

Marriage: worth fighting for

How the Family Law (Scotland) Bill undermines marriage



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What the Executive is proposing

The Scottish Executive wants to make divorce quicker and easier. The Family Law (Scotland) Bill is currently before the Scottish Parliament. It proposes major changes to divorce law which would drastically cut the time to get a divorce on the grounds of separation by:

- a) reducing five years' separation to two years (where only one party consents to the divorce); and
- b) reducing two years' separation to one year (where both consent).

But the law should not create a conveyor belt to divorce. It should encourage couples to stay together.

As well as a major reform to divorce law, cohabiting couples are to be given many of the same legal rights as married couples. Unmarried couples who live together will be given financial rights that mimic those of marriage, allowing them to have equal rights to property and money when they split up.

Remarkably, the Bill will also for the first time in Scotland allow a man to marry his daughter-in-law or his mother-in-law. The Bill also

abolishes desertion as a specific ground for divorce, ‘grave financial hardship’ as a bar to divorce, and ‘collusion’ as a bar to divorce.

The Executive argues reform is needed to recognise the ‘complexity of modern family living’ and give greater protection to children whose parents split up.¹ Yet the evidence overwhelmingly shows that children are best served by encouraging and supporting marriage, rather than by undermining marriage and enabling quick divorce.

The Bill sends out the message throughout Scotland: “no-fault divorce in a year”. Supporters of the Bill may have good intentions, but making divorce easier will mean that more people get divorced. That will mean misery for countless thousands of children and adults alike.

Key facts

- Most people marry and most marriages last for life.²
- Research accepted by the Executive shows that 60% of cohabiting relationships result in marriage. The remaining 40% will tend to dissolve within ten years.³
- Cohabitation is therefore a temporary relationship where neither party is willing to make a permanent commitment. The median length of cohabitation in Scotland is three years.⁴
- In Scotland 55% of adults are married, 8% are divorced or separated and 10% are widowed. Only 7% cohabit.⁵
- Scotland has a lower rate of divorce than England and Wales.⁶
- In 2003 there were 10,927 divorces in Scotland.⁷
- Around one third of divorces in Scotland involve children.⁸
- Children from broken homes are more likely to have poorer health, to do worse at school, to commit crime, to be

unemployed and to die earlier than children who live with married parents.⁹

- Adults who divorce have a greatly increased incidence (compared to those who remain married) of heart disease, cancer, alcoholism and suicide.¹⁰

Where children live:¹¹

- 64.5% in a married couple household
- 25.1% in a lone parent household
- 9.6% in a cohabiting couple household
- 0.9% in care

Marriage is good for society

Marriage has been protected in the Western legal tradition because of the unique social benefits it offers to adults and children. As the Executive admits “marriage remains the dominant family form in Scotland” and is “the preferable setting for bringing up children.”¹²

The evidence strongly shows that marriage is good for adults and children. As Professor A H Halsey, (Professor of Social Policy at Nuffield College, Oxford) and co-author of *English Ethical Socialism* stated:

“No one can deny that divorce, separation, birth outside marriage and one-parent families as well as cohabitation and extra-marital sexual intercourse have increased rapidly. Many applaud these freedoms. But what should be universally acknowledged is that the children of parents who do not follow the traditional norm (i.e. taking on personal, active and long-term responsibility for the social upbringing of the children they generate) are thereby disadvantaged in many major aspects of their chances of living a successful life. On the evidence available such children tend to die earlier, to have more illness, to do less well at school, to exist at a lower level of nutrition, comfort and conviviality, to suffer more unemployment, to be more prone to deviance and crime, and finally to repeat the cycle of unstable parenting from which they themselves have suffered... The evidence all points in the same direction, is formidable, and tallies with common sense.”¹³

The research evidence shows that divorce is normally – not in every case, but normally – linked to negative outcomes for children. Children from broken homes (“separated families”) have a higher probability of:

- being in poverty and poor housing;
- being poorer when they are adults;
- behavioural problems;
- performing less well at school;
- needing medical treatment;
- leaving school/home when young;
- becoming sexually active, pregnant, or a parent at an early age;
- depressive symptoms, high levels of smoking and drinking and drug use during adolescence and adulthood.¹⁴

Divorce is also linked to negative outcomes for adults. A report from *One Plus One* has shown that adults who divorce have a greatly increased incidence (compared to those who remain married) of heart disease, cancer, alcoholism and suicide.¹⁵

