.14A(1)(i)

Form of notice of consent in action of dissolution of a civil partnership under section 117(3)(c) of the Civil Partnership Act 2004

NOTICE OF CONSENT TO DISSOLUTION OF CIVIL PARTNERSHIP

I have received a copy of the summons in the court action raised against me by (*pursuer's name and address*).

I understand that it states that I consent to the granting of decree of dissolution of my civil partnership in this action.

I consent to the granting of decree of dissolution of my civil partnership in this action.

Signature

Name (in Block Capitals)

Address

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

Date

Signature of Witness

Name (in Block Capitals)

Address

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

Occupation

Rule 49.14A(1)(a)(ii)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A–C

Form of notice to defender where it is stated that he consents to decree of separation of civil partners

FORM 49.14A-C

Rule 49.14A(1)(a)(ii)

Form of notice to defender where it is stated that he consents to decree of separation of civil partners

Date: (date of posting or other method of service)

To: (name and address of defender in summons)

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks separation from you. A copy of the summons in the action is attached.

1. The summons states that you consent to a decree of separation. If you do consent your civil partner will obtain a decree of separation if he [or she] shows that you have not cohabited with him [or her] at any time during a continuous period of two years after the registration of your civil partnership and immediately before this action.

2. If the pursuer obtains a decree of separation, the consequences may be as follows:–

(a) you may be obliged to live apart from your civil partner but the civil partnership will continue to exist;

(b) your civil partner may continue to have a legal obligation to support you and any children of the family;

(c) apart from the above there may be other consequences applicable to you depending on your particular circumstances.

3. If you consent to the grant of decree of separation, you are still entitled to apply to the court—

(a) for an order under section 11 of the Children (Scotland) Act 1995 for maintenance in respect of any child of the family, or any child accepted as such, who is under 16 years of age;

(b) for payment of aliment by your civil partner to you.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

4. If after considering the above you wish to consent to decree of separation, you should complete and sign the attached notice of consent form, and send it to—

The Deputy Principal Clerk of Session
2 Parliament Square
Edinburgh EH1 1RQ

You may do so within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

5. If after consent you wish to withdraw your consent, you must immediately inform the Deputy Principal Clerk of Session at the above address in writing. Please state the name of court action in your letter.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[or Solicitor [or Agent] for pursuer]

(Address)

Rule 49.14A(1)(a)(ii)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A-D

Form of notice of consent in action of separation of civil partners under section 117(3)(c) of the Civil Partnership Act 2004

FORM 49.14A-D

Rule 49.14A(1)(a)(ii)

Form of notice of consent in action of separation of civil partners under section 117(3)(c) of the Civil Partnership Act 2004

NOTICE OF CONSENT TO SEPARATION OF CIVIL PARTNERS

I have received a copy of the summons in the court action raised against me by (*pursuer's name and address*).

I understand that it states that I consent to the granting of decree of dissolution of my civil partnership in this action.

I consent to the granting of decree of dissolution of my civil partnership in this action.

Signature

Name (in Block Capitals)

Address

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

Date

Signature of Witness

Name (in Block Capitals)

Address

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

Occupation

Rule 49.14A(1)(b)(i)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A–E

Form of notice to defender in an action of dissolution of civil partnership under section 117(3)(d) of the Civil Partnership Act 2004

FORM 49.14A-E

Rule 49.14A(1)(b)(i)

Form of notice to defender in an action of dissolution of civil partnership under section 117(3)(d) of the Civil Partnership Act 2004

Date: (date of posting or other method of service)

To: (name and address of defender in summons)

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks dissolution of your civil partnership. A copy of the summons in the action is attached.

1. The summons states that you have not cohabited with the pursuer at any time during a continuous period of five years after the registration of your civil partnership and immediately before this action. If the pursuer establishes this as a fact the pursuer will obtain a decree of dissolution of your civil partnership unless in the opinion of the court the grant of decree would result in grave financial hardship to you.

2. If the pursuer obtains a decree of dissolution of your civil partnership, the consequences may be as follows:–

- (a) you may lose your rights of inheritance in your civil partner's property;
- (b) you may lose the right to any pensions which depends on the civil partnership continuing or on your civil partner dying;
- (c) apart from these consequences there may be others depending on your particular circumstances.

3. If you consent to the grant of decree of dissolution of your civil partnership, you are still entitled to apply to the court—

- (a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;
- (b) to make an order under section 11 of the Children (Scotland) Act 1995 or for maintenance in respect of any child of the family, or any child accepted as such, who is under 16 years of age.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

If you lodge defences, you may do so at the Offices of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[or Solicitor [or Agent] for pursuer]

(Address)

Rule 49.14A(1)(b)(ii)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.14A–F

Form of notice to defender in an action of separation of civil partners on grounds under section 117(3)(d) of the Civil Partnership Act 2004

FORM 49.14A-F

Rule 49.14A(1)(b)(ii)

Form of notice to defender in an action of separation of civil partners on grounds under section 117(3)(d) of the Civil Partnership Act 2004

Date: *(date of posting or other method of service)*

To: *(name and address of defender in summons)*

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks separation from you. A copy of the summons in the action is attached.

1. The summons states that you have not cohabited with him the pursuer at any time during a continuous period of five years after the registration of your civil partnership and immediately before this action. If the pursuer establishes this as a fact and the court is satisfied that there are justified grounds for the decree the pursuer will obtain a decree of separation.

2. If the pursuer obtains a decree of separation, the consequences may be as follows:–

(a) you may be obliged to live apart from your civil partner but the civil partnership will continue to exist;

(b) your civil partner may continue to have a legal obligation to support you and any children of the family;

(c) apart from the above there may be other consequences applicable to you depending on your particular circumstances.

3. If you consent to the grant of decree of separation, you are still entitled to apply to the court—

(a) for an order under section 11 of the Children (Scotland) Act 1995 for maintenance in respect of any child of the family, or any child accepted as such, who is under 16 years of age;

(b) for payment of aliment by your civil partner to you.

4. In order to make such an application you must lodge defences to the action. If you wish to do this you should consult a solicitor.

