

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Divorce

Section 14: Collusion no longer to be bar to divorce

25. The aim of this section is to remove collusion as a bar to divorce, but it remains the case that at common law the court should not grant a decree of divorce if satisfied that the pursuer has put forward a false case or the defender has withheld a good defence. 'Collusion' is where the parties to a marriage agree to permit a false case to be substantiated, or to keep back a good defence. For example, this might involve the spouses falsifying an adulterous relationship in order to achieve a quicker divorce. However, given that there is broad agreement that existing legislative provisions relating to collusion no longer serve a useful purpose, section 14 of the Act provides that any rule of law which would prevent spouses from divorcing if they colluded will cease to have effect.
26. Subsection 14(2) repeals section 9 of the Divorce (Scotland) Act 1976. Section 9 of the 1976 Act abolished the oath of calumny. The oath of calumny was an oath by a pursuer to swear that there was no agreement between the parties to put forward a false case or to hold back a good defence. However, as collusion is being removed by section 14(1) there is no longer any need to maintain the abolition at section 9 of the 1976 Act. The oath of calumny is not revived.