



**Scottish
Civil Justice
Council**

**PUBLIC CONSULTATION: on the simplified
procedures for divorce and dissolution**

19 November 2024

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The accompanying documents support the proposals made within this paper:

- *Draft Rules*
- *Business and Regulatory Impact Assessment (BRIA)*
- *Equalities Impact Assessment (EQIA)*
- *Respondent Information Form*

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SECTION 1: RESPONDING TO THIS CONSULTATION

1. The Family Law Committee (FLC) of the Council is undertaking this consultation on the draft rules that would be required to extend the ability to use the *simplified procedures* to potential applicants with children under the age of 16 who have made appropriate arrangements for the welfare of their children.
2. Feedback on the draft rules supporting that proposed change is sought from members of the public, the parties currently using a *simplified procedure* or who have done so in the past, the judiciary, the legal profession, court officials, and officials in the Scottish Legal Aid Board.
3. This consultation will be open for twelve weeks. Written responses are invited by **Friday 14 February 2025**.
4. To respond please email scjc@scotcourts.gov.uk with your response, along with a completed **Respondent Information Form**.

How will your response will be handled?

5. Your response will be handled in line with the information you provide within your Respondent Information Form. If you are content for your response to be published it will be uploaded to our website. If you ask for your response not to be published the Council will regard it as confidential and treat it accordingly. All respondents should be aware that the Council is subject to the provisions of the Freedom of Information (Scotland) Act 2002. If a Freedom of Information (FOI) request is received about the responses to this consultation, any of the responses (including those not published) may have to be made available in order to respond.

Why run a Public Consultation?

6. Using the *simplified procedures* of the court to bring a marriage or civil partnership to an end represents a significant life event. Hence a full public consultation is appropriate to secure the widest possible range of feedback.

Who are we consulting with?

7. The Council would welcome responses from the following:

General Public:

Those who have used either of the *simplified procedures*

Those who may have a general interest in those *simplified procedures*

Those who may have a general interest in divorce or dissolution more widely

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Advice and Assistance:

Those providing advice to people seeking a divorce or dissolution

Judiciary:

Senators of the College of Justice

Sheriffs Principal

Sheriffs and Summary Sheriffs Association

Practitioners:

Faculty of Advocates

Law Society of Scotland

Officials:

Scottish Courts and Tribunals Service

Scottish Legal Aid Board

8. To support the policy interests of Scottish Ministers, the Council has forwarded this consultation paper to Scottish Government officials.

Comments and complaints

9. If you wish to provide any feedback on this consultation, or how it is being conducted, then please email scjc@scotcourts.gov.uk.

SECTION 2: EXECUTIVE SUMMARY

Purpose

10. To seek feedback on the procedural changes required to extend the scope of the *simplified procedures*; to enable potential applicants with children to use that more straightforward option.

Background

11. The following definitions are relevant when reading this paper:

Term	Meaning
<i>simplified procedures</i>	<p>A collective term for the four relevant court procedures provided to support the court making its decisions on the papers (when appropriate):</p> <p><u>Sheriff Courts:</u></p> <ul style="list-style-type: none"> • OCR CH 33 (Family Actions) – Part XI (Simplified Divorce). • OCR CH 33A (Civil Partnership Actions) – Part XI (Simplified Dissolution), <p><u>Court of Session:</u></p> <ul style="list-style-type: none"> • RCS CH 49 (Family Actions) – Part XI (Simplified Divorce). • RCS CH 49 (Family Actions) – Part XIA (Simplified Dissolution).
<i>ordinary procedure for family actions</i>	<p>A collective term that indicates the ‘ordinary procedure’ for a family action would be used:</p> <p><u>Sheriff Courts:</u></p> <ul style="list-style-type: none"> • OCR CH 33 (Family Actions) – excluding Part XI • OCR CH 33A (Civil Partnership Actions) – excluding Part XI <p><u>Court of Session:</u></p> <ul style="list-style-type: none"> • RCS CH 49 (Family Actions) – excluding Part XI & Part XIA

12. At present the *simplified procedures* cannot be used by those in a relationship that have been able to agree suitable arrangements for the welfare of their children. That situation arises because the current criteria restricts applications to those with “no children of the marriage under the age of 16”. Hence a subset of potential applicants are unnecessarily redirected to use the more complex, more costly, and more time consuming *ordinary procedure for family actions*.

13. The Council considers that to be unduly burdensome and procedurally unfair. Subject to including appropriate safeguards, the proposal is to recognise those adults who can agree the arrangements needed for their own children without the need for an intervention by the courts. Hence this consultation seeks feedback

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on the draft rules needed to secure sufficient relevant information about the children.

14. Readers should note that the Council cannot proceed to implement these proposed changes without some prerequisite changes in the law:
- To amend the existing legal requirement for third party evidence¹ to be provided in these cases; and
 - To amend the legal aid regulations to cover any hearing that needed to be fixed under a *simplified procedure* to consider the welfare of a child.
15. The Scottish Government will be consulting separately on those law changes.
16. If the Scottish Ministers do decide to proceed; an appropriate statutory instrument would be laid to support scrutiny of those changes by the Scottish Parliament.

