



**Scottish
Civil Justice
Council**

CONSULTATION ANALYSIS: on the simplified procedures for divorce and dissolution

Issued: 16 September 2025

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SECTION 1 - INTRODUCTION

Purpose

1. To analyse the responses received to the Public Consultation on the proposed amendments to the *simplified procedures* for divorce and dissolution.
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Timing

2. This consultation was opened 19 November 2024 for a 12 week duration to 15 February 2025. It was then extended by 12 weeks and closed 9 May 2025.
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Why was this consultation undertaken?

3. The Council had sought feedback on its proposal to extend the ability to use the *simplified procedures* for divorce and dissolution to potential applicants with children under the age of 16; providing they had made appropriate arrangements for the welfare of their children.
4. The policy objectives in doing so were:
 - *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 were under the age of 16;
 - *To protect the best interests of each child* – through the provision of sufficient information for the court to make appropriate enquiries¹ 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 to these procedures.

The need for prerequisite changes in primary legislation

5. At present the law stipulates a need for third party evidence to be provided within the relevant applications when made. Hence the future implementation of these proposed changes will be dependent on the Scottish Government consulting on (and then enacting) changes within appropriate primary legislation.

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

The responses received

6. There were a total of 10 responses received:

NUMBER OF RESPONSES				
CATEGORY	RESPONDENT	Organisations	Individuals	COMBINED TOTAL
Practitioners	Law Society of Scotland	3	1	4
	Scottish Law Agents Society	1	0	1
	Other	1	0	1
Officials	Scottish Courts and Tribunals Service	0	1	1
Advice & Assistance	Third Sector	1	0	1
Public	General Public	0	2	2
	TOTALS	6	4	10

7. In line with the permissions given by each respondent; 7 of those 10 responses can be viewed online via the consultation pages on the Councils website'.

<https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations>

SECTION 2 – RESPONSES TO THE CONSULTATION QUESTIONS

8. The Council had sought feedback regarding 4 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?

RESPONDENT	Responded to Q1	Should the simplified procedures be extended?
1	Yes	Yes – it affords individuals with more control over their own affairs
2	Yes	Yes
3	Yes	Yes
4	Yes	Yes
5	Yes	Yes
6	Yes	Yes – there is no public interest in making the process more onerous
7	Yes	Yes – providing there are sufficient safeguards against coercion
8	Yes	Yes
9	Yes	Yes
10	No	

Consultation Analysis - on the 'simplified procedures' for divorce and dissolution

9. All of those who responded to question 1 supported the *simplified procedures* for divorce and dissolution being made available to those applicants who have agreed suitable arrangements for the upbringing of their children:

"...there is no public interest in making the process any more onerous than it needs to be.

"...the process should be more straightforward, with minimal court/legal intervention" as

"...that affords individuals more control over their personal affairs."

"Parties need to pay significantly more for ordinary divorce Actions than they do for simplified Actions"

"...the convoluted nature of the ordinary divorce Actions can be jarring and laborious".

"The courts do not involve themselves in the welfare of children when cohabitants separate, so it seems inconsistent to insist upon this exercise only when the parents are married or in a civil partnership."

10. Some respondents noted the need to ensure there are appropriate safeguards available to those using the *simplified procedures*:

"...to ensure that women experiencing domestic abuse, particularly those unrepresented, are not coerced to 'agree' to arrangements controlled and applied for by an abuser".

"...the proposed rules and revised forms seem to depend on the parties to accurately capture and transmit the views and interests of the child"

There may be cases where "...the parties' views as to the interest of the child do not coincide with those of the child."

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?

RESPONDENT	Responded to Q2	Will the 4 proposed forms capture sufficient information on each child?
1	Yes	No comment (<i>had not reviewed the forms</i>)
2	Yes	Yes
3	Yes	Yes
4	Yes	Yes
5	Yes	Yes
6	Yes	Potentially - although there are some conflicting issues
7	Yes	Potentially - providing the "voice of the child" can be recognised
8	Yes	Potentially - we consider the proposals could go further
9	Yes	Yes
10	No	

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11. Most of the respondents to question 2 agreed that the content of the new forms will provide sufficient information on the welfare of the children; although there was a perceived gap in terms of seeking the "voice of the child":

"Consulting the child is addressed in Question 10 on Forms F33B, CR30A, 49.73-D and 49.80B but, assuming the parent answers "Yes" and indicates that the child is happy with the arrangement, there does not seem to be any way to verify whether the child was actually consulted. Nor is it clear what would result from a "No" response."