If you lodge defences, you must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [*or if service is executed before calling of the summons*, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[or Solicitor [or Agent] for pursuer]

(Address)

Rule 49.14A(1)(c)

FORM 49.14A–G

Form of notice to defender in action of dissolution of civil partnership on grounds under section 117(2)(b) of the Civil Partnership Act 2004

FORM 49.14A-G

Rule 49.14A(1)(c)

Form of notice to defender in action of dissolution of civil partnership on grounds under section 117(2)(b) of the Civil Partnership Act 2004

Date: (date of posting or other method of service)

To: (name and address of defender in summons)

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks dissolution of your civil partnership. A copy of the summons in the action is attached.

1. The summons states that an interim gender recognition certificate has been issued to you [or your civil partner] after the date of registration of your civil partnership. If the pursuer establishes this as a fact the pursuer will obtain a decree of dissolution of your civil partnership.

2. If the pursuer obtains a decree of dissolution of your civil partnership, the consequences may be as follows:–

- (a) you may lose your rights of inheritance in your civil partner's property;
- (b) you may lose the right to any pensions which depends on the civil partnership continuing or on your civil partner dying;
- (c) apart from these consequences there may be others depending on your particular circumstances.

3. If you consent to the grant of decree of dissolution of your civil partnership, you are still entitled to apply to the court—

- (a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;
- (b) to make an order under section 11 of the Children (Scotland) Act 1995 or for maintenance in respect of any child of the family, or any child accepted as such, who is under 16 years of age.

4 In order to make such an application you must lodge defences to the action. If you wish to do this you should consult a solicitor.

5. If you lodge defences, you must do so at the Offices of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Messenger-at-Arms

[or Solicitor [or Agent] for pursuer]

(Address)

Part 3

Rule 49.73

FORM 49.73C

FORM 49.73C

Rule 49.73

Under the Divorce (Scotland) Act 1976, section 1(1)(b)

Simplified Procedure

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh
EH1 1RQ

APPLICATION FOR DIVORCE

ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce" 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 Extracts Department at the above address, or any Sheriff Clerk's Office or Citizen's Advice Bureau.

Direction 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 civil partner (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. |
| Affidavit (Part 3) | 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 at Part 3 (page 10) can be completed and sworn. |
| Returning completed Application Form to court | 4. When directions 1-3 above have been carried out, your application is now ready to be sent to the court. With it you must enclose:
(i) your marriage certificate (the document headed "Extract of an entry in a Register of Marriages"), which will be returned to you in due course, or an equivalent document, and
(ii) Either a cheque or postal order in respect of the court fee, crossed and made payable to "the Scottish Court Service",
or a completed form SP15, claiming exemption from the court fee.
5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the court immediately. |

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU. PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.

Notes on Sections 1 and 2 opposite

- (i) The names entered in sections 1 and 2 opposite must be those shown on your marriage certificate. If you are known by another name which does not appear on that extract, please write that name in brackets.
- (ii) The surname given for a wife must be her present married name. Her maiden name and any names from previous marriages should be entered in the space for other names.
- (iii) Home addresses should be given where these are known. The court is required by law to serve a copy of this application on your husband/wife.

Note on Section 3 opposite

If the address of your husband/wife is NOT known or cannot reasonably be ascertained, please enter “not known” in this section; you must take all reasonable steps to find out where your husband/wife is living and state on a separate sheet what steps you have taken and attach it to this form then proceed to section 4.

N.B. The statement must be signed

Notes on Section 4 opposite

In the event that the address of your husband/wife is unknown to you, the court is required by law to intimate a copy of this application to:

- (i) ONE of the next-of-kin of your husband/wife. (“Next-of-kin” does not include yourself or any children of the marriage for the purposes of this application.)
- (ii) All children of your marriage aged 16 years or over, whether or not they live with you.

When entering details of next-of-kin, if any, please state his or her relationship to your husband/wife (i.e.—“mother”, “father”, “brother”, “sister”, etc.)

If you do not know the identity or whereabouts of any of the next-of-kin of your husband/wife, or the whereabouts of any children of your marriage, please enter “not known” where appropriate.

MARRIAGE CERTIFICATE— If you do not know the address of your husband/wife and you were married in Scotland, you will require to obtain a copy of your marriage certificate issued by the Registrar not more than one month before the date of posting this application to the court. In order to obtain an up-to-date copy of your marriage certificate you should apply to:

General Register Office (Scotland), Registration Branch, New Register House, Edinburgh EH1 3YT or the office where the marriage was registered,

stating both husband’s and wife’s full names and the date and place of your marriage

(Note that the registrar will charge a fee for this service.)

The requirement to obtain an up-to-date marriage certificate does not apply if you were married outwith Scotland.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname..... Other name(s)
in full

Present Address.....
.....
..... Daytime 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" and proceed to Section 4)

Present Address..... Daytime 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 FAMILY

Names and dates of birth	Addresses
.....
.....
.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

If sufficient space is not available here to list all the children of the marriage, please continue on a separate sheet and attach to this form.

Notes on Section 5 opposite

“Domiciled” means that the person concerned regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (O.J. No L. 338, 23.12.2003, p.1)

Notes on Section 6 opposite

You will be able to obtain these details from your marriage certificate, which must accompany this application form when you send it to the court.

A photocopy of the marriage certificate will NOT be accepted.

PART 1 (continued)

5. JURISDICTION

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

PART A

- (i) My spouse and I are habitually resident in Scotland
 - (ii) My spouse and I were last habitually resident in Scotland, and one of us still resides there
 - (iii) My spouse is habitually resident in Scotland
 - (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
 - (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland
 - (vi) My spouse and I are domiciled in Scotland
-

Part B applies where the defender is not a national of a Contracting State (other than the UK or Ireland) or domiciled in Ireland

PART B

- (i) I am domiciled in Scotland

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(ii) My spouse is domiciled in Scotland

AND

(iii) No Court of a Contracting State has jurisdiction under the Council Regulation

6. DETAILS OF PRESENT MARRIAGE

Place of Marriage.....(Registration District)

Date of Marriage: Day.....month.....year.....

7. DETAILS OF ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE

(i) Please state whether the interim gender recognition certificate has been issued to you or your husband/wife.

(ii) Please state the date the interim gender recognition certificate was issued. Day.....Month.....Year.....

Note on Section 9 opposite

“Children of the marriage” includes any adopted children and/or children accepted into the family.