Divorce and Dissolution

17. The 'divorce and dissolution' category of court business includes six distinct procedures:

Sheriff Courts:

- The *ordinary procedure for family actions* in the sheriff courts.
- The *simplified procedure* for divorce in the sheriff courts:
 - *OCR CH 33 (Family Actions) – Part XI (Simplified Divorce)*.
- The *simplified procedure* for dissolution in the sheriff courts:
 - *OCR CH 33A (Civil Partnership Actions) – Part XI (Simplified Dissolution)*,

Court of Session:

- The *ordinary procedure for family actions* in the Court of Session.
- The *simplified procedure* for divorce in the Court of Session:
 - *RCS CH 49 (Family Actions) – Part XI (Simplified Divorce)*.
- The *simplified procedure* for dissolution in the Court of Session:
 - *RCS CH 49 (Family Actions) – Part XIA (Simplified Dissolution)*.

The 'ordinary procedure for family actions':

18. Where an applicant elects not to use a *simplified procedure*, or they are ineligible to do so, they will use the *ordinary procedure for family actions*. That procedure requires applicants to progress through the relevant "steps in legal process" in more detail and may require attendance at hearings.
19. Most applicants will seek legal advice in order to use this more complex procedure and its associated forms.

¹ Under section 8 of the Civil Evidence (Scotland) Act 1988

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The simplified procedures:

20. The majority (57%) of applicants for a divorce or dissolution will opt to use one of the *simplified procedures* as they were designed for use by party litigants without the need to seek legal advice. They are simplified to the extent the court can take timely decisions on the papers and without the need for hearings. That in turn relies on the quality of the information submitted by way of the specified forms (*refer annex 1*); and the ability to then hold a party to account for the accuracy of the statements made.

The transaction volumes:

21. There is a long and well-established pattern where 99% of divorce applications will be registered in the sheriff courts with less than 1% registered in the Court of Session (usually due to international elements arising within a case). For the applications registered in the sheriff courts, during the 2022/23 year:

*There were **8,424 applications for divorce** - the majority (4,982 / 57%) of applicants elected to use the *simplified procedure*, with the remainder (3,442 / 43%) using the *ordinary procedure for family actions*; and*

*There were **58 applications for dissolution of a civil partnership** - the majority (42 / 72%) of applicants made use of the *simplified procedure*, with the remainder (16 / 28%) using the *ordinary procedure for family actions*.*

22. Readers can find further data on actions for both 'divorce and dissolution' within the latest official [report](#) on Civil Justice Statistics; including the [spreadsheet](#) that provides the *supplementary tables* to that report.

The existing rules

23. The 4 existing sets of *simplified procedure* rules can be viewed online:

SHERIFF COURTS:

Ordinary Cause Rules (OCR) –

- CH 33 (Family Actions) – Part XI (SIMPLIFIED DIVORCE APPLICATIONS) - *Rule 33.73 to 33.82*; and
- CH 33A (Civil Partnership Actions) - PART XI SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS - *Rule 33A.66 to 33A.75*
<https://scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court--civil-procedure-rules/ordinary-cause-rules>

COURT OF SESSION:

Rules of the Court of Session (RCS) - CH49 (Family Actions) –

- Part XI (SIMPLIFIED DIVORCE APPLICATIONS) - *Rule 49.72 to 49.80*; and

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- PART XIA (SIMPLIFIED APPLICATIONS FOR DISSOLUTION OF CIVIL PARTNERSHIPS) - *Rule 49.80A.1 to 49.80I.2*
<https://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

24. Annex 2 summarises the amendments made to those rules since they were issued in 1993 and 1994 respectively.

The Policy Objectives

25. For these proposed rule changes the policy objectives sought are:

- *To encourage negotiation and reduce conflict* – by extending access to the *simplified procedures* to those uncontested cases where the parties have been able to agree suitable arrangements for the welfare of any children of the relationship that are under 16;
- *To protect the best interests of each child* – through the provision of sufficient information for the court to make appropriate enquiries² into all of the arrangements made for the children of that relationship; and
- *To make the rules “easy to understand”* – by addressing other miscellaneous changes requested since the last amendments were made.

SECTION 3 – THE PROPOSALS FOR CONSULTATION

26. This section summarises the proposed changes to the *simplified procedures*, which should be read in conjunction with the ‘draft rules’ provided.

What happens at present?

27. Under the current criteria for both of the *simplified procedures* the courts can only accept an application when there are no children of the relationship under the age of 16. In practice that excludes many potential applicants who were able to amicably agree arrangements for their children with no dispute about their upbringing and neither party contesting the application made. The likely “user experience for that subset of potential applicants raises several policy issues:

- *COST* – the requirement to use the more detailed steps in legal process under the *ordinary procedure for family actions* means those users will incur higher costs for legal representation, court fees etc.;

² Under [section 12](#) of the Children (Scotland) Act 1995

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- *TIME* – those more detailed steps in legal process will take added time for applicants to familiarise themselves with the procedure, and that in turn will delay ‘closure’ of their legal relationship;
- *EFFICIENCY* – if the court was able to make decisions on the papers for those cases it could significantly reduce that added delay, allowing the courts to meet the needs of those potential applicants more timeously; and
- *LEGAL AID* – some of the cases progressed under the *ordinary procedure for family actions* will qualify for civil legal aid but that option will no longer apply if that case is shifted to a *simplified procedure*. In practical terms the absence of that legal aid funding is offset by either the lower legal costs incurred if using a legal representative for proceedings under a *simplified procedure* or the absence of any legal costs at all if progressing that application themselves as an unrepresented party (also referred to as a party litigant).