12. In terms of whether or not the right balance is being achieved in the level of *judicial oversight* expected within a simplified procedure:

"On the one hand, it can be argued that meaningful oversight would require an enquiry to be conducted by an independent third party into the proposed arrangements for the future care of every child whose parents are divorcing with the third party producing a child welfare report. On the other hand, it can be argued that such an approach intrudes unduly into family privacy and creates unnecessary expense."

13. In terms of providing *comparable procedures*:

"...there is no automatic oversight of the arrangement for the care of a child when unmarried cohabiting parents separate, nor when a parent, whether married or not, dies."

14. In terms of upholding the 'right to privacy' in family life:

*"We consider that the proposed forms also raise questions regarding respect for privacy. Public attitudes to privacy have moved on significantly over the last few decades and in our experience **many people who require to apply for divorce are unhappy with what they consider to be unnecessary and unjustified intrusion into their private family life.**"*

*"Our experience of the current ordinary cause divorce procedure is that the affidavit procedure which is used in undefended actions (which would encompass all applications that might be made under the new simplified procedure) does not usually require applicants to provide the level of detail which the new forms would seem to require. **A much lighter touch can usually be taken.** It is many years since we had the experience of affidavits being rejected for lack of sufficient information. **We are concerned that one of the consequences of the proposed reform is that it will result in more information being required of applicants in relation to their children than is currently the case in practice.**"*

15. That respondent then went on to suggest that the Council should consider the following alternative approach to achieving the stated aims of this consultation:

"We consider that it would be more appropriate for the new form:

- To set out in brief terms the court's statutory duty in terms s12;*
- To set out the types of orders the court could make in terms of s11 and then to ask the applicant whether they are aware of any circumstances relating to their child which might give rise to the need for an order to be made (and if so to provide details of those circumstances); and*
- To set out the s67 grounds and then to ask the applicant whether they are aware of any circumstances relating to their child which might give rise to a s67 ground (and if so to provide details of those circumstances)."*

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?

RESPONDENT	Responded to Q3	Replacing the term “mental disorder” with “mental capacity”?
1	Yes	Yes
2	Yes	Unsure
3	Yes	Yes
4	Yes	Yes
5	Yes	Yes
6	Yes	Yes – mental disorder is an antiquated and insensitive term
7	No	
8	Yes	Yes
9	Yes	Yes
10	No	

16. All of those who responded to question 3 did agree that it was appropriate to stop using the term “mental disorder”:

“Having a “mental disorder” should not act as a barrier to reduced legal costs and more efficient service. “Mental capacity” is more fluid and could therefore be assessed on a case by case basis.”

“Mental disorder” is an antiquated and insensitive term, whereas “mental incapacity” is widely used in other contexts (e.g. Adults with Incapacity (Scotland) Act 2000) and has a certain neutrality about it.”

“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.”

17. Under OCR rule 33.73 (1) and 33A.66 that reference to “mental disorder” covers both parties. That said one respondent did note that within each application form that question is only asked regarding the mental health of the spouse?

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

RESPONDENT	Responded to Q4	Any other suggested changes?
1	Yes	No
2	Yes	No
3	Yes	Yes – use “children of the family” instead of “children of the marriage”
4	Yes	Yes – use “children of the family” instead of “children of the marriage”
5	Yes	No
6	Yes	Yes – the wider process could be “administrative” rather than “judicial”

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7	No	
8	Yes	Yes
9	Yes	Yes – better use of mediation and alternative dispute resolution
10	Yes	Yes – minor edits to the forms used for ordinary divorce procedure

18. In terms of the terminology used within the *simplified procedures* two respondents suggested the need to modernise the language used:

"The phrase "children of the marriage" could give rise to confusion where a couple have a child before their marriage and subsequently get married. Whilst clearly such a child ought to be included in the form (and that is clarified in the explanatory notes), in our view it would be better to change the phrase to "children of the family". Such a term better encapsulates modern families and streamlines the definitions for married couples and civil partners."