Notes on Section 11 opposite

No claim can be made in this form of divorce application for payment to you of a periodical allowance (*i.e.* regular payment of money, weekly, monthly etc. for your maintenance) or a capital sum (*i.e.* lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1 (continued)

8. MENTAL DISABILITY

As far as you are aware is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency) (If yes, give details)	YES	NO
--	-----	----

(Tick box which applies)

9. CHILDREN

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

(Tick box which applies)

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)

(Tick box which applies)

11. DECLARATION AND REQUEST FOR DIVORCE

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 of Applicant)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 2

APPLICANT'S AFFIDAVIT

To be completed only after Part 1 has been signed and dated.

I, *(Insert Applicant's full name)*.....

residing at *(insert Applicant's 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.

Signature of Applicant.....

SWORN at *(insert place)*.....

To be completed by Justice of the Peace, this.....day of.....20.....

Notary Public or before me *(insert full name)*.....

Commissioner for *(insert full address)*.....

Oaths

.....

.....

Signature.....

* Justice of the Peace/ Notary Public/Commissioner for Oaths

* Delete as appropriate

Rule 49.76

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.76–BA

Form of citation in simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976

FORM 49.76–BA

Rule 49.76

Form of citation in simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976

CITATION

Date: (Date of posting or other method of service)

To:
.....
.....

APPLICATION FOR DIVORCE. INTERIM GENDER RECOGNITION CERTIFICATE ISSUED TO HUSBAND/WIFE AFTER MARRIAGE

Your husband [or wife] has applied to the court for divorce on the ground that an interim gender recognition certificate has been issued to you or your husband [or wife] after your marriage.

A copy of the application is hereby served on you.

1. Please note that the court may not make a financial award under this procedure and that your husband [or wife] is making no claim against you for payment of a periodical allowance (*i.e.* regular payment of money weekly, monthly, etc., for his [or her] maintenance or a capital sum (*i.e.* lump sum));
2. Dissolution of your marriage may result in the loss to you of property rights (*e.g.* the right to succeed to the applicant's estate on his/her death) or the right, where appropriate, to a 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 by (*insert date on which period of notice expires*).
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.)

(Signed)

Deputy Principal Clerk of Session

[or authorised clerk of session]

[or Messenger-at-Arms]

(Address)

IMPORTANT NOTE. If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 49.76(4)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.76-C

Form of intimation to child or next-of-kin in simplified divorce application under section 1(2)(e) or (1)(b) of the Divorce (Scotland) Act 1976

FORM 49.76-C

Rule 49.76(4)

Form of intimation to child or next-of-kin in simplified divorce application under section 1(2)(e) or (1)(b) of the Divorce (Scotland) Act 1976

CITATION

Date: *(Date of posting or other method of service)*

To:
.....
.....

APPLICATION FOR DIVORCE. HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST FIVE YEARS OR ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE AFTER REGISTRATION OF THE CIVIL PARTNERSHIP

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

TAKE NOTICE

1. In the above application, a copy of which is enclosed, the applicant has indicated that you are the *(state relationship)* of *(name of respondent)* whose present address is not known to the applicant.

2. Should you know the present address of your *(state relationship)* or how he [or she] may be contacted, you are requested to give this information at once in writing to—

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

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 wish for your own interest to oppose the application for divorce, you should write to the above address by *(insert date on which period of time expires)*.

(Signed)

Deputy Principal Clerk of Session
[or authorised clerk of session]
[or Messenger-at-Arms]
(Address)

Part 4

Rule 49.80B(1)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80B-A

Form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004

FORM 49.80B-A

Rule 49.80B(1)

Form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP WITH CONSENT OF OTHER PARTY TO THE CIVIL PARTNERSHIP (CIVIL PARTNERS HAVING LIVED APART FOR AT LEAST TWO YEARS)

Before completing this form, you should have read the leaflet entitled “Do it yourself Dissolution”, which explains the circumstances in which a dissolution of a civil partnership may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for dissolution of your civil partnership.

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 Extracts Department at the above address, or any Sheriff Clerk’s Office or Citizen’s 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 civil partner (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 civil partner for completion of the consent at Part 2 (page 9).
NOTE: If your civil partner 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 dissolution of your civil partnership, you should consult a solicitor. |
| Affidavit (Part 3) | 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 at Part 3 (page 10) can be completed and sworn. |
| Returning completed Application Form to court | 4. When directions 1-3 above have been carried out, your application is now ready to be sent to the court. With it you must enclose:
(i) an extract of the registration of your civil partnership in the civil partnership register (the document headed “Extract of an entry in the Register of Civil Partnerships”), which will be returned to you in due course, or an equivalent document, and
(ii) Either a cheque or postal order in respect of the court fee, crossed and made payable to “the Scottish Court Service”, or a completed form SP15, claiming exemption from the court fee.
5. Receipt of your application will be promptly acknowledged. Should you |

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

wish to withdraw the application for any reason, please contact the court immediately.

THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU. PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.

Notes on Sections 1 and 2 opposite

- (i) The names entered in sections 1 and 2 opposite must be those shown on your extract of registration of civil partnership. If you are known by another name which does not appear on that extract, please write the name in brackets.
- (ii) The surname given for a female civil partner must be her maiden surname. Any names from previous marriages should be entered in the space for other names.
- (iii) Home address should be given where these are known. The court is required by law to serve a copy of this application on your civil partner.

Note on Section 3 opposite

“Domiciled” means that the person concerned regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

Notes on Section 4 opposite

You will be able to obtain these details from your extract of registration of civil partnership which must accompany this application form, when you send it to the court.

A photocopy of the extract of registration of civil partnership will NOT be accepted. If you cannot find the original you should apply for an official copy to:

General Register Office (Scotland), Registration Section, New Register House,
Edinburgh, EH1 3YT, or the office where the civil partnership was registered.

stating both civil partner’s full names, and the date and place of registration of the civil partnership.

(Note that the Registrar will charge a fee for this service.)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname..... Other name(s)
Present in full.....
Address.....
..... Daytime telephone number (if
any).....

2. NAME AND ADDRESS OF CIVIL PARTNER

Surname..... Other name(s)
Present in full.....
Address.....
..... Daytime telephone number (if
any).....