What is being proposed?

28. The proposal is that applicants should be able to progress their application via the relevant *simplified procedure* providing that:
- They have mutually agreed suitable financial arrangements for the upbringing of each child;
 - There is no dispute about each child’s welfare; and
 - The parties are not otherwise contesting the action.
29. The aim of that proposed change in procedure is to reduce the burden on applicants, improve procedural fairness, and allow more timeous decisions. To achieve that outcome the following changes are made within the draft rules:

Ordinary Cause Rules:

- Rules inserted to support the provision of the information:
 - Rule 33.80A (Consideration of arrangements for upbringing of child of the marriage); and
 - Rule 33A.73A (Consideration of arrangements for upbringing of child of the marriage).
- Rules inserted to support fixing a hearing by exception and require the intimation of that hearing:
 - Rule 33.80B (Hearing to consider arrangements for upbringing of child of the marriage); and
 - Rule 33A.73B (Hearing to consider arrangements for upbringing of a child of the family).

Rules of the Court of Session:

- Rules inserted to support the provision of the information required:

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- Rule 49.78A (Consideration of arrangements for upbringing of child of the marriage); and
- Rule 49.80GA (Consideration of arrangements for upbringing of child of the family)
- Rules inserted to fixing a hearing by exception and require the intimation of that hearing:
 - Rule 49.78B (Hearing to consider arrangements for upbringing of child of the marriage); and
 - Rule 49.80GB (Hearing to consider arrangements for upbringing of a child of the family).

What will that mean in practice?

Providing the information required for each child:

30. To enable the court to make decisions on the papers the parties must send the information the court requires on their children via a new form, which is to be accompanied by the child's birth certificate:

SHERIFF COURT	Ref.	New Form
Simplified Proc. - for Divorce	F33B	Form of arrangements for upbringing of child of the marriage under 16 years of age
Simplified Proc. - for Dissolution	CP30A	Form of arrangements for upbringing of child of the family under 16 years of age
COURT OF SESSION	Ref.	New Form
Simplified Proc. - for Divorce	49.73-D	Form of arrangements for upbringing of child of the marriage under 16 years of age
Simplified Proc. - for Dissolution	49.80B-D	Form of arrangements for upbringing of child of the family under 16 years of age

31. These new forms have been designed with the needs of section 11 and 12 of the Children (Scotland) Act 1995³ in mind. Those forms are submitted by the applicant, and require the other party to consent to the arrangements made.

Checking the arrangements made:

32. In order to protect the best interests of each child the rules require consideration by the court of all arrangements that could or should be made:

- *For contested proceedings* – the applicant cannot use a *simplified procedure* if the arrangements for children of the relationship are not yet settled.
- *For uncontested proceedings* – having reviewed the arrangements for the upbringing of the children as settled between the parties, the court is to make its own assessment of all the arrangements that could potentially be made⁴. To fulfil that wider statutory duty, the court needs to be satisfied on the full range of orders that could arise:

³ <https://www.legislation.gov.uk/ukpga/1995/36/contents>

⁴ Under section 12 of the Children (Scotland) Act 1995

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- Whether the issues giving rise to such orders have been adequately addressed in the arrangements agreed by the parties; and
- Whether the court itself should consider making any orders, including the fixing of a hearing.

Fixing a hearing by exception:

33. If the court is dissatisfied on any of the arrangements made for a child as set out in the forms, it may choose to fix a hearing⁵. That hearing must be intimated to the parties by using 1 of the 4 new forms added for that purpose:

SHERIFF COURT	Ref.	New Form
Simplified Proc. - for Divorce	F38A	Form of intimation to spouses of a hearing under rule 33.80A
Simplified Proc. - for Dissolution	CP37A	Form of intimation to civil partners of a hearing under rule 33A.73A
COURT OF SESSION	Ref.	New Form
Simplified Proc. - for Divorce	49.78A	Form of intimation to spouses of a By Order Roll hearing under rule 49.78A
Simplified Proc. - for Dissolution	49.80GA	Form of intimation to civil partners of a By Order Roll hearing under rule 49.80GA

34. Both parties are expected to attend any hearing fixed, which can be continued.

Remitting cases (to the ordinary procedure for family actions):

35. Where the court still remains dissatisfied post a hearing then it would be inappropriate to continuing proceedings under a *simplified procedure*. As a safeguard the court would use its existing powers to remit the case to the *ordinary procedure for family actions* to ensure those concerns are addressed.

The capacity to make decisions

36. A party to divorce or dissolution proceedings who suffers from any type of mental health issue could find themselves excluded from using a *simplified procedure* as both OCR rule 33.73 (1) and 33A.66 (1) currently state those procedures can only be used – “*if, and only if, ... neither party ... suffers from mental disorder*”.

37. When interpreting that requirement the parties may then look to the definition stated under section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 which reads:

Section 328 - Meaning of “mental disorder”

- (1) Subject to subsection (2) below, in this Act “mental disorder” means any—
- (a) mental illness;
 - (b) personality disorder; or

⁵ Adding a hearing is seen as preferable to the alternative - of dismissing any application where the court was unable to satisfy itself as to the arrangements on the basis of the information provided

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(c) learning disability, however caused or manifested; and cognate expressions shall be construed accordingly.

