



# Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983

## 1983 CHAPTER 12

An Act to extend the jurisdiction of sheriffs in Scotland in relation to actions for divorce; to make provision as regards the sufficiency of evidence in certain actions for divorce in Scotland; to make new provision in Scotland as to the fees and outlays of counsel and solicitors in relation both to legal aid, and to the giving of legal advice and assistance under the Legal Advice and Assistance Act 1972; to make new provision in relation to the regulation of fees payable in the Scottish courts; and for connected purposes. [11th April 1983]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### JURISDICTION AND EVIDENCE IN DIVORCE ACTIONS

#### **1 Sheriffs to have jurisdiction in respect of actions for divorce**

In section 5 of the Sheriff Courts (Scotland) Act 1907 (which relates to the jurisdiction of sheriffs), after paragraph (2A) there shall be inserted—

“(2B) Actions for divorce”.

#### **2 Rule requiring corroboration not to apply in certain undefended actions for divorce**

- (1) Any rule of law whereby in any proceedings evidence tending to establish any fact, unless it is corroborated by other evidence, is not to be taken as sufficient proof of that

fact shall cease to have effect in relation to any action to which this section applies, and, accordingly, in any such action the court shall be entitled, if they are satisfied that any fact has been established by evidence which has been given in that action, to find that fact proved by that evidence notwithstanding that the evidence is not corroborated.

- (2) This section applies to such class or classes of undefended actions for divorce as the Lord Advocate may by order prescribe.
- (3) In this section " undefended action for divorce " means an action for divorce in which the defender has not entered appearance or having entered appearance, has not lodged defences or has withdrawn them.
- (4) An order under subsection (2) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## PART II

### FEES AND OUTLAYS IN RELATION TO LEGAL AID

#### 3 **Power of Secretary of State to make provision as to fees etc. in relation to legal aid**

After section 14 of the Legal Aid (Scotland) Act 1967 there shall be inserted the following section—

**“14A Fees and outlays of counsel and solicitors.**

In relation to legal aid, the Secretary of State may by regulations make such provision as seems to him appropriate in respect of the fees and outlays of counsel and solicitors, and, in particular, any such regulations may—

- (a) prescribe, either specifically or otherwise, the work in respect of which fees may be charged;
- (b) prescribe, either specifically or otherwise, rates or scales of payment of fees and outlays allowable and the conditions under which such fees and outlays may be allowed ;
- (c) provide for the assessment and taxation of fees and outlays, and for the review of any such assessment or taxation, either by the Secretary of State or by any other person ;
- (d) prescribe general principles in accordance with which those who may be responsible in that regard should conduct any such assessment, taxation or review;
- (e) prescribe, or provide for the prescription of, the forms to be used for the purposes of any regulations made under this section ;
- (f) make different provision for different cases ; and
- (g) include such supplementary, incidental and procedural provision as the Secretary of State thinks fit.”

## PART III

### COURT FEES

#### 4 Power of Secretary of State to regulate court fees

For section 2 of the Courts of Law Fees (Scotland) Act 1895 (which enables the High Court of Justiciary and the Court of Session to regulate court fees) there shall be substituted the following section—

##### **“2 Power of Secretary of State to regulate, court fees.**

- (1) The Secretary of State may, with the concurrence of the Treasury, by order regulate the fees payable—
  - (a) to any officer of any office or department connected with the Scottish courts the expenses of which are paid wholly or partly out of the Consolidated Fund or out of moneys provided by Parliament; and
  - (b) to the district court.
- (2) An order under subsection (1) above—
  - (a) may provide as to the times when, places where and persons to whom fees payable by virtue of this section are payable ;
  - (b) may, in relation to any such fees, provide—
    - (i) for exemption from the requirement to pay them ;
    - (ii) for their remission ;
    - (iii) for their modification ; and
    - (iv) as to the circumstances in which and persons by whom such exemptions, remissions and modifications may be made; and
  - (c) may make different provision in relation to—
    - (i) different courts ; and
    - (ii) different cases or classes of case.
- (3) In subsection (1) above, " the Scottish courts " means—
  - (a) the Court of Session ;
  - (b) the High Court of Justiciary ;
  - (c) the sheriff court;
  - (d) the court of commissioners for teinds (provision for which is made in section 8 of the Court of Session Act 1839);
  - (e) the court for hearing appeals under subsection (8)(b) of section 45 of the Representation of the People Act 1949 (appeals relating to the registration of electors);
  - (f) the election court constituted under section 110 of the said Act of 1949 ;
  - (g) the lands valuation appeal court (provision for which is made in section 7 of the Valuation of Lands (Scotland) Amendment Act 1879); and
  - (h) any other court specified as a Scottish court for the purposes of this section in an order made by the Secretary of State.

