
Introduction

The Family Law (Scotland) Act 2006 includes measures to reduce the length of separation required before a couple can divorce. It also abolishes the concept of "common law marriages and makes new provisions in relation to religious divorces.

Separation periods before divorce

If someone wishes to seek a divorce, they must satisfy the court that the marriage is no longer working. This is called "irretrievable breakdown of marriage" and it can be proved in one of four ways:

a) if one spouse has subjected the other to "intolerable behaviour", the aggrieved party can apply for a divorce at any time, as long as they can provide relevant evidence to satisfy the court.

b) if one spouse has committed adultery, the aggrieved party can apply for a divorce at any time, as long as they can provide relevant evidence to satisfy the court

c) if the couple has been separated for more than one year and both parties agree to the divorce, they can apply to be divorced after one year.

d) if one of the parties does not agree to the divorce, the other party can apply to be divorced after they have lived apart for at least two years.

"Common law marriages"

It is a common misunderstanding that a couple will have established a "common law marriage" after living together for a period of time. This is not the case and common law marriage does not exist in Scotland. A very old form of arrangement called "marriage by cohabitation with habit and repute" did exist but this has been abolished by Section 3 of the 2006 Act.

A couple who have never been married do not have the same legal rights as a married couple, no matter how long they have lived together.

Religious divorces

This provision applies if a couple have agreed that they wish to divorce and their faith requires that they obtain a religious divorce in addition to the civil divorce granted by the courts. If one of the parties is refusing to co-operate in obtaining the religious divorce, the other party can apply to the court requesting that the court delay the grant a decree of divorce until the un-cooperative party takes steps to assist on obtaining the religious divorce.

Financial provision: valuation of matrimonial property

This section seeks to ensure that there will be a fair division of matrimonial property between divorcing spouses. The property will be valued at a date agreed between the parties. If they cannot agree, then the court has the power to attach a value on the date it makes the order dividing up the property.