

## EQUALITY IMPACT ASSESSMENT RECORD

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	Extending divorce and dissolution under simplified procedures to cases where there are children under 16 but no dispute about their welfare.	
<b>Minister</b>	Kenny MacAskill, Cabinet Secretary for Justice	
<b>Lead official</b>	Simon Stockwell, Family and Property Law Team	
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
	Liam Rankin	Family and Property Law Team
<b>Directorate: Division: Team</b>	Justice: Civil Law and Legal System Division: Family and Property Law	
<b>Is this new policy or revision to an existing policy?</b>	This is a revision to an existing policy to extend divorce and dissolution under simplified procedures to cases where there are children under 16 but no dispute about their welfare.	

### Screening

#### *Policy Aim*

The purpose of the policy is to:

- Reduce costs (both to the Scottish Legal Aid Board and to the parties to the court action).
- Ensure that full information is provided by the parties to the court action on the way in which the child or children will be brought up.

The desired outcomes are to:

- Reduce costs.
- Reduce the time taken to grant the divorce or dissolution.

- Reduce any bitterness between the parties to the action.
- Protect the welfare of children.

The policy is in line with:

Government Strategic Objective: “We have improved the life chances for children, young people and families at risk”.

Government Strategic Objective: “Our public services are high quality, continually improving, efficient and responsive to local people’s needs”.

### ***Who will it affect?***

The policy will affect:

- Children under 16 of a marriage or civil partnership where divorce or dissolution is being sought.
- The parties seeking a divorce or dissolution.
- The Scottish Legal Aid Board
- The Scottish Court Service.

The aim is to provide more straightforward procedures in these cases, whilst ensuring that the welfare of the child(ren) is protected.

The proposal is that:

- Where a couple wish to divorce or dissolve their civil partnership, simplified procedures<sup>1</sup> can be used in certain circumstances.
- In broad terms, the simplified procedures can be used when there is no dispute about financial matters and no children under 16<sup>2</sup>.

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<sup>1</sup> Information on divorce and dissolution procedures is at <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>

<sup>2</sup> Simplified procedures can only be used when the basis of the divorce or dissolution is the parties have not co-habited for one years and both consent to the divorce or dissolution; or the parties have not co-habited for two years or an interim Gender Recognition Certificate has been issued to one of the parties. Simplified procedures cannot be used when divorce or dissolution is sought on the basis of unreasonable behaviour. Similarly, simplified procedures cannot be used when divorce is sought on the basis of adultery (it is not possible to dissolve a civil partnership on the basis of adultery).

- The intention is to extend the simplified procedures to cover cases where there are children under 16 but no dispute between the parties about their welfare.
- When applying for a divorce or dissolution under simplified procedures and there were children under 16, the applicant would have to complete a form outlining the arrangements for bringing up the children.
- This application would have to be signed by the applicant in the presence of the notary public.
- The other party would then have to sign the application form to show that he or she agrees with the proposed arrangements for bringing up the children.
- Once the application is received, the court will advise the non-applicant spouse and the children of the application (unless there is good reason not to advise the children, such as them being too young to understand what is happening).
- The court will take account of any comments made by the non-applicant spouse or the children.
- The court will then either grant the divorce, refuse the divorce or postpone a decision on the divorce because it needs more information on matters such as the welfare of the children.
- The court might obtain more information when needed by:
  - Asking for more evidence from the parents.
  - Asking for evidence from the local authority.
  - Arranging a Child Welfare Hearing.
  - Referring the matter to the Children's Reporter.
- Legal aid is not available for an action for divorce and dissolution under the simplified procedures (although legal aid may be available for advice and assistance before the court action is raised).
- If the court seeks further information about the welfare of the child, the action would be remitted to ordinary cause and so legal aid might be available, subject to the usual eligibility criteria.

To establish this procedure, changes will be needed to the court rules and to the court forms<sup>3</sup>. These are a matter for the Lord President of the Court of Session<sup>4</sup>.

In addition, the Scottish Government would intend to make an order under section 8 of the Civil Evidence (Scotland) Act 1988.

Under section 8 of the 1988 Act, third party evidence is normally required in a number of court actions on family matters, such as divorce and dissolution actions, to establish the grounds of the action. Ministers may make orders to disapply or modify this, in respect of such class or classes of action as may be specified.