(2) A person is not mentally disordered by reason only of any of the following—

- (a) sexual orientation;*
- (b) sexual deviancy;*
- (c) transsexualism;*
- (d) transvestism;*
- (e) dependence on, or use of, alcohol or drugs;*
- (f) behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person;*
- (g) acting as no prudent person would act.*

38. The original policy intention when making reference to “mental disorder” would have been to avoid any one party taking advantage of the other. That said it could be seen as discriminatory if it unfairly excludes a person from using a *simplified procedure* that could have got to a decree faster and at less cost.

39. The main outcome sought is to establish whether a person has the ‘mental capacity’ to make a decision in the full knowledge of the consequences, rather than a need for the court to explore the impact of every possible mental illness.

40. The proposal is to replace that current reference to “mental disorder with a reference to “mental incapacity” instead; and then add an associated definition of incapacity which would read “someone who is incapable of: acting, making decisions, communicating decisions, understanding decisions, or retaining memory of decisions⁶. The Council would welcome feedback on that additional change which has not yet been narrated within the draft rules; as the Scottish Government will also address that option when consulting on the other proposed changes to section 8 of the Civil Evidence (Scotland) Act 1988.

SECTION 4 – THE CONSULTATION QUESTIONS

41. Given the proposed extension to the *simplified procedures* set out in section 3, the Council would appreciate your feedback on the following questions:

Question 1 – Do you agree that both the ‘*simplified procedure for divorce*’ and the ‘*simplified procedure for dissolution*’ should be extended to parties who are able to agree suitable arrangements for the upbringing of any children still under the age of 16? If not, why not?

Question 2 – Do you think the 4 new forms added (*F33B / CP30A / 49.73-D / 49.80B*) on the arrangements made for children will gather sufficient information for the court to consider the welfare of the children of a marriage or civil partnership? If not, why not?

⁶ That definition of “incapacity” is as used within the Adults With Incapacity (Scotland) Act 2000

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Question 3 – Do you agree that for OCR rule 33.73 (1) and 33A.66 the term “mental disorder” should be replaced with a reference to “mental capacity”? If not, why not?

Question 4 – Are there any additional changes that you would suggest regarding the procedures for a simplified divorce or simplified dissolution?

SECTION 5 – OTHER AMENDMENTS MADE

42. This section notes other miscellaneous changes that have been or will be included within the amended rules to reflect previous changes in the law and/or pre-existing policy positions agreed by the Council.

Marriage and Civil Partnership (Scotland) Act 2014

43. In 2004 the grounds for divorce in [section 1](#) of the Divorce (Scotland) Act 1976 were updated to include the issue of an *interim gender recognition certificate*, with the amended rules requiring an original or certified copy of that certificate. At that time a certificate was deemed sufficient to support “decisions made on the papers” so applicants could use a *simplified procedure*. The Marriage and Civil Partnership (Scotland) Act 2014 then inserted subsection 3B into [section 1](#) of the Divorce Scotland Act 1976 to reflect the differing routes from an interim certificate to a full certificate. In practice that can impact on a party’s ability to provide timely evidence to the court, which can be problematic when trying to make “decisions on the papers”. Hence the draft rules shift those (very rare) applications out of the *simplified procedure* and into the *ordinary procedure for family actions*:

Sheriff Court - Ordinary Cause Rules (OCR):

- To withdraw references to section 1(1)(b) of the Divorce (Scotland) Act 1976, or section 117(3)(b) of the Civil Partnership Act 2004, from the interpretation clauses (OCR rule 33.73); and
- To withdraw the references made to the existing Forms (OCR F33A & CP31) and withdraw the forms themselves.

Court of Session - Rules of the Court of Session (RCS):

- To withdraw references to section 1(1)(b) of the Divorce (Scotland) Act 1976, or section 117(3)(b) of the Civil Partnership Act 2004, from the interpretation clauses (RCS rule 49.72 & 49.80A.1); and
- To withdraw the references made to the existing Forms (RCS 49.73-C & 49.80B-C) and withdraw the forms themselves.

44. In 2021 the Civil Partnership (Scotland) Act 2020 then made further amendments to section 117 of the Civil Partnership Act 2004.

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Postponement of a decree (where there is a religious impediment to marriage)

45. The law provides for postponement of a decree (and its recall) under [section 3A](#) of the Divorce (Scotland) Act 1976, and [section 121A](#) of the Civil Partnership Act 2004. The rules need to convey those applications are to be made by lodging a minute in process. The Council already has rules in place (OCR rule 33.27A and RCS Rule 49.27C) to convey that as the mechanism in divorce proceedings. The consequential amendment made replicates that mechanism when seeking the postponement of a decree in dissolution proceedings.

Disapplying the need for third party evidence

46. The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (as originally enacted) included [section 2](#) so that a requirement for corroboration would not apply in certain undefended actions for divorce. Under the regulations made the requirement for the court to consider evidence from a third party was disappplied to enable decisions on the papers in uncontested cases, with that option then restated as section 8 (4) of the Civil Evidence (Scotland) Act 1988.

47. The two latest sets of regulations ([UKSI 1989 / 582](#) & [SSI 2012/111](#)) repeat that evidential exclusion. If the proposed extension is approved, the criteria listed in those regulations will need to be updated to ensure all decrees issued under the *simplified procedures* remain valid; and avoid legal challenges on the basis that third party evidence was not considered.