- (4) An order under subsection (1) or (3)(h) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

## PART IV

### SUPPLEMENTAL

#### 5 Finance

There shall be paid out of moneys provided by Parliament any increase in moneys so payable under any other Act which is attributable to the provisions of this Act.

#### 6 Minor and consequential amendments and repeals

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential upon the provisions of this Act.
- (2) The enactments specified in Schedule 2 to this Act are repealed to the extent specified in the third column of that Schedule.

#### 7 Citation, commencement and extent

- (1) This Act may be cited as the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.
- (2) The following provisions of this Act, that is to say, section 2, this section, and paragraph 2 of Schedule 1 (together with so much of section 6(1) above as relates to that paragraph) shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) The remaining provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions or for different purposes of the same provision.
- (4) This Act shall extend to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 6(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Court of Session Act 1830 c. 69*

- 1 In section 33 (which provides for the Court of Session to have exclusive jurisdiction in respect of certain consistorial actions), for the word " All " there shall be substituted the words " Subject to section 5(2B) of the Sheriff Courts (Scotland) Act 1907, all " .
- 2 In section 36 (which makes provision as to the sufficiency of evidence in consistorial actions)—
  - (a) at the beginning there shall be inserted the words " Subject to section 2 of the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983, " and
  - (b) after the word " enumerated" there shall be inserted the words " (including any actions for divorce brought in the sheriff court) " .

##### *The Conjugal Rights (Scotland) Amendment Act 1861 c. 86*

- 3 In section 8 (which empowers the Lord Advocate to appear in actions for declarator of nullity of marriage and divorce), after the word " divorce ", where it first appears, there shall be inserted the words " , whether (in the case of actions for divorce) in the Court of Session or in the sheriff court " .
- 4 In section 9 (which empowers the Court to make provision for the children of the marriage in any action for separation or divorce), after the word " divorce" there shall be inserted the words " , whether (in the case of actions for divorce) in the Court of Session or in the sheriff court, " .
- 5 In section 10 (which relates to the service of summonses in consistorial actions), after the word " action " where it first appears, there shall be inserted the words " in the Court of Session " .

##### *The Crofters Holdings (Scotland) Act 1886 c. 29*

- 6 At the end of section 29 (which provides, among other things, for the fixing of scales of costs and fees, and for their taxation) there shall be added the following—

“Provided that no scale of costs and fees fixed by the Commission, and no regulations made by them as to the taxation of such costs and fees, shall apply in respect of any of the matters which the Secretary of State may regulate under or by virtue of section 14A of the Legal Aid (Scotland) Act 1967”.

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*Status: This is the original version (as it was originally enacted).*

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*The Sheriff Courts (Scotland) Act 1907 c. 51*

- 7 In section 40 (which relates to the power of the Court of Session to regulate fees etc.), after the word " agents " there shall be inserted the words " (other than such of the fees of agents as the Secretary of State may regulate under or by virtue of section 14A of the Legal Aid (Scotland) Act 1967) " .

*The Administration of Justice (Scotland) Act 1933 c. 41*

- 8 In paragraph (g) of section 16 (which relates to the power of the Court of Session to regulate procedure etc. by Act of Sederunt), after the word " fees " there shall be inserted the words " (other than such fees as the Secretary of State may regulate under or by virtue of section 14A of the Legal Aid (Scotland) Act 1967) " .

*The Juries Act 1949 c. 27*

- 9 In subsection (1) of section 26 (which provides for fees payable by a party applying for a jury trial in a civil cause)—
- (a) for the words "Act of Sederunt", where they appear for the first time, there shall be substituted the words " an order made by the Secretary of State " ;
  - (b) after the words " as may be", where they appear for the second time,, there shall be inserted the word " so " ;
  - (c) the words " by Act of Sederunt", where they appear for the second time, shall cease to have effect.

*The Summary Jurisdiction (Scotland) Act 1954 c. 48*

- 10 In subsection (3) of section 76 (which relates to the regulation of fees by the High Court of Justiciary), for the words " affect the regulations enacted " there shall be substituted the words " empower the High Court to make any regulation which the Secretary of State is empowered to make " .

*The Legal Aid (Scotland) Act 1967 c. 43*

- 11 In subsection (7) of section 6 (which relates to the payment of solicitors and counsel appearing for persons receiving legal aid), for the words " not exceed those allowed under Schedule 2 to " there shall be substituted the words " be determined in accordance with regulations made under section 14A of " .

*The Sheriff Courts (Scotland) Act 1971 c. 58*

- 12 In subsection (2A) of section 37 (which relates to remits from the sheriff court to the Court of Session), after the words " sheriff court" there shall be inserted the words " , being an action for divorce or an action " .

*The Matrimonial Proceedings (Polygamous Marriages) Act 1972 c. 38*

- 13 In subsection (2)(c) of section 2 (which makes provision for matrimonial relief and declarations as to validity in respect of polygamous marriages in relation to Scotland), for the words " section 5 of the Divorce (Scotland) Act 1938 " there shall be substituted the words " section 1 of the Presumption of Death (Scotland) Act 1977 " .