3. JURISDICTION

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

PART A

- (i) My civil partner and I are habitually resident in Scotland
 - (ii) My civil partner and I were last habitually resident in Scotland, and one of us still resides there
 - (iii) My civil partner is habitually resident in Scotland
 - (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
-

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland

If you have ticked one of the boxes in Part A, you do not have to complete Part B or C. You should complete either Part B or Part C if you have not ticked any of the boxes in Part A

PART B

- (i) No court has, or is recognised as having, jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

AND

- (ii) I am domiciled in Scotland
(iii) My civil partner is domiciled in Scotland

PART C

- (i) My civil partner and I are registered civil partners of each other in Scotland

AND

- (ii) No court has, or is recognised as having jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

AND

- (iii) It is in the interests of justice for the Court of Session to assume jurisdiction in the case. (Please give reasons below).

4. DETAILS OF PRESENT CIVIL PARTNERSHIP

Place of Registration of Civil Partnership.....(Registration District)

Date of Registration of Civil Partnership: Day.....month.....year.....

Notes on Section 5 opposite

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

You and your civil partner must have lived apart from each other for a continuous period of at least two years after the date of registration of your civil partnership and immediately before the date of this application.

This minimum period of two years' separation is extended if you and your civil partner have lived together again for **not more than six months in all** during that two year period. For example, if you lived together for three months in total during the two year period, then you should not complete this application until two years and three months have elapsed from the date of your original separation.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Notes on Section 6 opposite

Is there a reasonable chance that you can still settle the differences with your civil partner and resume normal family life?

Are you satisfied that there is now no possibility of the civil partnership succeeding?

Notes on Section 7 opposite

If your civil partner is not prepared to sign the form of consent at Part 2 of this application you will not obtain a dissolution of your civil partnership by this method.

Note on Section 9 opposite

“Children of the family” includes any children accepted into the family.

5. PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your civil partner. (If more than 2 years, just give the month and year) Day.....Month.....Year.....

(ii) Have you lived with your civil partner since that date? YES NO
(Tick box which applies)

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

6. RECONCILIATION YES NO

Is there any reasonable prospect of reconciliation with your civil partner?
(Tick box which applies)

Do you consider that the civil partnership has broken down irretrievably? YES NO
(Tick box which applies)

7. CONSENT

Does your civil partner consent to a dissolution of the civil partnership being granted? YES NO
(Tick box which applies)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

8. MENTAL DISABILITY

Is your civil partner incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? (If yes, give details)

YES

NO

(Tick box which applies)

9. CHILDREN

Are there any children of the family under the age of 16?

YES

NO

(Tick box which applies)

10. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your civil partnership?

YES

NO

(If yes, give details)

(Tick box which applies)

Notes on Section 11 opposite

No claim can be made in this form of dissolution application for payment to you of a periodical allowance (*i.e.* regular payment of money weekly, monthly, etc. for your maintenance) or a capital sum (*i.e.* lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after dissolution of a civil partnership, the right to payment of a capital sum is lost once decree of dissolution is granted.

11. REQUEST FOR DISSOLUTION OF THE CIVIL PARTNERSHIP AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in Sections 1-10 above apply to my civil partnership.

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

I request the court to grant decree of dissolution of my civil partnership.

.....

(Date)

(Signature)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IMPORTANT

Part 1 **MUST** be completed, signed and dated before sending the application form to your civil partner.

NOTES ON COMPLETING PART 2 OPPOSITE (page 9)

- 1. Read over carefully PART 1 (pages 3-7) of this application, which has already been completed by your civil partner.

2. Financial Provisions

Please note that in section 11 of Part 1, the Applicant states that he/she does NOT claim any financial awards by way of periodical allowance or capital sum. You also are required to state (items (c) and (d) opposite) that you make no claim upon the Applicant for payment of a periodical allowance or capital sum.

Note: While it may be possible to obtain an order for **periodical allowance** after dissolution of a civil partnership, the right to payment of a **capital sum** is lost once decree of dissolution is granted.

3. Warning

Dissolution of your civil partnership may result in the loss to you of property rights (e.g. the right to succeed to the Applicant's estate on his/her death) or the right, where appropriate, to a pension.

(If you are in any doubt about signing the form of consent you should consult a solicitor.)

PART 2

CONSENT BY APPLICANT'S CIVIL PARTNER TO DISSOLUTION OF CIVIL PARTNERSHIP

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

I,

(Full name, in BLOCK letters, of Applicant's civil partner)

residing at.....

.....

.....

(Address, also in BLOCK letters)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 two 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 (*i.e.* 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 (*i.e.* a lump sum payment);
- (e) I understand that dissolution of my civil partnership may result in the loss to me of property rights; and
- (f) **I CONSENT TO DECREE OF DISSOLUTION BEING GRANTED IN RESPECT OF THIS APPLICATION**

.....

(Date) (Signature)

NOTE: You may withdraw your consent, even after giving it, at any time before the dissolution of the civil partnership is granted by the court. Should you wish to do so, you must immediately advise—

The Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ

**PART 3
APPLICANT'S AFFIDAVIT**

To be completed only after Parts 1 and 2 have been signed and dated.

I, (*Insert Applicant's full name*).....

residing at (*insert Applicant's present home address*).....

.....

Town.....Country.....

SWEAR that to the best of my knowledge and belief:

- (1) the facts stated in Part 1 of this Application are true; and
- (2) the signature in Part 2 of this application is that of my civil partner.

Signature of Applicant.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To be completed by
Justice of the Peace,
Notary Public or
Commissioner for
Oaths

SWORN at *(insert place)*.....
this.....day of.....20.....
before me *(insert full name)*.....
(insert full address).....
.....
.....
Signature.....
*Justice of the Peace/ Notary Public/Commissioner for Oaths
* Delete as appropriate

Rule 49.80B(2)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80B-B

Form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004

FORM 49.80B-B

Rule 49.80B(2)

Form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP

(CIVIL PARTNERS HAVING LIVED APART FOR AT LEAST FIVE YEARS)

Before completing this form, you should have read the leaflet entitled “Do it yourself Dissolution”, which explains the circumstances in which a dissolution of a civil partnership may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for dissolution of your civil partnership.