Two such orders have been made:

The Evidence in Divorce Actions (Scotland) Order 1989: SI 1989/582<sup>5</sup>

The Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012: SSI 2012/111<sup>6</sup>

The Government would intend to make an Order so that no third party evidence was needed in cases where divorce or dissolution was being sought under simplified procedures and there were children under 16 but no dispute about their welfare.

This proposed Order would only apply where the basis of the divorce or dissolution was non-cohabitation for one year, with both parties consenting to the divorce or dissolution, or non-cohabitation for two years.

Where the basis of the divorce or dissolution is the issue of an interim Gender Recognition Certificate, the interim Gender Recognition Certificate, or a certified copy, has to be provided to the court.

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<sup>3</sup> Information on court rules and rule-making is at <http://www.scottishciviljusticecouncil.gov.uk/rule-making>

<sup>4</sup> The Lord President is the senior judge in Scotland and head of the judiciary.

<sup>5</sup> <http://www.legislation.gov.uk/ukSI/1989/582/contents/made>

<sup>6</sup> <http://www.legislation.gov.uk/ssi/2012/111/contents/made>

***What might prevent the desired outcomes being achieved?***

If the parties to the divorce or dissolution do not provide sufficient information on the proposed arrangements for bringing up children, the court may have to refuse the application or seek further information.

## **Stage 1: Framing**

### ***Results of framing exercise***

The proposal has an impact on children.

Therefore, it is important that the proposed policy is robust in ensuring that the welfare of children is protected.

Statistical information is less important as the key issue is to ensure the welfare of the children affected by divorce and dissolution actions. However, statistical information on divorce and dissolution actions is available and is used in this EQIA<sup>7</sup>.

### ***Extent/Level of EQIA required***

The Government's view is as follows:

#### Age

As indicated above, the proposed policy will impact on children and it is particularly important, therefore, that the policy is robust in protecting the interest and welfare of children.

Statistical information is provided on the age of spouses and civil partners when they married or entered into a civil partnership and when they divorced or dissolved.

#### Disability

The policy has no specific impact on disabled people.

#### Sex (including pregnancy and maternity).

The policy impacts equally on men and women.

There is evidence to suggest that problems with family or relationships are more likely to be reported by women than men.

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<sup>7</sup> Key data is at <http://www.scotland.gov.uk/Publications/2012/12/9263/5> and <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS/civlawscot1112?refresh=0.09949338570896027>

## Gender reassignment

The policy has no specific impact on transsexual people.

Divorce and dissolution will continue to be available on the grounds of the issue of an interim Gender Recognition Certificate.

The Marriage and Civil Partnership (Scotland) Bill<sup>8</sup>, currently before the Scottish Parliament, contains provisions which would enable:

- married people to obtain a full Gender Recognition Certificate and stay married, if both spouses wish to remain married;
- civil partners to stay in the civil partnership if both obtain a full Gender Recognition Certificate on the same day;
- civil partners (including those obtaining gender recognition) to change their relationship to a marriage, if both civil partners wish to change their relationship to a marriage.

## Sexual orientation

The policy has no differential impact in relation to sexual orientation.

The intention is that the simplified procedure for divorce and dissolution where there are children under 16 but no dispute about their welfare would work in the same way for divorces and for dissolutions of civil partnerships.

Similarly, the intention is that the simplified procedure for divorce would work in the same way for same sex marriage as for opposite sex marriage, assuming that the Marriage and Civil Partnership (Scotland) Bill is passed by the Scottish Parliament and receives Royal Assent.

## Race

The policy has no specific impact on the protected characteristic of race.

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<sup>8</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64983.aspx>

## Religion and belief

The policy has no specific impact on the protected characteristic of religion and belief.

Some people of faith have religious objections to divorce or consider that divorce should only be available in certain circumstances. However, the policy proposal does not change when divorce or dissolution may be available.

The proposal does not limit the ability of the court under section 3A of the Divorce (Scotland) Act 1976 to postpone granting a decree of divorce on the grounds of irretrievable breakdown of the marriage when:

- one of the parties is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage; and
- the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.

“Religious marriage” means a marriage solemnised by a marriage celebrant of a religious body prescribed by ministers. So far, Ministers have made just one set of regulations, the Divorce (Religious Bodies) (Scotland) Regulations 2006, SSI 2006/253<sup>9</sup>. These prescribed “any Hebrew Congregation”.

## Consultation

The Government intends to consult on the proposed order under section 8 of the Civil Evidence (Scotland) Act 1988. This EQIA will form part of that consultation.