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*Status: This is the original version (as it was originally enacted).*

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*The Legal Advice and Assistance Act 1972 c. 50*

- 14 In subsection (3) of section 3 (which relates to the financial limit on the prospective cost of advice and assistance).—
- (a) for the word " expenses " , in both places where it occurs, there shall be substituted the word " outlays " ;
  - (b) for the word " disbursements " , wherever it occurs, there shall be substituted the word " outlays " ;
  - (c) the words " charges or " , in both places where they occur, shall cease to have effect; and
  - (d) for the words " fees payable to " , in both places where they occur, there shall be substituted the words " the fees and outlays of " .
- 15 In section 4 (which relates to contributions from persons receiving advice or assistance), for the words " charge or fee " and the words " charges or fees " there shall be substituted the words " fees or outlays " .
- 16 In section 5 (which relates to the payment of charges or fees otherwise than through the client's contribution)—
- (a) for the words " charges or fees " , wherever they occur, there shall be substituted the words " fees or outlays " ;
  - (b) subsection (6) shall cease to have effect.
- 17 In section 6 (which provides for certain provisions of the Legal Aid (Scotland) Act 1967 to have effect in relation to legal advice and assistance as they have effect in relation to legal aid)—
- (a) in subsection (1)(b), for the word " 15 " there shall be substituted the words " 14A " ;
  - (b) in subsection (3), before the words " and section 15 " there shall be inserted the words " , 14A " .

*The Domicile and Matrimonial Proceedings Act 1973 c. 45*

- 18 In section 8 (which relates to the jurisdiction of the sheriff court).—
- (a) in subsection (1), at the end there shall be added the words " or divorce " ;
  - (b) in subsection (2) of the said section, after the word " separation " there shall be inserted the words " or divorce " ;
  - (c) in subsection (3) of the said section, after the word " separation " there shall be inserted the words " or divorce " ; and
  - (d) in subsection (4) of the said section, after the word " separation " there shall be inserted the words " or divorce " .
- 19 In paragraph 8 of Schedule 3 (which relates to the sisting of consistorial actions)—
- (a) after the words " in the Court of Session " there shall be inserted the words " or in the sheriff court " ;
  - (b) after the word " Court " where it appears for the second time there shall be inserted the word " concerned " .
- 20 In paragraph 9(3) of the said Schedule the words " on the Court of Session " shall cease to have effect.

*Status: This is the original version (as it was originally enacted).*

*The Divorce (Scotland) Act 1976 c. 39*

- 21 In subsection (1)(ii) of section 6 (which empowers the court to make orders relating to settlements and other dealings), for the words " out of the jurisdiction of the court" there shall be substituted the words " furth of Scotland " .
- 22 In section 13(1) (which defines terms used in the Act), in the definition of " court" for the words from " — (a)" to " require " there shall be substituted the words " , in relation to any action, the Court of Session or the sheriff court, as the case may require. " .

*The Matrimonial Homes (Family Protection) (Scotland) Act 1981 c. 59*

- 23 In subsection (2) of section 13 (which relates to the transfer of a tenancy on the granting of a decree of divorce or nullity of marriage), for the words from the beginning to "marriage," there shall be substituted the words " The Court of Session or a sheriff, in granting decree in an action for divorce, and the Court of Session, in granting decree in an action for nullity of marriage, may " .

*The Civil Jurisdiction and Judgments Act 1982 c. 27*

- 24 In Schedule 14 (repeals) in the entry relating to the Sheriff Courts (Scotland) Act 1907, for the words " the first " Provided " " there shall be substituted the words " " Provided that actions " " .

SCHEDULE 2

Section 6(2).

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
1 & 2 Geo. 4. c. 38.	The Court of Session Act 1821.	Section 31.
7 Edw. 7. c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 40, the words from " and, with the " to " fees of court".
15 & 16 Geo. 5. c. 33.	The Church of Scotland (Property and Endowments) Act 1925.	In section 11(3), the words from " The Court of Session " to " the said fees."
1 & 2 Geo. 6. c. 50.	The Divorce (Scotland) Act 1938.	The whole Act.
12 & 13 Geo. 6. c. 27.	The Juries Act 1949.	In section 26(1), the words " by Act of Sederunt" where they appear for the second time.
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	Section 16(1)(b)(i),(2) and (4), and Schedule 2.



Chapter	Short Title	Extent of Repeal
<a href="#">1972 c. 50.</a>	The Legal Advice and Assistance Act 1972.	In section 3(3) the words "charges or " in both places where they occur. Section 5(6).
<a href="#">1973 c. 45.</a>	The Domicile and Matrimonial Proceedings Act 1973.	In Schedule 3, in paragraph 9(3) the words " on the Court of Session ".