

*These notes relate to the Family Law (Scotland) Act 2006  
(asp 2) which received Royal Assent on 20 January 2006*

## **FAMILY LAW (SCOTLAND) ACT 2006**

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### **EXPLANATORY NOTES**

#### **THE ACT**

*Declarator of freedom and putting to silence: action no longer competent*

**Section 42: Action for declarator of freedom and putting to silence to cease to be competent**

61. An action for a declarator of nullity of marriage is not available if there is not even a semblance of marriage or pretended marriage that can be declared null. In the past, the remedy for this situation has been an action for declarator of freedom and putting to silence in which the pursuer asks the court for a declarator that he or she is free of any marriage with the defender and for a decree ordaining the defender to desist from asserting that he or she is the spouse of the pursuer and putting the defender to silence thereafter. Whilst there may have been a need for this type of action in days when irregular marriages were common and there was often doubt as to whether a couple had privately exchanged consent to marry, the action is now virtually unknown and has become obsolete. Section 42 therefore removes the remedy by providing that it shall no longer be competent to raise an action for declarator of freedom and putting to silence.