



EQUALITY IMPACT ASSESSMENT:

If extending the simplified procedures for divorce and dissolution

PREPARED BY: the Secretariat to the Scottish Civil Justice Council (SCJC)

REGARDING: the equality impacts of the draft rules that have been published as part of the consultation on the extension of the simplified procedures.

LAST UPDATED: **19 November 2024**

Step 1 – POLICY BACKGROUND

The purpose and intended effect

Background

The “*simplified procedures*” for parties seeking a divorce, or the dissolution of a civil partnership, provide long established rules. Whilst those procedures work effectively at present; the ability to access those procedures could be widened for some potential users.

Policy Objectives

The policy objectives are:

- *To encourage negotiation and reduce conflict* – by extending access to the *simplified procedures* to uncontested cases where the parties are able to agree suitable arrangements for the welfare of children of the relationship that are under 16;
- *To protect the best interests of each child* – by including a requirement for the court to make appropriate enquiries into all of the arrangements made for children¹; and
- *To make the rules “easy to understand”* – by addressing other miscellaneous amendments requested since the last amendments made.

To achieve those objectives the proposal is:

- To extend the availability of both ‘*simplified procedures*’ to uncontested cases where the parties have been able to agree arrangements suitable to the court for the welfare of any children under the age of 16.

¹ Under section 12 of the Children (Scotland) Act 1995

Why is this policy being developed or revised now?

This is an area of high transaction processing for the courts, and the proposed change to the criteria will deliver continuous improvement. An extension would make the procedures more accessible to a material number of applicants; providing they can agree arrangements for the welfare of their children and are not contesting the application made.

How are staff and / or customers affected by this policy?

Court Users - Will become eligible for using the simplified procedures, where they have children under the age of 16.

Court Staff – Need to be aware of the changed eligibility, and the likely shift in workload.

Judicial Office Holders - Need to be made aware of the changed eligibility, and the likely shift in workload.

What research has influenced the development of this policy?

The following points are relevant for policy development purposes:

Judicial Decision Making - Decisions on divorce and dissolution are a routine matter for the judiciary, supported by a significant body of case precedent.

Business Levels - The level of transactions is material enough to be reported on annually in the annual Civil Justice Statistics publication and its supplementary tables.

Technology - The existing *integrated case management system* (ICMS) supports the high level of transactional processing involved for the Court of Session and the sheriff courts.

Equalities - The best interests of the children is better supported when their parents are able to end their legal relationship timeously and at lower cost.

User Experience - The assumption is that those with children under the age of 16 would prefer to have a choice (*simplified procedure* or the *ordinary procedure for family actions*).

How does this policy support the public sector equality duty?

The Council does not provide front line public services. It does provide 'functions of a public nature' by proposing draft court rules for consideration by the Court of Session, so it gives 'due regard' to the general equality duties under the Equalities Act 2010:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

How has feedback from equality groups helped to shape this policy?

Widening access to the *simplified procedures* for those who have amicably agreed arrangements for their children will make it more straightforward for some applicants seeking a divorce / dissolution to reach a timely closure of their legal relationship (compared to going through the alternative of using the procedure for family actions)

Step 2 – ASSESSMENT OF LIKELY EQUALITY IMPACTS

When considering equality impacts, readers should note the differing roles that apply:

- The “rule making” function sits with the Scottish Civil Justice Council (SCJC) which is responsible for making reasonable adjustments when proposing rules of court, to anticipate the needs of those with impairments.
- The “service delivery” function sits with the Scottish Courts and Tribunal Service (SCTS) who deliver the frontline digital services (*websites, video platform, telephone platform, helpdesks etc.*) supporting the rules in use. That organisation makes any additional reasonable adjustments within the front line services.

This EQIA is narrated from the Council’s perspective, which is focussed on the impacts that arise from the **rule making** function.

**ALL COURT
USERS**

DIGITISATION

The amended *simplified procedures* mirror the practical arrangements for virtual hearings, electronic transmission of documents, electronic signatures, electronic walls of court etc.

These proposed rule changes do not add new digital services, so no new digital impacts arise for the purposes of this EQIA.

LEGAL TERMINOLOGY

The law can dictate the use of complicated legal terminology which in turn can make the procedures in the civil courts difficult to understand for both party litigants and represented parties, which is problematic for those with more complex communication needs.