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 Extracts Department at the above address, or any Sheriff Clerk’s Office or Citizen’s 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. |
| Affidavit (Part 2) | 2. When you have completed Part 1, 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 at Part 2 (page 8) can be completed and sworn. |
| Returning completed Application Form to court | 3. When directions 1 and 2 above have been carried out, your application is now ready to be sent to the court. With it you must enclose:
(i) an extract of the registration of your civil partnership in the civil partnership register (the document headed “Extract of an entry in the Register of Civil Partnerships”), which will be returned to you in due course, or an equivalent document. If you do not know the address of your civil partner and your civil partnership was registered in Scotland you also need to obtain a letter from the General Register Office stating that there is no record of your civil partner having dissolved your civil partnership. If you required this letter it should be obtained not more than one month before posting off your application form:
General Register Office (Scotland)
Registration Branch
New Register House
Edinburgh EH1 3YT and
(ii) Either a cheque or postal order in respect of the court fee, crossed and made payable to “Scottish Court Service”, or a completed form SP15, claiming exemption from the court fee. |
| | 4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the court |

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

immediately.

THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU. PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.

Notes on Sections 1 and 2 opposite

- (i) The names entered in sections 1 and 2 opposite must be those shown on your extract of registration of civil partnership. If you are known by another name which does not appear on that extract, please write the name in brackets.
- (ii) The surname given for a female civil partner must be her maiden surname. Any names from previous marriages should be entered in the space for other names.
- (iii) Home address should be given where these are known. The court is required by law to serve a copy of this application on your civil partner.

Note on Section 3 opposite

If the address of your civil partner is NOT known or cannot reasonably be ascertained, please enter “not known” in this section; you must take all reasonable steps to find out where your civil partner is living and state on a separate sheet what steps you have taken and attach it to this form. then proceed to section 4.

N.B. The statement must be signed

Notes on Section 4 opposite

In the event that the address of your civil partner is unknown to you, the court is required by law to intimate a copy of this application to:

- (i) ONE of the next-of-kin of your civil partner. (“Next-of-kin” does not include yourself or any children of the family for the purposes of this application.)
- (ii) All children of the family aged 16 years or over, whether or not they live with you.

When entering details of next-of-kin, if any, please state his or her relationship to your civil partner (i.e.—“mother”, “father”, “brother”, “sister”, etc.)

If you do not know the identity or whereabouts of any of the next-of-kin of your civil partner, or the whereabouts of any children of the family, please enter “not known” where appropriate.

EXTRACT OF REGISTRATION OF CIVIL PARTNERSHIP— If you do not know the address of your civil partner and your civil partnership was registered in Scotland, you will require to obtain an extract of the registration of your civil partnership issued by the Registrar not more than one month before the date of posting this application to the court. In order to obtain an up-to-date extract of the registration of your civil partnership, you should apply to:

General Register Office (Scotland), Registration Branch, New Register House, Edinburgh EH1 3YT or the office where the civil partnership was registered,

stating both your and your civil partner’s full names and the date and place of registration of your civil partnership.

(Note that the registrar will charge a fee for this service.)

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The requirement to obtain an up-to-date extract of the registration of your civil partnership does not apply if your civil partnership was registered outwith Scotland.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname..... Other name(s)
Present in full.....
Address.....
..... Daytime telephone number (if
any).....

2. NAME OF CIVIL PARTNER

Surname..... Other name(s)
in full.....

3. ADDRESS OF CIVIL PARTNER (if the address of your civil partner is not known, please enter "not known" and proceed to Section 4)

Present Daytime telephone number (if
Address..... any).....
.....

4. Only complete this section if you do not know the present address of your civil partner

NEXT-OF-KIN

Name..... Address.....
.....
.....

Relationship to your civil
partner.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

CHILDREN OF THE FAMILY

Names and dates of birth	Addresses
.....
.....
.....
.....

If sufficient space is not available here to list all the children of the family, please continue on a separate sheet and attach to this form.

Notes on Section 5 opposite

“Domiciled” means that the person concerned regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

Notes on Section 6 opposite

You will be able to obtain these details from your extract of the registration of your civil partnership, which must accompany this application form when you send it to the court.

A photocopy of the extract of registration of the civil partnership will NOT be accepted.

Notes on Section 7 opposite

You and your civil partner must have lived apart from each other for continuous period of at least 5 years and after the date of registration of your civil partnership and immediately before the date of this application.

This minimum period of 5 years separation is extended if you and your civil partner have lived together again for **not more than 6 months in all** during that 5 year period. For example, if you have lived together for 3 months in total during the 5 year period, then you should not complete this application until 5 years and 3 months have elapsed from the date of your original separation.

Notes on Section 8 opposite

Is there a reasonable chance that you can still settle the differences with your civil partner and resume normal family life?

Are you satisfied that there is now no possibility of the civil partnership succeeding?

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1 (continued)

5. JURISDICTION

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

PART A

- (i) My civil partner and I are habitually resident in Scotland
- (ii) My civil partner and I were last habitually resident in Scotland, and one of us still resides there
- (iii) My civil partner is habitually resident in Scotland
- (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
- (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland

If you have ticked one of the boxes in Part A, you do not have to complete Part B or C. You should complete either Part B or Part C if you have not ticked any of the boxes in Part A

PART B

- (i) No court has, or is recognised as having, jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

AND

- (ii) I am domiciled in Scotland
- (iii) My civil partner is domiciled in Scotland

PART C

- (i) My civil partner and I are registered civil partners of each other in Scotland

AND

- (ii) No court has, or is recognised as having jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

6. DETAILS OF PRESENT CIVIL PARTNERSHIP

Place of Registration of Civil Partnership.....(Registration District)

Date of Registration of Civil Partnership: Day.....month.....year.....

7. PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your civil partner. (If more than 5 1/2 years, just give the month and year) Day.....Month.....Year.....

(ii) Have you lived with your civil partner since that date? YES NO
(Tick box which applies)

8. RECONCILIATION

YES NO

Is there any reasonable prospect of reconciliation with your civil partner?
(Tick box which applies)

Do you consider that the civil partnership has broken down irretrievably? YES NO
(Tick box which applies)

Note on Section 10 opposite

“Children of the family” includes any children accepted into the family.

Notes on Section 12 opposite

No claim can be made in this form of dissolution application for payment to you of a periodical allowance (*i.e.* regular payment of money, weekly, monthly etc. for your maintenance) or a capital sum (*i.e.* lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after dissolution of your civil partnership, the right to payment of a capital sum is lost once decree of dissolution is granted.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1 (continued)

9. MENTAL DISABILITY

YES NO

As far as you are aware is your civil partner incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency) (If yes, give details)

(Tick box which applies)

10. CHILDREN

YES NO

Are there any children of the family under the age of 16?

