

## **FAMILY LAW COMMITTEE: SCOTTISH CIVIL JUSTICE COUNCIL**

### Extending simplified divorce and dissolution to cases where there are children under 16 and agreement on their upbringing.

1. This is an open paper by the Scottish Government.
2. The attached draft consultation paper is an initial draft by the Government of its proposed consultation on an Order to be made under section 8(4) of the Civil Evidence (Scotland) Act 1988 disapplying the need for third party evidence in these cases.
3. This draft should **not** be seen as a final statement of the Government's policy position. It is an initial draft to help the Committee as it considers potential changes to court rules and forms. The draft consultation is subject to further change before it is issued.
4. **Comments from the Committee on the draft consultation are welcome.**
5. The Government does not, of course, make court rules and forms. Therefore, the draft consultation does not seek views on changes in these areas. The draft consultation does refer to previous papers considered by the Family Law Committee and the Scottish Civil Justice Council.
6. In line with usual practice, the Government would intend that its consultation will be accompanied by Impact Assessments. An Equality Impact Assessment has already been prepared. The Government would also intend to produce a Business and Regulatory Impact Assessment and will consider the use of a Children Impact Assessment. The Government is aiming to issue its consultation late in May, for a period of 12 weeks.

**Family and Property  
Scottish Government  
March 2014**

# CONSULTATION ON EXTENDING SIMPLIFIED DIVORCE

## Contents

This consultation consists of the following:

- Contents
- Discussion
- Annex A: Responding to this consultation paper
- Annex B: List of consultees
- Annex C: Respondent Information Form (RIF)

The purpose of this consultation is to seek views on extending simplified divorce and dissolution to cases where there are children under 16 and agreement on their upbringing.

Please respond to this consultation by [5PM on 12 weeks after it opens] by completing the Respondent Information Form at Annex C and sending it to:

[ give contact details]

## **DISCUSSION**

### Summary of proposal

1. This consultation paper proposes the extension of simplified divorce and dissolution to cases where there are children of the marriage or civil partnership under 16 and there is no dispute about their upbringing. It also seeks views on a proposed Statutory Instrument to disapply the need for third party evidence in these cases.

### Divorce and dissolution in Scotland

2. Under the Divorce (Scotland) Act 1976, there are two grounds for divorce in Scotland:

2.1 The irretrievable breakdown of the marriage.

2.2 The issue of an interim Gender Recognition Certificate (GRC) to either party to the marriage.

3. There are four ways through which the irretrievable breakdown of the marriage can be established:

3.1 Adultery.

3.2 Unreasonable behaviour.

3.3 The parties have not lived together for one year and both parties consent to the divorce.

3.4 The parties have not lived together for two years.

4. Under the Civil Partnership Act 2004, dissolution of a civil partnership can be achieved on the same basis, except that adultery is not a way of establishing that a civil partnership has broken down irretrievably.

### Simplified divorce and dissolution

5. Simplified divorce and dissolution (sometimes known as “DIY divorce and dissolution”) is a straightforward way of ending a marriage or civil partnership<sup>1</sup>. It involves completing an application form and an affidavit. Simplified divorce and dissolution are only available in certain circumstances:

5.1 When the basis is one year separation with consent or two years separation without consent, or because of the issue of an interim gender recognition certificate;

---

<sup>1</sup> More information on simplified divorce and dissolution is available on the Scottish Court Service website at: <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>

- 5.2 There are no children of the marriage/partnership under the age of 16;
- 5.3 There are no financial matters to sort out;
- 5.4 There is no evidence of either party being unable to manage his or her affairs because of mental illness, personality disorder or learning disability;
- 5.5 There are no other court proceedings under way which might result in the end of the marriage or civil partnership.
6. Around 60% of divorces and dissolutions are obtained through the simplified procedure<sup>2</sup>.