Inserting guidance in forms

48. One of the statutory guiding principles for the Council is to provide rules that are “as clear and easy to understand as possible”. Hence the Council has a policy position of inserting guidance into forms to make them “user friendly”. Some years ago a user group developed a package of such “user friendly” forms for use with simplified divorce and dissolution actions. Those [downloadable](#) forms on the SCTS website are supplementary to those prescribed by statute⁷. They are now replicated by the statutory forms in the draft rules, to support those supplementary forms being withdrawn.

SECTION 6 – THE NEXT STEPS

49. Following the closing date for this consultation the next steps will be:

Responses - the individual responses will be uploaded to the consultation page of the website (where respondents give permission);

⁷ Alternate forms are acceptable under section 21 of the Interpretation and Legislative Reform (Scotland) Act 2010. The tests are “the difference does not materially affect the effect of the form” & “it is not misleading”.

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Analysis of Responses – the secretariat will prepare the Analysis of Responses report for consideration by the Committee, and publication;

Consultation Response – once the analysis has been considered, the Committee will approve finalised rules for consideration by the Council; and

Approval of the amendments – if approved by Council, the draft rules will be proposed to the Court of Session for their consideration and approval (in due course).

50. Subject to the enactment of the prerequisite law changes, the next steps following approval and signing by the Court of Session would be:

Advance Publication - the amending Act of Sederunt would be laid in the Scottish Parliament and published via legislation.gov.uk;

Familiarisation - a period would be provided between the date the instrument is made and the date it comes into force to allow practitioners, court officials, judiciary etc. time to familiarise themselves with the change; and

Commencement – the amended rules will come into force on a target date to be agreed between the Council, the SCTS and the Scottish Government, consistent with commencement of the prerequisite law change.

**Secretariat to the Scottish Civil Justice Council
November 2024**

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BIBLIOGRAPHY

Existing Rules

SHERIFF COURTS:

Ordinary Cause Rules (OCR) –

- CH 33 (Family Actions) – Part XI (SIMPLIFIED DIVORCE APPLICATIONS) - *Rule 33.73 to 33.82*; and
- CH 33A (Civil Partnership Actions) - PART XI SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS - *Rule 33A.66 to 33A.75*

<https://scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court--civil-procedure-rules/ordinary-cause-rules>

COURT OF SESSION:

Rules of the Court of Session (RCS) - CH49 (Family Actions) –

- Part XI (SIMPLIFIED DIVORCE APPLICATIONS) - *Rule 49.72 to 49.80*; and
- PART XIA (SIMPLIFIED APPLICATIONS FOR DISSOLUTION OF CIVIL PARTNERSHIPS) - *Rule 49.80A.1 to 49.80I.2*

<https://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

Guidance

A GUIDE TO THE SIMPLIFIED DIVORCE /DISSOLUTION OF CIVIL PARTNERSHIP PROCEDURE IN SCOTLAND (Feb 2021, SCTS)

<https://scotcourts.gov.uk/rules-and-practice/guidance-notes/simplified-divorce-and-dissolution-of-civil-partnership-guidance-notes>

Legislation

Sheriff Courts (Scotland) Act 1907 (455 pages)

<https://www.legislation.gov.uk/ukpga/Edw7/7/51/contents>

Divorce (Scotland) Act 1976 (11 pages)

<https://www.legislation.gov.uk/ukpga/1976/39/contents>

Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (10 pages)

<https://www.legislation.gov.uk/ukpga/1983/12/contents>

Civil Evidence (Scotland) Act 1988 (8 pages)

<https://www.legislation.gov.uk/ukpga/1988/32/contents>

Children (Scotland) Act 1995 (130 pages)

<https://www.legislation.gov.uk/ukpga/1995/36/contents>

Civil Partnership Act 2004 (564 pages)

<https://www.legislation.gov.uk/ukpga/2004/33/contents>

Family Law (Scotland) Act 2006 (41 pages)

<https://www.legislation.gov.uk/asp/2006/2/contents>

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BIBLIOGRAPHY...continued

Adoption and Children (Scotland) Act 2007
<https://www.legislation.gov.uk/asp/2007/4/contents>

Marriage and Civil Partnership (Scotland) Act 2014 (57 pages)
<https://www.legislation.gov.uk/asp/2014/5/contents>

Regulations

Evidence in undefended Divorce Actions (Scotland) Order 1983
<https://www.legislation.gov.uk/uksi/1983/949/contents/made>

Evidence in Divorce Actions (Scotland) Order 1989
<https://www.legislation.gov.uk/uksi/1989/582/contents/made>

Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012
<https://www.legislation.gov.uk/ssi/2012/111/contents/made>

The Divorce (Religious Bodies) (Scotland) Regulations 2006
<https://www.legislation.gov.uk/ssi/2006/253/contents/made>

Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019
<https://www.legislation.gov.uk/ssi/2019/104/contents>

Acts of Sederunt

The *simplified procedure* was first introduced in the Court of Session with effect from 11 January 1983, and the sheriff courts with effect from 1 May 1984. The relevant instruments included:

- Act of Sederunt (Rules of Court Amendment No. 6) (Simplified Divorce Procedure) 1982
<https://www.legislation.gov.uk/uksi/1982/1679/contents/made>
- Legal Aid (Scotland) (Exclusion of Proceedings) Regulations 1982
<https://www.legislation.gov.uk/uksi/1982/1877/made>
- Act of Sederunt (Consistorial Causes) 1984
<https://www.legislation.gov.uk/uksi/1984/255/contents/made>

Other relevant rules instruments are set out in Annex 2: Previous Amendments.

