



Divorce (Scotland) Act 1976

1976 CHAPTER 39

Divorce

1 Irretrievable breakdown of marriage to be sole ground of divorce.

- (1) In an action for divorce the court may grant decree of divorce if, but only if, it is established in accordance with the following provisions of this Act that the marriage has broken down irretrievably.

References in this Act (other than in sections 5(1) and 13 of this Act) to an action for divorce are to be construed as references to such an action brought after the commencement of this Act.

- (2) The irretrievable breakdown of a marriage shall, subject to the following provisions of this Act, be taken to be established in an action for divorce if—
- (a) since the date of the marriage the defender has committed adultery; or
 - (b) since the date of the marriage the defender has at any time behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender; or
 - (c) the defender has wilfully and without reasonable cause deserted the pursuer; and during a continuous period of two years immediately succeeding the defender's desertion—
 - (i) there has been no cohabitation between the parties, and
 - (ii) the pursuer has not refused a genuine and reasonable offer by the defender to adhere; or
 - (d) there has been no cohabitation between the parties at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of the action and the defender consents to the granting of decree of divorce; or
 - (e) there has been no cohabitation between the parties at any time during a continuous period of five years after the date of the marriage and immediately preceding the bringing of the action.

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- (3) The irretrievable breakdown of a marriage shall not be taken to be established in an action for divorce by reason of subsection (2)(a) of this section if the adultery mentioned in the said subsection (2)(a) has been connived at in such a way as to raise the defence of *lenocinium* has been condoned by the pursuer's cohabitation with the defender in the knowledge or belief that the defender has committed the adultery.
- (4) Provision shall be made by act of sederunt—
- (a) for the purpose of ensuring that, where in an action for divorce to which subsection (2)(d) of this section relates the defender consents to the granting of decree, he has been given such information as will enable him to understand—
 - (i) the consequences to him of his consenting as aforesaid; and
 - (ii) the steps which he must take to indicate his consent; and
 - (b) prescribing the manner in which the defender in such an action shall indicate his consent, and any withdrawal of such consent, to the granting of decree; and where the defender has indicated (and not withdrawn) his consent in the prescribed manner, such indication shall be sufficient evidence of such consent.
- (5) Notwithstanding that irretrievable breakdown of a marriage has been established in an action for divorce by reason of subsection (2)(e) of this section, the court shall not be bound to grant decree in that action if in the opinion of the court the grant of decree would result in grave financial hardship to the defender.
- For the purposes of this subsection, hardship shall include the loss of the chance of acquiring any benefit.
- (6) In an action for divorce the standard of proof required to establish the ground of the action shall be on balance of probability.

2 Encouragement of reconciliation.

- (1) At any time before granting decree in an action for divorce, if it appears to the court that there is a reasonable prospect of a reconciliation between the parties, it shall continue, or further continue, the action for such period as it thinks proper to enable attempts to be made to effect such a reconciliation; and if during any such continuation the parties cohabit with one another, no account shall be taken of such cohabitation for the purposes of that action.
- (2) Adultery shall not be held to have been condoned within the meaning of section 1(3) of this Act by reason only of the fact that after the commission of the adultery the pursuer has continued or resumed cohabitation with the defender, provided that the pursuer has not cohabited with the defender at any time after the end of the period of three months from the date on which such cohabitation as is referred to in the said section 1(3) was continued or resumed as aforesaid.
- (3) The irretrievable breakdown of a marriage shall not be taken to be established in an action for divorce by reason of section 1(2)(c) of this Act if, after the expiry of the period mentioned in the said section 1(2)(c), the pursuer has resumed cohabitation with the defender and has cohabited with the defender at any time after the end of the period of three months from the date on which the cohabitation was resumed as aforesaid.
- (4) In considering whether any period mentioned in paragraph (c), (d), or (e) of section 1(2) of this Act has been continuous no account shall be taken of any period

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or periods not exceeding six months in all during which the parties cohabited with one another; but no such period or periods during which the parties cohabited with one another shall count as part of the period of non-cohabitation required by any of those paragraphs.

3 Action for divorce following on decree of separation.

- (1) The court may grant decree in an action for divorce notwithstanding that decree of separation has previously been granted to the pursuer on the same, or substantially the same, facts as those averred in support of the action for divorce; and in any such action (other than an action for divorce by reason of section 1(2)(a) of this Act) the court may treat an extract decree of separation lodged in process as sufficient proof of the facts upon which such decree was granted.
- (2) Nothing in this section shall entitle the court to grant decree of divorce without receiving evidence from the pursuer.

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