### Proposed change

7. The Scottish Government is proposing that simplified divorce and dissolution should also be available where there are children under 16 and no dispute about their upbringing. The Government considers that there are a number of reasons for making this change:

7.1 Where a child's parents have reached agreement on how the child should be brought up, it would seem appropriate for this agreement to be followed.

7.2 The Scottish Legal Aid Board estimate that extending the simplified procedure could produce savings for the Board of around £700,000 a year, not including further savings in respect of Advice and Assistance.

7.3 There would also be savings for couples seeking divorce or dissolution who have agreed all matters including upbringing arrangements and who do not qualify for legal aid.

7.4 Most children now are born outwith marriage<sup>3</sup>. When an unmarried couple split up and reach agreement about the child's upbringing, they do not need to go to court to ensure that agreement is treated as final. Extending simplified divorce and dissolution in the way proposed would mean that married couples and couples in a civil partnership would find it easier for their proposed arrangements in relation to bringing up children to be put in place.

7.5 The Government is not removing section 12 of the Children (Scotland) Act 1995. Section 12(1) requires the court in divorce and dissolution actions to consider, in the light of such information as is before the court as to the arrangements which have been, or are proposed to be, made for the

---

<sup>2</sup> See tables 6 and 7 of Civil Law Statistics in Scotland: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS/civlaw1213> Supplementary tables on divorces and dissolutions are at <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS/suptab1213>

<sup>3</sup> See <http://www.gro-scotland.gov.uk/files2/stats/ve-ref-tables-2012/ve-12-t3-8.xls>

upbringing of any children, whether to exercise powers under section 11 of the 1995 Act (court orders relating to parental responsibilities etc.) or under section 62 of the Children's Hearings (Scotland) Act 2011 (on references to the Principal Reporter).

8. Keeping section 12 ensures that, where appropriate, the court can continue to ask questions about the proposed arrangements for bringing up the children.

Question 1. Should simplified divorce and dissolution be extended to cover cases where there are children under 16 and no dispute about the upbringing of the children? Yes/no. Please give reasons for your answer.

Details of how the change would be achieved

9. To achieve the proposed change:

9.1 Rules of court and court forms would need to be amended.

9.2 Guidance issued by the Scottish Court Service would need to be amended.

9.3 Ministers would need to make an Order, disapplying the need for third party evidence in divorce and dissolution cases where there are children under 16 and no dispute about their upbringing.

10. The Scottish Government does not make rules of court. These are made by the Court of Session, following advice from the Scottish Civil Justice Council (SCJC). Similarly, guidance for court-users is a matter for the Scottish Court Service. The Government has sent a policy paper and a draft Equality Impact Assessment<sup>4</sup> to the Family Law Committee of the SCJC on potential changes to rules, forms and guidance. This has been discussed at the Family Law Committee and at the SCJC<sup>5</sup>.

11. As indicated above, the Government does intend to make an Order disapplying the need for third party evidence in divorce and dissolution cases where there are children under 16 and no dispute about their upbringing.

12. Under section 8 of the Civil Evidence (Scotland) Act 1988, a court is required to receive evidence from a third party before it grants a divorce or dissolution, except in types of cases covered by an Order made under section 8(4). The power to make Orders under section 8(4) was originally exercisable by the Lord Advocate, but transferred to the Scottish Ministers at devolution in 1999. In 1989, the Lord Advocate made an Order<sup>6</sup> under section 8(4). That

---

<sup>4</sup> Relevant papers can be found at <http://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee/02-september-2013-papers>

<sup>5</sup> The minutes of the relevant SCJC meeting are at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-meeting-papers/02-september-2013/scjc-minutes-of-meeting---awaiting-approval.pdf?sfvrsn=2> (see paragraph 28).

<sup>6</sup> SI 1989/582: <http://www.legislation.gov.uk/ukSI/1989/582/made>

order removed the requirement for a sheriff or the Court of Session to see evidence from a third party before granting divorce on the basis of non-cohabitation.