Negative impacts – terminology:

	<ul style="list-style-type: none"> Those with communication difficulties already have a sense of separation from the other people involved in a case, which will be heightened where the use of complex legal language and processes hinders their understanding and ability to participate. <p><u>Reasonable adjustments - in court rules:</u></p> <ul style="list-style-type: none"> <i>Usability</i> – the <i>simplified procedures</i> are written as succinctly as possible so that they are easy to use and understand (relative to other procedures). <p><u>Reasonable adjustments - in working practices:</u></p> <ul style="list-style-type: none"> <i>Participation</i> – the <i>simplified procedures</i> reflect the existing duty on the judiciary to ensure effective participation.
<p>AGE</p>	<p>THE UPBRINGING OF CHILDREN UNDER 16</p> <p>The existing criteria excludes some potential applicants from using the <i>simplified procedures</i> due to the fact they have children of the relationship under the age of 16, irrespective of whether suitable arrangements have been agreed.</p> <p><u>Negative Impacts – being excluded from simplified procedures:</u></p> <p>Whilst there is logic in having this exclusion in a contested action; it can be seen as lacking in fairness where the parties have amicably agreed the arrangements for their children, and the court would find those arrangements suitable. Hence the proposal made for this extension - which would improve procedural fairness.</p> <p><u>Reasonable adjustments - in court rules:</u></p> <p>To make a decision on the papers the court will require sufficient information on the arrangements made for children, which will be captured through completion of the prescribed forms. Where the court remains concerned then a hearing would be fixed, or the case remitted to the <i>procedure for family actions</i>.</p> <p>The exclusion criteria will continue to apply to people with children under 16 that have been <u>unable to agree</u> suitable arrangements for their children; or otherwise contesting the case.</p>
<p>DISABILITY</p>	<p>THE CAPACITY TO MAKE DECISIONS</p> <p>As the rules make an outdated reference to the term “mental disorder” the current criteria has the potential to exclude some applicants with a mental health impairment from using a simplified procedure.</p> <p><u>Reasonable adjustments - in court rules:</u></p> <p>The proposal is to change that outdated reference from “mental disorder” to “mental capacity”. That will extend the ability to use a</p>

	simplified procedure to those with any impairment through mental health that remains able to understand the nature of the decision being taken and its consequences.
GENDER REASSIGNMENT	<p>GENDER CERTIFICATION</p> <p>The issue of an <i>interim gender recognition certificate</i> is one of the “grounds” set for a divorce or the dissolution of a civil partnership. Originally the certificate itself was sufficient to use a simplified procedure. In 2014 that changed with the insertion of subsection 3B into section 1 of the 1976 Act; making it more appropriate to direct these applications to the <i>procedure for family actions</i>.</p> <p><u>Reasonable adjustments - in court rules:</u></p> <p>An application made on the grounds of having an <i>interim gender recognition certificate</i> is directed to the <i>ordinary procedure for family actions</i>.</p> <p><u>Safeguards</u> – using a <i>simplified procedure</i> remains an option for those who rely on the alternate ground of an irretrievable breakdown of the relationship.</p>
MARRIAGE & CIVIL PARTNERSHIP	<i>Not Applicable</i> – as these proposed changes are not being made “in relation to work”.
PREGNANCY & MATERNITY	No significant equality impacts identified
RACE	<p>TRANSLATION</p> <p>For those who use English as a second language, or do not understand English at all, there is added complexity if using an interpreter to understand the requirements within the rules or to participate in a hearing. That act of translating can add significant time and cost to proceedings.</p> <p><u>Positive Impacts – translation:</u></p> <p>In cases where the parties do have children then having the case dealt with on the papers under a simplified procedure will help to avoid the need for translation during the hearings that might otherwise arise.</p>
RELIGION & BELIEF	<p>OATHS</p> <p>In line with Part II of the Oaths Act 1978², and chapter 6 of the Equal Treatment Bench Book³, a party to civil proceedings is able to choose whether they would prefer to a) swear their oath on a holy book or b) affirm their oath.</p>

² <https://www.legislation.gov.uk/ukpga/1978/19/contents>

³ https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/equal-treatment-bench-book.pdf?sfvrsn=3aa746ad_4

SEX	<p>WOMEN</p> <p>Women account for 51.5% of the general population in Scotland, and they do present a materially higher proportion of the applicants in divorce actions. For 2021/22 women were:</p> <ul style="list-style-type: none"> • 59.2% of all pursuers in divorces; and of those they were • 55.6% of the pursuers opting to use simplified procedure. <p><i>Positive Impacts – for women</i></p> <p>As women form a larger percentage of pursuers they will derive a greater share of the benefits expected from the change in eligibility.</p>
SEXUAL ORIENTATION	No significant equality impacts identified.