(Tick box which applies)

11. OTHER COURT ACTIONS

YES NO

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your civil partnership?

(If yes, give details)

(Tick box which applies)

12. DECLARATION AND REQUEST FOR DISSOLUTION OF CIVIL PARTNERSHIP

I confirm that the facts stated in Sections 1-11 above apply to my civil partnership.

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 civil partner as a result of granting this application.

I request the court to grant decree of dissolution of my civil partnership.

.....
(Date)

.....
(Signature of Applicant)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 2

APPLICANT'S AFFIDAVIT

To be completed only after Part 1 has been signed and dated.

I, *(Insert Applicant's full name)*.....

residing at *(insert Applicant's 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.

Signature of Applicant.....

To be completed by
Justice of the Peace,
Notary Public or
Commissioner for
Oaths

SWORN at *(insert place)*.....

this.....day of.....20.....

before me *(insert full name)*.....

(insert full address).....

.....

.....

Signature.....

*Justice of the Peace/ Notary Public/Commissioner for Oaths

* Delete as appropriate

Rule 49.80B(3)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80B-C

**Form of simplified dissolution of civil partnership application
under section 117(2)(b) of the Civil Partnership Act 2004**

FORM 49.80B-C

Rule 49.80B(3)

**Form of simplified dissolution of civil partnership application under section 117(2)(b) of the
Civil Partnership Act 2004**

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP

(ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE)

Before completing this form, you should have read the leaflet entitled “Do it yourself Dissolution”, which explains the circumstances in which a dissolution of a civil partnership may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for dissolution of your civil partnership.

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 Extracts Department at the above address, or any Sheriff Clerk’s Office or Citizen’s 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. |
| Affidavit (Part 2) | 2. When you have completed Part 1, 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 at Part 2 (page 8) can be completed and sworn. |
| Returning completed Application Form to court | 3. When directions 1 and 2 above have been carried out, your application is now ready to be sent to the court. With it you must enclose:
(i) an extract of the registration of your civil partnership in the civil partnership register (the document headed “Extract of an entry in the Register of Civil Partnerships”), which will be returned to you in due course, or an equivalent document. If you do not know the address of your civil partner and your civil partnership was registered in Scotland you also need to obtain a letter from the General Register Office stating that there is no record of your civil partner having dissolved your civil partnership. If you required this letter it should be obtained not more than one month before posting off your application form:
General Register Office (Scotland)
Registration Branch
New Register House
Edinburgh EH1 3YT;
(ii) the interim gender recognition certificate or a certified copy of it; and
(iii) Either a cheque or postal order in respect of the court fee, crossed and made payable to “Scottish Court Service”, or a completed form SP15, claiming exemption from the court fee. |
| | 4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the court immediately. |

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

The surname given for a female civil partner must be her maiden surname. Any names from previous marriages should be entered in the space for other names.

THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU. PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.

Notes on Sections 1 and 2 opposite

- (i) The names entered in sections 1 and 2 opposite must be those shown on your extract of registration of civil partnership. If you are known by another name which does not appear on that extract, please write the name in brackets.
- (ii) The surname given for a female civil partner must be her maiden surname. Any names from previous marriages should be entered in the space for other names.
- (iii) Home address should be given where these are known. The court is required by law to serve a copy of this application on your civil partner.

Note on Section 3 opposite

If the address of your civil partner is NOT known or cannot reasonably be ascertained, please enter “not known” in this section; you must take all reasonable steps to find out where your civil partner is living and state on a separate sheet what steps you have taken and attach it to this form. then proceed to section 4.

N.B. The statement must be signed

Notes on Section 4 opposite

In the event that the address of your civil partner is unknown to you, the court is required by law to intimate a copy of this application to:

- (i) ONE of the next-of-kin of your civil partner. (“Next-of-kin” does not include yourself or any children of the family for the purposes of this application.)
- (ii) All children of the family aged 16 years or over, whether or not they live with you.

When entering details of next-of-kin, if any, please state his or her relationship to your civil partner (i.e.—“mother”, “father”, “brother”, “sister”, etc.)

If you do not know the identity or whereabouts of any of the next-of-kin of your civil partner, or the whereabouts of any children of the family, please enter “not known” where appropriate.

EXTRACT OF REGISTRATION OF CIVIL PARTNERSHIP— If you do not know the address of your civil partner and your civil partnership was registered in Scotland, you will require to obtain an extract of the registration of your civil partnership issued by the Registrar not more than one month before the date of posting this application to the court. In order to obtain an up-to-date extract of the registration of your civil partnership, you should apply to:

General Register Office (Scotland), Registration Branch, New Register House, Edinburgh EH1 3YT or the office where the civil partnership was registered,

stating both your and your civil partner’s full names and the date and place of registration of your civil partnership.

(Note that the registrar will charge a fee for this service.)

The requirement to obtain an up-to-date extract of the registration of your civil partnership does not apply if your civil partnership was registered outwith Scotland.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname..... Other name(s)
Present in full.....
Address.....
..... Daytime telephone number (if
any).....

2. NAME OF CIVIL PARTNER

Surname..... Other name(s)
in full.....

3. ADDRESS OF CIVIL PARTNER (if the address of your civil partner is not known, please enter "not known" and proceed to Section 4)

Present Daytime telephone number (if
Address..... any).....
.....

4. Only complete this section if you do not know the present address of your civil partner

NEXT-OF-KIN

Name..... Address.....
.....
.....

Relationship to your civil
partner.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1 (continued)

CHILDREN OF THE FAMILY

Names and dates of birth	Addresses
.....
.....
.....

If sufficient space is not available here to list all the children of the family, please continue on a separate sheet and attach to this form.

Notes on Section 5 opposite

“Domiciled” means that the person concerned regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

Notes on Section 6 opposite

You will be able to obtain these details from your extract of the registration of your civil partnership, which must accompany this application form when you send it to the court.

A photocopy of the extract of registration of the civil partnership will NOT be accepted.

5. JURISDICTION

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

PART A

- (i) My civil partner and I are habitually resident in Scotland
- (ii) My civil partner and I were last habitually resident in Scotland, and one of us still resides there
- (iii) My civil partner is habitually resident in Scotland
- (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
- (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

If you have ticked one of the boxes in Part A, you do not have to complete Part B or C. You should complete either Part B or Part C if you have not ticked any of the boxes in Part A

PART B

(i) No court has, or is recognised as having, jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

AND

(ii) I am domiciled in Scotland

(iii) My civil partner is domiciled in Scotland

PART C

(i) My civil partner and I are registered civil partners of each other in Scotland

AND

(ii) No court has, or is recognised as having jurisdiction under regulations made under section 219 of the Civil Partnership Act 2004

AND

(iii) It is in the interests of justice for the Court of Session to assume jurisdiction in the case. (Please give reasons below).