13. In 2012, the Scottish Ministers made an Order<sup>7</sup> which removed the requirement for a sheriff or the Court of Session to see evidence from a third party before granting dissolution on the basis of non-cohabitation. Section 27 of the Marriage and Civil Partnership (Scotland) Act 2014 makes provision in relation to this Order. Under section 27 of the 2014 Act, the Order is to be taken to have been in force since 5 December 2005 (when civil partnerships were introduced) and to have had effect in relation to actions raised before 30 March 2012 (when the Order came into force) as it has effect in relation to actions raised on or after that date.

14. The two Orders reflect the existence of the simplified divorce and dissolution procedures. As well as in non-cohabitation cases, simplified divorce is also available on the basis of an interim Gender Recognition Certificate. However, in these cases the interim Gender Recognition Certificate, or a certified copy, has to be supplied.

15. Article 2(1)(d) of the 1989 Order provides that third party evidence must still be supplied where there are children of the marriage under 16. Similarly, article 2(1)(d) of the 2012 Order provides that third party evidence must still be supplied where there are children of the family under the age of 16.

16. The Government intends to make a further Order which would end the need for this evidence. The effect would be that third party evidence would no longer be needed in undefended divorce or dissolution cases where there are children under 16 where:

- the parties have agreed on the upbringing of the children.
- the basis of the action is non-cohabitation.
- there are no other relevant court proceedings.
- no court is being sought on financial provision.
- neither party suffers from mental disorder.

17. The Order would not need to cover cases where the grounds for the action is the issue of an interim GRC given that in these cases the interim GRC, or a certified copy, has to be supplied. The Government's intention is that simplified divorce and dissolution should be available where there are children under 16 and agreement on their upbringing and the divorce or dissolution is on the grounds of the issue of an interim GRC. However, there is no need in these cases to disapply the need for third party evidence.

---

<sup>7</sup> SI 2012/111: <http://www.legislation.gov.uk/ssi/2012/111/made>

Question 2. Do you have any comments on the proposed Order to disapply the need for third party evidence in divorce and dissolution cases where there are children under the age of 16 and the parties have agreed on the upbringing of the children?

Conclusion

18. The Government would be grateful for any further comments you may wish to make:-

Question 3. Do you have any further comments? If so, please outline these comments.

Family and Property  
Scottish Government  
XX 2014

## **ANNEX A: Responding to this consultation paper**

***Please send your response with the completed Respondent Information Form at Annex C to:***

**XXX** or

Civil Law and Legal System Division  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

If you have any queries contact on **XXX**.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx> ). This system allows individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** at Annex C. This will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

The Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material or offensive material, responses will be published on-line.



### **What happens next?**

Following the closing date, all responses will be analysed and considered. The analysis of responses will be published.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to **XXXX**

**ANNEX B: List of consultees [to be completed].**

Child Law Centre  
Children's Commissioner for Scotland  
Christian Institute  
Equality Network  
Families need Fathers  
Family Law Association  
Law Society of Scotland  
Scotland for Marriage  
Scottish Churches Parliamentary Office  
Scottish Council for Jewish Communities  
Scottish Court Service  
Scottish Legal Aid Board  
Scottish Muslim Council  
Scottish Transgender Alliance  
Scottish Women's Aid

## ANNEX C: Extension of simplified divorce



### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

#### 2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

#### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes  No

**following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

**Yes**

**No**

## CONSULTATION QUESTIONS

Question 1. Should simplified divorce and dissolution be extended to cover cases where there are children under 16 and no dispute about the upbringing of the children? Yes/no. Please give reasons for your answer.

Question 2. Do you have any comments on the proposed Order to disapply the need for third party evidence in divorce and dissolution cases where there are children under the age of 16 and the parties have agreed on the upbringing of the children?

Question 3. Do you have any further comments? If so, please outline these comments.

Responses should be sent to arrive by [12 weeks from start of consultation] to:

XXX or

XXX

Civil Law and Legal System Division  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

**Please note that no late responses will be accepted.**

**Scottish Government  
2014**