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BIBLIOGRAPHY...continued

Other publications

The following publications are not directly related to the use of the *simplified procedures*. They arose from the general literature review undertaken for this policy area and have been noted for the purposes of future policy development only:

- Royal Commission on Legal Services in Scotland (*Lord Hughes, 1980*)
Not available for download
- Discussion Paper No 76 - The Ground for Divorce: Should the law be changed? (*May 1988, SLC*)
<https://www.scotlawcom.gov.uk/files/8712/7892/6474/dp76.pdf>
- Report 116: on Reform of the Ground for Divorce (*Apr 1989, SLC*)
<https://www.scotlawcom.gov.uk/files/3012/7989/7431/rep116.pdf>
- Report 192: Family Law – The Ground for Divorce (*Apr 1989, LC*)
<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2016/07/LC.-192-FAMILY-LAW-THE-GROUND-FOR-DIVORCE.pdf>
- Built to Last: 30 years of financial provision on divorce (*2016, University of Glasgow*)
<http://eprints.gla.ac.uk/117617/1/117617.pdf>

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ANNEX 1 – FORMS

The aim of the *simplified procedure* is to support timely court decisions being made efficiently on the papers. In practice that means the range of forms, and the information gathered within those forms, is critical to effective service delivery.

Divorce & Dissolution – in the sheriff courts:

Under the Ordinary Cause Rules (OCR)

The 18 existing forms:

CHAPTER 33 FAMILY ACTIONS	CHAPTER 33A CIVIL PARTNERSHIP ACTIONS
PART XI - SIMPLIFIED DIVORCE	PART XI - SIMPLIFIED DISSOLUTION
Form F31 - Simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)	Form CP29 - Simplified dissolution of civil partnership application under s.117(3)(c) of Civil Partnership Act 2004
Form F33 - Simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976	Form CP30 - Simplified dissolution of civil partnership application under s.117(3)(d) of Civil Partnership Act 2004
Form F33A - Simplified Divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976 <i>(to be withdrawn)</i>	Form CP31 - Simplified dissolution of civil partnership application on grounds under .117(2)(b) of Civil Partnership Act 2004 <i>(to be withdrawn)</i>
Form F34 - Citation in application relying on the facts in section 1(2)(d) of the Divorce (Scotland) Act 1976	Form CP32 - Citation in application relying on facts in s.117(3)(c) of Civil Partnership Act 2004
Form F35 - Citation in application relying on the facts in section 1(2)(e) of the Divorce (Scotland) Act 1976	Form CP33 - Citation in application relying on facts in s.117(3)(d) of Civil Partnership Act 2004
Form F35A - Citation in application relying on grounds under in section 1(1)(b) of the Divorce (Scotland) Act 1976 <i>(to be withdrawn)</i>	Form CP34 - Citation in application on grounds under s.117(2)(b) of Civil Partnership Act 2004 <i>(to be withdrawn)</i>
Form F36 - Intimation of simplified divorce application for display on the walls of court	Form CP35 - Intimation of simplified dissolution of civil partnership application for display on walls of court
Form F37 - Intimation to children and next-of-kin in simplified divorce application	Form CP36 - Intimation to children of family and next-of-kin in simplified dissolution of civil partnership application
Form F38 - Extract decree of divorce in simplified divorce application	Form CP37 - Extract decree of dissolution of civil partnership in application for a simplified dissolution of civil partnership

The 4 proposed new forms:

Form F33B (form of arrangements for upbringing of child of the marriage under 16 years of age)	Form CP30A (form of arrangements for upbringing of child of the family under 16 years of age)
Form F38A (form of intimation to spouses of a hearing under rule 33.80A)	Form CP37A (form of intimation to civil partners of a hearing under rule 33A.73A)

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ANNEX 1 – FORMS...continued

Divorce & Dissolution – in the Court of Session:
Under the Rules of the Court of Session (RCS)

The 18 existing forms:

CHAPTER 49 FAMILY ACTIONS	CHAPTER 49 FAMILY ACTIONS
PART XI - SIMPLIFIED DIVORCE	PART XI A - SIMPLIFIED DISSOLUTION
Form 49.73-A - Under the Divorce (Scotland) Act 1976, Section 1(2)(d) Simplified Procedure	Form 49.80B-A - Under the Civil Partnership Act 2004 section 117(3)(c) Simplified Procedure
Form 49.73-B - Under the Divorce (Scotland) Act 1976, Section 1(2)(e) Simplified Procedure	Form 49.80B-B - Under the Civil Partnership Act 2004 section 117(3)(d) Simplified Procedure
Form 49.73-C - Under the Divorce (Scotland) Act 1976, Section 1(1)(b) Simplified Procedure <i>(to be withdrawn)</i>	Form 49.80B-C - Under the Civil Partnership Act 2004 section 117(3)(b) Simplified Procedure <i>(to be withdrawn)</i>
Form 49.76-A - Form of citation in simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976	Form 49.80E-A
Form 49.76-B - Form of citation in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976	Form 49.80E-B - Form of citation in simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004
Form 49.76-BA - Form of citation in simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976 <i>(to be withdrawn)</i>	Form 49.80E-C - Form of citation in simplified dissolution of civil partnership application under section 117(2)(b) of the Civil Partnership Act 2004 <i>(to be withdrawn)</i>
Form 49.76-C - Form of intimation to child or next of kin in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976	Form 49.80E-D - Form of intimation to child or next-of-kin in simplified dissolution of civil partnership application under section 117(3)(d) or 117(2) of the Civil Partnership Act 2004
Form 49.76-D - Form of certificate of service of simplified divorce application	Form 49.80E-E - Form of certificate of service of simplified dissolution application
Form 49.76-E - Form of certificate of service of simplified divorce application by messenger-at-arms	Form 49.80E-F - Form of certificate of service of simplified dissolution application by messenger-at-arms