6. DETAILS OF PRESENT CIVIL PARTNERSHIP

Place of Registration of Civil Partnership.....(Registration District)

Date of Registration of Civil Partnership: Day.....month.....year.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART 1 (continued)

7. DETAILS OF ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE

(i) Please state whether the interim gender recognition certificate has been issued to you or your civil partner.

(ii) Please state the date the interim gender recognition certificate was issued. Day.....Month.....Year.....

Note on Section 9 opposite

“Children of the family” includes any children accepted into the family.

Notes on Section 11 opposite

No claim can be made in this form of dissolution application for payment to you of a periodical allowance (*i.e.* regular payment of money, weekly, monthly etc. for your maintenance) or a capital sum (*i.e.* lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after dissolution of your civil partnership, the right to payment of a capital sum is lost once decree of dissolution is granted.

8. MENTAL DISABILITY

YES NO

As far as you are aware is your civil partner incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency) (If yes, give details)

(Tick box which applies)

9. CHILDREN

YES NO

Are there any children of the family under the age of 16?

(Tick box which applies)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

10. OTHER COURT ACTIONS

YES

NO

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your civil partnership?

(If yes, give details)

(Tick box which applies)

11. DECLARATION AND REQUEST FOR DISSOLUTION OF CIVIL PARTNERSHIP

I confirm that the facts stated in Sections 1-10 above apply to my civil partnership.

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

I request the court to grant decree of dissolution of my civil partnership.

.....

(Date)

(Signature of Applicant)

PART 2

APPLICANT'S AFFIDAVIT

To be completed only after Part 1 has been signed and dated.

I, (Insert Applicant's full name).....

residing at (insert Applicant's 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.

Signature of Applicant.....

To be completed by Justice of the Peace, Notary Public or Commissioner for Oaths

SWORN at (insert place).....

this..... day of.....20.....

before me (insert full name).....

(insert full address).....

.....

.....

Signature.....

*Justice of the Peace/ Notary Public/Commissioner for Oaths

* Delete as appropriate

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80E-A

Form of citation in simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004

FORM 49.80E-A

Rule 49.80E(3)

Form of citation in simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004

CITATION

Date: *(Date of posting or other method of service)*

To:
.....
.....

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP (WITH CONSENT OF OTHER PARTY TO THE CIVIL PARTNERSHIP) CIVIL PARTNERS HAVING LIVED APART FOR AT LEAST TWO YEARS

You are hereby served with an application by your civil partner which asks the court to grant a decree of dissolution of your civil partnership.

If you wish to oppose the granting of such a decree, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the court by *(insert date on which period of notice expires)*.

(Signed)

Deputy Principal Clerk of Session

[or authorised clerk of session]

[or Messenger-at-Arms]

(Address)

IMPORTANT NOTE. If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

Rule 49.80E(3)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80E-B

Form of citation in simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004

FORM 49.80E-B

Rule 49.80E(3)

Form of citation in simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004

CITATION

Date: *(Date of posting or other method of service)*

To:
.....
.....

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP. CIVIL PARTNERS HAVING LIVED APART FOR AT LEAST FIVE YEARS

Your civil partner has applied to the court for a decree of dissolution of your civil partnership on the ground your civil partnership has broken down irretrievably because you and (s)he have lived apart for a period of at least five years.

A copy of the application is hereby served on you.

1. Please note—

- (a) that the court may not make a financial award under this procedure and that your civil partner is making no claim against you for payment of a periodical allowance (*i.e.* regular payment of money weekly, monthly, etc., for his *or* her] maintenance or a capital sum (*i.e.* lump sum);
- (b) that your civil partners states that you will not suffer grave financial hardship in the event of decree of dissolution of your civil partnership being granted.

2. Dissolution of your civil partnership may result in the loss to you of property rights (*e.g.* the right to succeed to the applicant’s estate on his/her death) or the right, where appropriate, to a pension.

3. If you wish to oppose the granting of such a dissolution of your civil partnership, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the court by (*insert date on which period of notice expires*).

4. In the event of the dissolution of your civil partnership 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.)

(Signed)

Deputy Principal Clerk of Session

[*or* authorised clerk of session]

[*or* Messenger-at-Arms]

(Address)

IMPORTANT NOTE. If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

Rule 49.80E(3)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80E-C

Form of citation in simplified dissolution of civil partnership application under section 117(2)(b) of the Civil Partnership Act 2004

FORM 49.80E-C

Rule 49.80E(3)

Form of citation in simplified dissolution of civil partnership application under section 117(2)(b) of the Civil Partnership Act 2004

CITATION

Date: (Date of posting or other method of service)

To:
.....
.....

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP. INTERIM GENDER RECOGNITION CERTIFICATE ISSUED TO ONE OF THE CIVIL PARTNERS AFTER REGISTRATION OF THE CIVIL PARTNERSHIP.

Your civil partner has applied to the court for a decree of dissolution of your civil partnership on the ground that an interim gender recognition certificate has been issued to you or your civil partner after your civil partnership was registered.

A copy of the application is hereby served on you.

1. Please note that the court may not make a financial award under this procedure and that your civil partner is making no claim against you for payment of a periodical allowance (*i.e.* regular payment of money weekly, monthly, etc., for his [*or her*] maintenance or a capital sum (*i.e.* lump sum));
2. Dissolution of your civil partnership may result in the loss to you of property rights (*e.g.* the right to succeed to the applicant's estate on his/her death) or the right, where appropriate, to a pension.
3. If you wish to oppose the granting of such a dissolution of your civil partnership, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the court by (*insert date on which period of notice expires*).
4. In the event of the dissolution of your civil partnership 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.)

