



# Divorce (Scotland) Act 1976

## 1976 CHAPTER 39

### *Divorce*

#### **1** [<sup>F1</sup>Grounds 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 .

- [<sup>F2</sup>(a)] the marriage has broken down irretrievably [<sup>F3</sup>or
- (b) [<sup>F4</sup>subject to subsection (3B),] an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the date of the marriage, been issued to either party to the marriage.]

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
- <sup>F5</sup>(c) .....
- (d) there has been no cohabitation between the parties at any time during a continuous period of [<sup>F6</sup>one year] 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 [<sup>F7</sup>two] years after the date of the marriage and immediately preceding the bringing of the action.

(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

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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.

[<sup>F8</sup>(3A) For the avoidance of doubt, in relation to marriage between persons of the same sex, adultery has the same meaning as it has in relation to marriage between persons of different sexes.]

[<sup>F9</sup>(3B) Subsection (1)(b)—

- (a) does not apply where, under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued, but
- (b) continues to apply despite a full gender recognition certificate being issued to that person by the sheriff under section 4E of that Act.]

(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.

<sup>F10</sup>(5) . . . . .

(6) In an action for divorce the standard of proof required to establish the ground of the action shall be on balance of probability.

#### Textual Amendments

- F1** S. 1 title substituted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(2)**; S.I. 2005/54, art. 2
- F2** Words in s. 1(1) renumbered as s. 1(1)(a) (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(1)(a)**; S.I. 2005/54, art. 2
- F3** S. 1(1)(b) inserted (4.4.2005) by [Gender Recognition Act 2004 \(c. 7\)](#), s. 26, **Sch. 2 para. 6(1)(b)**; S.I. 2005/54, art. 2
- F4** Words in s. 1(1)(b) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 31(2)**, 36; S.S.I. 2014/287, art. 3, Sch.
- F5** S. 1(2)(c) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 12**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F6** Words in s. 1(2)(d) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 11(a)**, 46(2); S.S.I. 2006/212, art. 2
- F7** Word in s. 1(2)(e) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 11(b)**, 46(2); S.S.I. 2006/212, art. 2
- F8** S. 1(3A) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 5(2)**, 36; S.S.I. 2014/287, art. 3, Sch.
- F9** S. 1(3B) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 31(3)**, 36; S.S.I. 2014/287, art. 3, Sch.

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**Changes to legislation:** *There are currently no known outstanding effects for the Divorce (Scotland) Act 1976, Section 1. (See end of Document for details)*

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**F10** S. 1(5) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 13, 46(2); S.S.I. 2006/212, art. 2

**Changes to legislation:**

There are currently no known outstanding effects for the Divorce (Scotland) Act 1976, Section 1.