

SHERIFFDOM OF LOTHIAN AND BORDERS

PRACTICE NOTE NO 1, 2012

SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS: GUIDANCE FOR SHERIFFS AND PRACTITIONERS

1. Section 8 of the Civil Evidence (Scotland) Act 1988 (“the Act”) provides:

8.— Evidence in actions concerning family relationships, etc.

(1) In any action to which this subsection applies (whether or not appearance has been entered for the defender), no decree or judgment in favour of the pursuer shall be pronounced until the grounds of action have been established by evidence.

(2) Subsection (1) above applies to actions for divorce, for dissolution of civil partnership, for separation of spouses or of civil partners, for declarator of marriage or of nullity of marriage or of civil partnership or for parentage or non-parentage.

(3) Subject to subsection (4) below, in any action for divorce, separation or declarator of marriage or nullity of marriage, the evidence referred to in subsection (1) above shall consist of or include evidence other than that of a party to the marriage (or alleged or purported marriage).

(3A) Subject to subsection (4) below, in any action for dissolution of civil partnership, separation of civil partners or declarator of nullity of civil partnership, the evidence referred to in subsection (1) above shall consist of or include evidence other than that of a partner in the civil partnership (or purported civil partnership).

(4) The Lord Advocate may by order made by statutory instrument provide that subsection (3) or (3A) above shall not apply, or shall apply subject to such modifications as may be specified in the order, in respect of such class or classes of action as may be so specified.

(5) No order shall be made under this section unless a draft of the order has been laid before Parliament and has been approved by resolution of each House.

2. In terms of paragraphs 2 and 3 of the Evidence in Divorce Actions (Scotland) Order 1989 (1989 SI 582) the Lord Advocate disappplied section 8(3) of the Act in simplified divorce applications to which Part XI of Chapter 33 of the Ordinary Cause Rules 1993 ("the 1993 Rules") refers. So no corroboration is required in the case of these applications.

3. Part XI of Chapter 33A of the 1993 Rules ignores the fact that no order has been made by the Lord Advocate to disapply section 8(3A) of the Act in the case of simplified dissolution of civil partnership applications. It follows that, despite the terms of Chapter 33A, in the case of such an application the evidence in support of the ground of action must consist of or include evidence other than that of a partner in the civil partnership which is the subject of the application.

4. In order to comply with section 8(1) and (3A) of the Act a simplified dissolution of civil partnership application should be signed by the applicant in accordance with rule 33A.67(1) or (2) (as the case may be) of the 1993 Rules and should be supported by an affidavit by a witness who is not a partner in the civil partnership which is the subject of the application. This additional affidavit should be as nearly as may be in the form set out in the schedule to this Practice Note.

5. When completed the affidavit should be sent to the sheriff clerk either along with the simplified dissolution of civil partnership application to which it relates or as soon as possible after the application itself has been sent.

6. In this context "affidavit" has the same meaning as in rule 1.2(2)(a) of the 1993 Rules.

(signed) **Mhairi M Stephen**

Sheriff Principal of Lothian & Borders

20 February 2012

Schedule

I, *(Insert full name of witness)*

.....

residing at *(insert present home address of witness)*

.....
.....
.....

SWEAR that to the best of my knowledge and belief the facts stated in the paragraph headed PERIOD OF SEPARATION in the simplified dissolution of civil partnership application by *(insert applicant's full name and address)* are true.

Signature of

witness.....

To be
completed
by Justice
of the
Peace,
Notary
Public or
Commissioner for
Oaths

SWORN at *(insert place)*

.....

this.....day

of.....20.....

before me *(insert full name)*

.....

(insert full address)

.....

.....

.....

Signature.....

*Justice of the Peace/ Notary Public/Commissioner for Oaths

(Delete as appropriate)*