(Signed)

Deputy Principal Clerk of Session

[*or* authorised clerk of session]

[*or* Messenger-at-Arms]

(Address)

IMPORTANT NOTE. If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

Rule 49.80E(4)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80E-D

Form of intimation to child or next-of-kin in simplified dissolution of civil partnership application under section 117(3)(d) or 117(2)(b) of the Civil Partnership Act 2004

FORM 49.80E-D

Rule 49.80E(4)

Form of intimation to child or next-of-kin in simplified dissolution of civil partnership application under section 117(3)(d) or 117(2)(b) of the Civil Partnership Act 2004

CITATION

Date: *(Date of posting or other method of service)*

To:
.....
.....

APPLICATION FOR DISSOLUTION OF A CIVIL PARTNERSHIP. CIVIL PARTNERS HAVING LIVED APART FOR AT LEAST FIVE YEARS OR ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE AFTER REGISTRATION OF THE CIVIL PARTNERSHIP

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

TAKE NOTICE

1. In the above application, a copy of which is enclosed, the applicant has indicated that you are the *(state relationship)* of *(name of respondent)* whose present address is not known to the applicant.

2. Should you know the present address of your *(state relationship)* or how he [or she] may be contacted, you are requested to give this information at once in writing to—

Court of Session
Extracts Department (SP)
Parliament House
Edinburgh EH1 1RQ
Tel: 0131-225-2595

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 wish for your own interest to oppose the application for dissolution of the civil partnership, you should write to the above address by *(insert date on which period of time expires)*.

(Signed)

Deputy Principal Clerk of Session
[or authorised clerk of session]
[or Messenger-at-Arms]

(Address)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 49.780E(5)

FORM 49.80E-E

Form of certificate of service of simplified dissolution application

FORM 49.80E-E

Rule 49.780E(5)

Form of certificate of service of simplified dissolution application

CERTIFICATE OF SERVICE [or INTIMATION]

I, *(name)*, Deputy Principal Clerk of Session [or *clerk of session authorised by him*], certify that I served [or *intimated*] this simplified dissolution application by *(name of applicant)* on [or to] *(name of person on whom service executed or to whom intimation given)* by posting it with a citation [or *notice of intimation*] in Form *(number of form)* to that person between *(time)* and *(time)* on *(date)* at *(name of post office)* in a registered envelope [or *recorded delivery envelope*] address as follows:—*(address)*. The Post Office receipt [or *certificate of posting*] is attached to this certificate.

(Signed)

Deputy Principal Clerk of Session

[or *authorised clerk of session*]

[or *Messenger-at-Arms*]

(Address)

(Signed)

Witness

Rule 49.780E(5)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 49.80E-F

Form of certificate of service of simplified dissolution application by messenger-at-arms

FORM 49.80E-F

Rule 49.780E(5)

Form of certificate of service of simplified dissolution application by messenger-at-arms

CERTIFICATE OF SERVICE [or INTIMATION]

I, *(name)*, Messenger-at-Arms, certify that I served [or intimated] this simplified dissolution application [and notice of intimation] on [or to] *(name of person on whom served or to whom intimated)*—

- ❖ by leaving it and a citation [or notice] with *(name of person)* at *(place)* at *(time)* on *(date)*.
- ❖ by leaving it and a citation [or notice] with *(name and occupation of person with whom left)* at *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resident the place but is not available)*.
- ❖ by depositing it and a citation [or notice] in *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resident the place but is not available)*.
- ❖ by leaving it and a citation [or notice] with *(name and occupation of person with whom left)* at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resident the place but is not available)*.
- ❖ by depositing it and a citation [or notice] at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resident the place but is not available)*.
- ❖ by leaving it and a citation [or notice] at *(registered office or place of business)* on *(date)*, in the hands of *(name of person)*.
- ❖ by leaving [or depositing] it and a citation [or notice] at *(registered office, official address or place of business)* on *(date)*, in such a way as it was likely to come to the attention of *(name of person on whom served or to whom intimated)*. *(Specify how left)*.

I did this in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

(Signed)

Witness

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 (S.I.1994/1443) (“the Rules”) in order to make provision for applications under the Civil Partnership Act 2004 (“the 2004 Act”) in relation to the dissolution or nullity of a civil partnership or the separation of civil partners. The amendments also make provision for a simplified procedure for divorce on the grounds of the issue of an interim gender recognition certificate.

Paragraph 2(2) to (13) amends Part 1 of Chapter 49 (general provision) to extend the application of the provisions relating to family actions to include actions for the dissolution or nullity of a civil partnership or the separation of civil partners under the 2004 Act.

Paragraph 2(14) excludes proceedings for financial provision following overseas proceedings to dissolve or annul a civil partnership and for an order under Chapter 3 (occupancy rights) or 4 (interdicts) of Part 3 of the 2004 Act from the application of rule 49.28 (evidence in certain undefended family actions).

Paragraph 2(15) amends rule 49.30 (no suspension in undefended divorce actions) so that it extends to undefended actions of dissolution of a civil partnership.

Paragraph 2(16) and (17) makes amendments to Part III of Chapter 49 (defended family actions) in connection with proceedings under Chapters 3 and 4 of the 2004 Act.

Paragraph 2(18) and (19) extends the application of Parts IV (applications and orders relating to children in certain actions) and V (orders relating to financial provision etc.) respectively to actions of dissolution and nullity of a civil partnership and separation of civil partners.

Paragraph 2(20) extends the application of rule 49.46 (applications in actions to which Part V applies) to applications for orders under section 112 of the 2004 Act.

Paragraph 2(21) inserts a new Part VIIA into Chapter 49 in respect of financial provision after the overseas dissolution or annulment of a civil partnership.

Paragraph 2(22) substitutes a new rule 49.58 in order to exclude applications for section 11 orders in actions for dissolution and declarator of nullity of a civil partnership from the application of Part IX.

Paragraph 2(23) inserts a new Part XA into Chapter 49 in respect of causes under Chapters 3 and 4 of Part 3 of the 2004 Act.

Paragraph 2(24) extends the application of the simplified divorce procedure in Part XI of Chapter 49 to applications for divorce on the grounds of the issue of an interim gender recognition certificate.

Paragraph 2(25) inserts a new Part XIA into Chapter 49 in respect of simplified applications for the dissolution of a civil partnership.

Paragraph 2(26) makes amendments to rule 50.2 in Chapter 50 (causes under the Presumption of Death (Scotland) Act 1977) to provide for intimation of an action of declarator under section 1(1) of that Act to the missing person’s civil partner.

Paragraph 2(27) makes various amendments to the forms set out in the Appendix to the Rules