Scottish Civil Justice Council

Providing your response

If you have chosen to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you wish to include your responses within this Respondent Information Form, please insert your responses to each consultation question in the (expandable) boxes below:

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?

We consider that the simplified procedure for both divorce and dissolution could be extended in the manner proposed, subject to there being appropriate procedures for the Court to be satisfied about the welfare of any children of the marriage or civil partnership.

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?

Generally the forms should gather sufficient information.

Parties often seek a divorce by way of the existing procedure whilst there is an ongoing court action about the children. Under the existing procedure, that court action should be referred to in the Writ and Affidavits. The proposed new Forms should have a section where this can be referred to.

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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?

We agree with this and consider that the definition of "mental capacity" is appropriate in the circumstances.

The consultation paper is inconsistent on whether the proposal is to refer to 'mental capacity' or 'mental incapacity'. We note that the proposed definition of incapacity in the consultation document is drawn from the Adults with Incapacity (Scotland) Act 2000. It is important that any reference to capacity within the Rules is consistent with the 2000 Act.

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

We would note that the proposed changes have the potential to, in most cases, reduce costs and conflict. We would suggest that alternative methods to alternative dispute resolution such as mediation, and a better public awareness of those methods, would have an increased impact.