19. In terms of streamlining the procedures for "divorce and dissolution" generally:

- *One respondent suggested that more focus could be given to the options for alternative dispute resolution (ADR) and mediation; and*
- *One respondent suggested the Council may wish to remove the need for any judicial input in these decisions at all (by changing to a wholly 'administrative' procedure).*

20. To improve the usability of forms under both the *ordinary procedures* for divorce and the *simplified procedures* one respondent suggested a number of areas could be clarified within the forms used including:

- **DEFINITIONS**
 - *As a lot of applicants will try to lodge their application on the first possible day, and to reflect a recent reported court opinion, the definitions used should:*
 - *Clarify whether the ability to lodge an application under the 1 year (with consent) option comes into effect after that 1 year (365 days) or after a year and a day?*
 - *Clarify whether the ability to lodge an application under the 2 years (without consent) option comes into effect after 2 years or after 2 years and a day?*
- **NAME AND ADDRESS OF APPLICANT:**
 - *As differing cultures have differing naming conventions the accuracy of the forms, and the ability to enter that information into digital case management systems, would be improved if the reference to "other name (s) in full" was dropped and information was requested in the more universal format of:*
 - *First name (s)*
 - *Middle Name (s)*
 - *Surnames (s).*
- **PLACE OF MARRIAGE (REGISTRATION DISTRICT):**
 - *Despite the guidance provided many applicants will enter the place they were married rather than the registration district, whereas asking the applicant to input both pieces of information could reduce confusion?*
- **COURT FEES:**
 - *The current wording only makes reference to the use of cheques, postal orders and fee exemptions, whereas the SCTS does provide other payment options such as telephone payments by credit card?*

SECTION 3 – CONCLUSIONS

21. The conclusions of this report are that:

- There is clear support for extending the ability to use the *simplified procedures* for divorce and dissolution to potential applicants with children under the age of 16, with no views expressed to the contrary;
- There are questions over whether the information sought on each child within the 4 new forms does exceed what is expected under the existing procedure and whether seeking that level of detail remains consistent with protecting the *right to privacy* in family life. Hence the Council may wish to consider the alternative approach suggested at paragraph 15; and assess whether that option can better achieve the stated aims of this consultation.

22. Having considered the content of this report the Council should instruct its final changes to the draft rules, which could include:

CHILDREN OF THE MARRIAGE

- Within the rules and accompanying forms the drafter could omit any references made to “children of the marriage” and substitute the term “children of the family”.

MENTAL DISORDER:

- Within the rules and accompanying forms the drafter should:
 - Omit any references made to “*mental disorder*” and substitute the term “*mental incapacity*” as defined under the 2002 Act; and
 - Amend each application form so that the questions on *mental incapacity* cover both the applicant and the spouse.

VOICE OF THE CHILD:

- In line with taking a simplified approach; the drafter should amend the rules and accompanying forms to incorporate some form of positive affirmation that the views of each child have been sought and taken into account;

SECTION 4 – NEXT STEPS

23. Following due consideration of this report the next steps will be:

- *Instruct drafting*– the Council will instruct its final amendments to the draft rules that accompanied this consultation;
- *Finalise the draft rules* – once those rule changes have been drafted, the finalised Act of Sederunt will be considered and approved by the Council, and then kept on hold pending the prerequisite change in the law;

- *Amend the primary legislation* – to remove the need for third party evidence to be provided when making an application the Scottish Government has the lead responsibility for consulting on and then enacting the prerequisite changes needed within primary legislation;
- *Propose the Rules* – once the prerequisite law change has been enacted, the Council will propose the finalised Act of Sederunt for consideration and approval by the Court of Session; and
- *Publish the rules* – assuming those proposed changes are approved by the Court of Session, that amending Act of Sederunt will be laid with the Scottish Parliament and published via legislation.gov.uk.

**Secretariat to the Scottish Civil Justice Council
September 2025**

BIBLIOGRAPHY

Consultations:

Public Consultation: on the simplified procedures for divorce and dissolution

+ *Draft Rules*

+ *Business and Regulatory Impact Assessment (BRIA)*

+ *Equality Impact Assessment (EQIA)*

<https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/simplified-procedures-for-divorce-and-dissolution>

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)

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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>

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 Un defended 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:

- 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>