The Government is putting a policy paper on potential changes to Court Rules to the Scottish Civil Justice Council and the Council’s Family Law Committee. This EQIA is being provided to the Council and to its Family Law Committee.

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<sup>9</sup> [http://www.legislation.gov.uk/ssi/2006/253/pdfs/ssi\\_20060253\\_en.pdf](http://www.legislation.gov.uk/ssi/2006/253/pdfs/ssi_20060253_en.pdf)



## Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Gaps identified and action taken
<b>AGE</b>	<p>As indicated previously, children are particularly affected by the proposal.</p> <p>Therefore, the proposal requires the parties to the divorce or dissolution action to complete a form outlining what they propose on bringing up children; requires the application to be notified to affected children unless there is good reason not to do so and empowers the court to reject the application or postpone it while further inquiries are carried out.</p> <p>There is research on how the voice of the child is heard in private family law disputes<sup>10</sup>.</p> <p>The Government considers that the proposals outlined in the EQIA would not have an adverse impact on the voice of the child.</p>	<p>-</p> <p>-</p> <p>Links to recent relevant research on the voice of the child in private family cases are at footnote 10 below.</p>	<p>-</p> <p>-</p> <p>-</p>

<sup>10</sup> See, for example, <http://www.era.lib.ed.ac.uk/bitstream/1842/6557/1/briefing%2065.pdf> and <http://www.scotland.gov.uk/Publications/2011/01/07142042/6> and <http://www.scotland.gov.uk/Publications/2010/12/08145916/10>

	<p>The parties would have to outline what was proposed and the child would have to be kept informed, unless there was good reason not to do so.</p> <p>There is statistical information on the age of people granted a divorce or dissolution:</p> <ul style="list-style-type: none"> <li>• when they entered into the marriage or the civil partnership; and</li> <li>• when they were granted the divorce or dissolution<sup>11</sup>.</li> </ul>	Civil Law Statistics published by the Scottish Government Footnote 11 below gives details.	-
<b>DISABILITY</b>	The policy has no specific impact on disabled people.	-	-
<b>SEX (INCLUDING PREGNANCY AND MATERNITY)</b>	<p>The Government's understanding is that most divorce actions are raised by women<sup>12</sup>.</p> <p>Over the past few years the pursuer was female in around 58% of divorce</p>	<p>Scottish Government research based on 1992 data.</p> <p>Scottish Court Service data.</p>	-

<sup>11</sup><http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Datasets/DatasetsCJS/civlawscot1112?refresh=0.09949338570896027>

Table 12 for 2010/11 shows age at divorce; table 13 for 2011/12 shows age at divorce; table 14 for 2010/11 shows age at dissolution; table 15 for 2011/12 shows age at dissolution; table 16 for 2010/11 shows age at marriage; table 17 for 2011/12 shows age at marriage; table 18 for 2010/11 shows age at civil partnership; table 19 for 2011/12 shows age at civil partnership.

<sup>12</sup><http://www.scotland.gov.uk/Publications/1998/12/796a1e3b-195c-4a67-958a-cf36463784b5> This suggested that in 1992: "Three quarters of all family actions were initiated by women, particularly so in divorce cases".

	cases. Problems with family or relationships are more likely to be reported by women (58%) than men (42%). <sup>13</sup>	The Civil Module of the 2010/11 Scottish Crime and Justice Survey, as reported in Civil Law Statistics in Scotland.	
<b>GENDER REASSIGNMENT</b>	Statistics on the number of people obtaining divorce and dissolution on the grounds of the issue of an interim Gender Recognition Certificate are available <sup>14</sup> .	Civil Law Statistics in Scotland.	-
<b>SEXUAL ORIENTATION</b>	Statistics on the number of people obtaining the dissolution of a civil partnership are available <sup>15</sup> .	Civil Law Statistics in Scotland.	-
<b>RACE</b>	The policy has no specific impact on the protected characteristic of race.	-	-
<b>RELIGION OR BELIEF</b>	Statistics on the number of divorces granted by method of celebration of the marriage are available <sup>16</sup> .	Civil Law Statistics in Scotland.	-

<sup>13</sup> <http://www.scotland.gov.uk/Publications/2012/12/9263/5> (paragraph 5.4)

<sup>14</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Datasets/DatasetsCJS/civlawscot1112?refresh=0.09949338570896027> Tables 2 and 3

<sup>15</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Datasets/DatasetsCJS/civlawscot1112?refresh=0.09949338570896027>

<sup>16</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Datasets/DatasetsCJS/civlawscot1112?refresh=0.09949338570896027> Table 20 (for 2010/11) and table 21 (for 2011/12).

### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	-	-	√	The proposal does not tackle these types of issues
Advancing equality of opportunity		-	√	The Government considers that the proposals outlined in the EQIA would not have an adverse impact on the voice of the child.  The parties would have to outline what was proposed and the child would have to be kept informed, unless there was good reason not to do so.
Promoting good relations among and between different age groups	-	-	√	The proposal does not tackle these types of issues.

**Do you think that the policy impacts disabled people?**

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation	-	-	√	The proposal has no differential impact on disabled people.
Advancing equality of opportunity	-	-	√	The proposal has no differential impact on disabled people.
Promoting good relations among and between disabled and non-disabled people	-	-	√	The proposal has no differential impact on disabled people.

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex (including pregnancy and maternity)</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	-	-	√	The proposal does not tackle these types of issues
Advancing equality of opportunity	√	-	-	The proposal will allow more couples seeking divorce and dissolution to use the simplified procedure.  There is some evidence to suggest that more women than men raise divorce actions.

Promoting good relations between men and women	√	-	-	The proposal will allow more couples seeking divorce and dissolution to use the simplified procedure. This could reduce the complexities involved and may therefore reduce animosity between the couple.
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**Do you think your policy impacts on transsexual people?**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	-	-	√	The proposal does not tackle these types of issues.
Advancing equality of opportunity	-	-	√	<p>The proposal does not lead to any differential change for transsexual people.</p> <p>Divorce and dissolution on the grounds of the issue of an interim Gender Recognition Certificate (GRC) will still be available.</p> <p>The simplified procedure will continue to be available and the interim GRC, or a certified copy, will still be required.</p> <p>Transsexual people seeking a divorce or dissolution where there are children under 16 but no dispute about their welfare will, like everybody else, benefit</p>

				from being able to use the simplified procedures.
Promoting good relations	-	-	√	The proposal does not tackle these types of issues.

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	-	-	√	The proposal does not tackle these types of issues.
Advancing equality of opportunity	-	-	√	The proposal is the same for both divorce and dissolution. It will also be the same for the divorce of a same sex marriage if that is introduced following the Marriage and Civil Partnership (Scotland) Bill.
Promoting good relations	-	-	-	The proposal does not tackle these types of issues.

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	-	-	√	The proposal has no impact on the protected characteristic of race.
Advancing equality of opportunity	-	-	√	The proposal has no impact on the protected characteristic of race.
Promoting good race relations	-	-	√	The proposal has no impact on the protected characteristic of race.

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	-	-	√	The proposal does not tackle these types of issues.
Advancing equality of opportunity	-	-	√	The proposal has no differential impact on the protected characteristic of religion or belief.
Promoting good relations	-	-	√	The proposal has no differential impact on the protected characteristic of religion or belief.  The proposal does not change the grounds on which divorce or dissolution is available.



## Stage 4: Decision making and monitoring

### *Identifying and establishing any required mitigating action*

Have positive or negative impacts been identified for any of the equality groups?	Positive impacts have been identified for sex, because the proposal may reduce animosity between couples seeking a divorce or dissolution.
Is the policy directly or indirectly discriminatory under the Equality Act 2010?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	-
If not justified, what mitigating action will be undertaken?	-

### ***Describing how Equality Impact analysis has shaped the policy making process***

Throughout the consideration of this policy, the Government has been aware of the need to protect and enhance the welfare of children. The EQIA has led to the Government considering in more detail exactly how this should be done.

The financial implications have not changed because of the EQIA.

### ***Monitoring and Review***

Monitoring will take place at a number of levels.

The Government will discuss with the Scottish Legal Aid Board the impact of the proposals, once they have been in place for a reasonable period (eg a year).

The Government will also discuss the impact of the proposals with other key bodies.

The Government will continue to publish and monitor detailed statistics on divorce and dissolution.

## Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, sex (including pregnancy and maternity), gender reassignment, sexual orientation, race and religion or belief have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

## Declaration

**I am satisfied with the equality impact assessment that has been undertaken for extending divorce and dissolution under simplified procedures to cases where there are children under 16 but no dispute about their welfare and give my authorisation for the results of this assessment to be published on the Scottish Government's website.**

**Name:**

**Position:**

**Authorisation date:**