

1989 No. 582 (S.67)

EVIDENCE

The Evidence in Divorce Actions (Scotland) Order 1989

Made - - - - - *23rd March 1989*

Coming into force *3rd April 1989*

The Lord Advocate, in exercise of the powers conferred on him by section 8(4) of the Civil Evidence (Scotland) Act 1988(a), and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before and approved by resolution of each House of Parliament:

1. This Order may be cited as the Evidence in Divorce Actions (Scotland) Order 1989 and shall come into force on 3rd April 1989.

2.—(1) The provisions of this Order shall have effect in relation to the following class of actions, namely actions for divorce in which—

- (a) the action is undefended;
- (b) the action is brought in reliance on the facts set out in section 1(2)(d) (2 years non-cohabitation and the defender's consent to decree) or in section 1(2)(e) (5 years non-cohabitation) of the Divorce (Scotland) Act 1976(b);
- (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
- (d) there are no children of the marriage under the age of 16 years;
- (e) neither party applies for an order for financial provision on divorce; and
- (f) neither party suffers from mental disorder within the meaning of section 1(2) of the Mental Health (Scotland) Act 1984(c).

(2) For the purpose of this Order an action shall be treated as undefended when the defender has not entered appearance or, having entered appearance, has not lodged defences or has withdrawn them.

3. Section 8(3) of the Civil Evidence (Scotland) Act 1988 shall not apply in respect of the class of action specified in article 2 above.

Lord Advocate's Chambers
23rd March 1989

Fraser of Carmyllie
Lord Advocate

(a) 1988 c.32.
(b) 1976 c.39.
(c) 1984 c.36.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that the requirement of section 8(3) of the Civil Evidence (Scotland) Act 1988 should not apply to a specified class of divorce action.

Section 8(3) requires that evidence to establish the grounds of action for divorce cases, among others, must consist of or include evidence from a source other than that of a party to the marriage. By means of this Order that requirement is not to apply to actions of divorce brought on the basis of 2 years non-cohabitation and with consent of the defender or of 5 years non-cohabitation where in both cases the action is undefended and certain other criteria are fulfilled. These are actions in which a simplified divorce procedure is available either in the Court of Session under Rule 170E to 170L of the Court of Session Rules (S.I. 1965/321 as amended by S.I. 1982/1679) or in the sheriff court under Ordinary Cause Rules 135 to 143 (the First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted by S.I. 1983/747 and subsequently amended by S.I. 1984/255, S.I. 1986/1230 and S.I. 1986/1946).

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