The 4 proposed new forms:

Form 49.73-D (form of arrangements for upbringing of child of the marriage under 16 years of age)	Form 49.80B-D (form of arrangements for upbringing of child of the family under 16 years of age)
Form 49.78A (form of intimation to spouses of a By Order hearing under rule 49.78A)	Form 49.80GA (form of intimation to civil partners of a By Order hearing under rule 49.80GA)

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ANNEX 2 – PREVIOUS AMENDMENTS

The 1994 RCS rules were made via [UKSI 1994/1443](#).

The 1993 OCR rules were made via [UKSI 1993/1956](#).

Both sets of rules included the *simplified procedures for divorce* when first enacted in 1993 and 1994, with the *simplified procedures for dissolution* being added in 2005:

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Explanatory Note</i>
Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996	1196 / 245	01 Dec 96	Makes provision for applications for financial provision on divorce where the order is in respect of a pension lump sum
Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 2000	2000 / 239	02 Oct 00	To allow the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application
Act of Sederunt (Ordinary Cause Rules) Amendment (Form of Simplified Divorce Application) 2003	2003 / 25	31 Jan 03	Amending the jurisdiction sections of the forms of simplified divorce application (Forms F31 and F33) - in light of EU changes to jurisdiction in divorce actions
Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005	2005 / 632	08 Dec 05	Make provision in RCS for applications under the Civil Partnership Act 2004 ; inserting RCS forms
Act of Sederunt (Ordinary Cause Rules) Amendment (Civil Partnership Act 2004) 2005	2005 / 638	08 Dec 05	Make provision in OCR for applications under the Civil Partnership Act 2004 ; inserts a new OCR Chapter 33A and new forms
Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Family Law (Scotland) Act 2006) 2006	2006 / 206	04 May 06	Reduces the separation periods for divorce
Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006	2006 / 207	04 May 06	Reduces the separation periods for divorce
Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007	2007 / 06	29 Jan 07	Minor amendment to rule 33.27A re applications for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 and to clarify that the simplified divorce procedure does not apply where either party makes such an application (sub-paragraphs (14) and (15));
Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2007	2007 / 07	29 Jan 07	Minor amendment to rule 49.27C in relation to applications for postponement of decree of divorce. Paragraph 2(10) substitutes a new rule 49.72(1)(g) which excludes the application of the simplified divorce procedure where an application is made under section 3A of the Divorce (Scotland) Act 1976.

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ANNEX 2 – PREVIOUS AMENDMENTS...continued

Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No. 2) (Marriage and Civil Partnership (Scotland) Act 2014) 2014	2014 / 32	16 Dec 14	Makes provision re the Marriage and Civil Partnership (Scotland) Act 2014 – as a pursuer in an action of divorce under section 1(1)(b) of the 1976 Act is to state whether or not the party issued with an interim gender recognition certificate has since been issued with a full gender recognition certificate by the Gender Recognition Panel.
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015	2015 / 419	10 Dec 15	To recognise changes to the appeal routes on the SAC being established in its civil jurisdiction
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Curators ad litem) 2017	2017 / 132	01 Jun 17	Amends the divorce and dissolution forms
Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Views of the Child) 2019	2019 / 123	24 Jun 19	Paragraphs 2(10) and (11) amend rule 49.41, and for rule 49.42 substitutes new rules, which apply to applications after decree in actions of divorce, dissolution, separation and declarator of nullity of marriage or civil partnership. Removes the existing procedural distinction between contact orders and other types of section 11 orders ; all post-decree applications relating to section 11 orders will now be dealt with by minute. Rule 49.42 outlines procedure for seeking the views of the child.
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2021	2021 / 75	01 Mar 21	Post Brexit updates to clarify the jurisdiction of Scotland’s courts for divorce and dissolution actions; adding amended jurisdiction questions into the forms; and substitutes “National Records of Scotland” for “General Register Office” etc.
Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Case Management of Defended Family and Civil Partnership Actions) 2022	2022 / 289	25 Sep 23	Inserted a bespoke procedure to provide for enhanced judicial case management in family and civil partnership actions in the sheriff court.
Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Miscellaneous) 2023	2023 / 196	2 Oct 23	Amends the provisions made with regard to reporting restriction orders

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ANNEX 3 – COMPARABILITY OF RULES

One of the guiding principles set for the Council is that - “*practice and procedure should, where appropriate, be similar in all civil courts*”. The following tables act as a check on that “comparability” across the 4 existing sets of rules:

Divorce & Dissolution – in the sheriff courts:

Ordinary Cause Rules (OCR)

CHAPTER 33 FAMILY ACTIONS	CHAPTER 33A CIVIL PARTNERSHIP ACTIONS
PART XI - SIMPLIFIED DIVORCE	PART XI - SIMPLIFIED DISSOLUTION
33.73. Application and interpretation of this Part	33A.66. Application and interpretation of this Part
33.74. Form of applications	33A.67. Form of applications
33.75. Lodging of applications	33A.68. Lodging of applications
33.76. Citation and intimation	33A.69. Citation and intimation
33.77. Citation where address not known	33A.70. Citation where address not known
33.78. Opposition to applications	33A.71. Opposition to applications
33.79. Evidence	33A.72. Evidence
33.80. Decree	33A.73. Decree
33.81. Appeals	33A.74. Appeals
33.82. Applications after decree	33A.75. Applications after decree

Notes:

1. The use of short succinct headings aids comparability

Divorce & Dissolution – in the Court of Session:

Rules of the Court of Session (RCS)

CHAPTER 49 FAMILY ACTIONS	CHAPTER 49 FAMILY ACTIONS
PART XI - SIMPLIFIED DIVORCE	PART XI A - SIMPLIFIED DISSOLUTION
49.72. Application and interpretation of, and directions under, this Part	49.80A. Application and interpretation of, and directions under, this Part
49.73. Form of applications for simplified divorce	49.80B. Form of application for simplified dissolution of a civil partnership
49.74. Lodging and registration of simplified divorce applications	49.80C. Lodging and registration of simplified dissolution applications
49.75. Warrants for service or intimation of simplified divorce applications	49.80D. Warrants for service or intimation of simplified dissolution applications
49.76. Execution of service or intimation of simplified divorce applications	49.80E. Execution of service or intimation of simplified dissolution application
49.77. Opposition to simplified divorce applications	49.80F. Opposition to simplified dissolution application
49.78. Evidence in simplified divorce applications	49.80G. Evidence in simplified dissolution applications
49.79. No reclaiming in simplified divorce applications	49.80H. No reclaiming in simplified dissolution applications
49.80. Applications after decree in simplified divorce applications	49.80I. Applications after decree in simplified dissolution applications

Notes:

1. The heading length hinders comparability to a degree (in comparison to the sheriff court rules).

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ANNEX 4 – GROUNDS (*For seeking a divorce or dissolution*)

The grounds to be met for a divorce:

The grounds of divorce under section 1 of the Divorce (Scotland Act) 1976 are:

- The irretrievable breakdown of the marriage based on:
 - One year non cohabitation with consent;
 - Two years non cohabitation without consent;
 - Adultery;
 - Unreasonable behaviour; or
- An *interim gender recognition certificate* issued since the date of marriage.

The grounds to be met for a dissolution:

The grounds for dissolution under section 117 of the Civil Partnership Act 2004 are:

- The irretrievable breakdown of the civil partnership based on:
 - One year non cohabitation with consent;
 - Two years non cohabitation without consent; or
- The irretrievable breakdown of the civil partnership based on:
 - Unreasonable behaviour; or
- An *interim gender recognition certificate* issued since the date of marriage.

ANNEX 5 – CRITERIA (*For using a simplified procedure*)

This annex sets out the timeline for development of the current criteria:

The criteria for divorce – when using a simplified procedure

The *simplified procedure for divorce* was first introduced⁸ into the Rules of the Court of Session with effect from 11 January 1983.

The sheriff courts gained a concurrent jurisdiction for divorce from 1 April 1984, which supported the *simplified procedure for divorce* then being inserted⁹ into the Ordinary Cause Rules with effect from 1 May 1984.

To use the *simplified procedure for divorce* an applicant needs to meet these criteria:

- **No children of the marriage under the age of 16;**
- No financial matters to be sorted out;
- No signs that the applicant, or their spouse, is unable to manage their affairs because of mental illness, personality disorder or learning disability; and
- No other court proceedings under way which might result in the end of the marriage.

The criteria for dissolution when using a simplified procedure

The *simplified procedure for dissolution* was introduced¹⁰ into both the Court of Session and the sheriff courts with effect from 8 December 2005.

To use the *simplified procedure for dissolution* an applicant needs to meet comparable criteria to those used in a simplified divorce:

- **No children of the partnership under the age of 16;**
- No financial matters to be sorted out;
- No signs that the applicant, or their civil partner, is unable to manage their affairs because of mental illness, personality disorder or learning disability; and
- No other court proceedings under way which might result in the end of the civil partnership.

This consultation seeks feedback on changing the first criteria regarding children of the marriage or partnership, which will be replaced with the revised form of words narrated in the draft rules.

⁸ The *simplified procedure* was first introduced into the Court of Session by the Act of Sederunt (Rules of Court Amendment No. 6) (Simplified Divorce Procedure) 1982 ([UKSI 1982/1679](#))

⁹ The *simplified procedure* was first introduced into the sheriff courts by the Act of Sederunt (Consistorial Causes) 1984 ([UKSI 1984 / 255](#))

¹⁰ The procedures for dissolution were introduced via the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005 ([SSI 2005/632](#)) and the Act of Sederunt (Ordinary Cause Rules) Amendment (Civil Partnership Act 2004) 2005 ([SSI 2005/638](#)).