Researchers considering data from the USA’s National Survey of Families and Households found: “...no evidence that divorce or separation typically made adults happier than staying in an unhappy marriage. Two out of three unhappily married adults who avoided divorce reported being happily married five years later.”¹⁶

A report in 2000 put readily identifiable welfare costs of family breakdown in Britain at £8.5 billion and the total direct costs to the taxpayer as at least £15 billion.¹⁷ Currently over half of the whole adult population of Scotland is married, whilst only 7% of adults are cohabiting and only 5% are divorced.¹⁸ A very large proportion of lone

parent households come into being because of divorce. More divorces will lead to higher costs to the public purse.

Marriage is good for society. Public policy should promote marriage and not seek to accelerate the number of divorces. Past changes in the divorce law have accelerated the number of divorces. This will undoubtedly happen again under the proposals to cut the separation periods for divorce. The result will be more pain and hurt to children and adults.

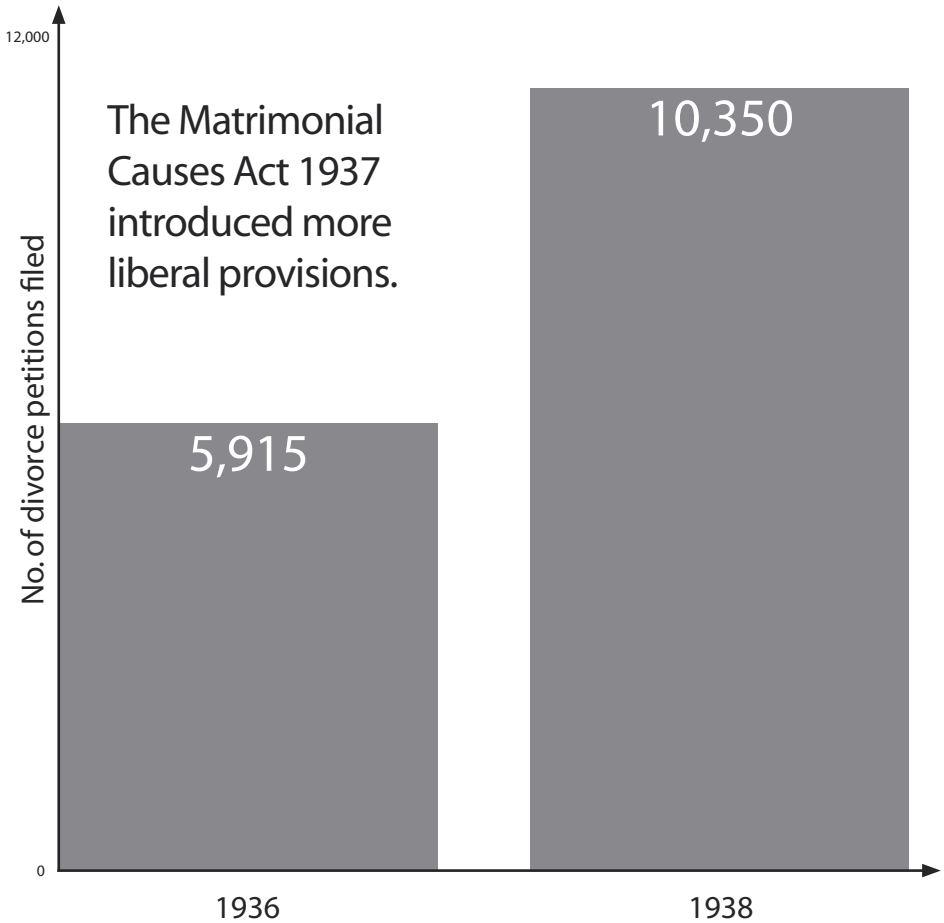
Speeding up the separation grounds will lead to more divorce

Under the Family Law (Scotland) Bill, the time it takes to get a divorce on the grounds of separation will be drastically cut – from two years to one year where both spouses agree and from five years to two where only one spouse wants the divorce.

The vast majority of divorces in Scotland are already obtained on the grounds of separation – some 82% of all divorces in Scotland.¹⁹ The Executive is thus proposing to liberalise what is already the most popular route for divorce. This change will hugely increase the number of future divorces.

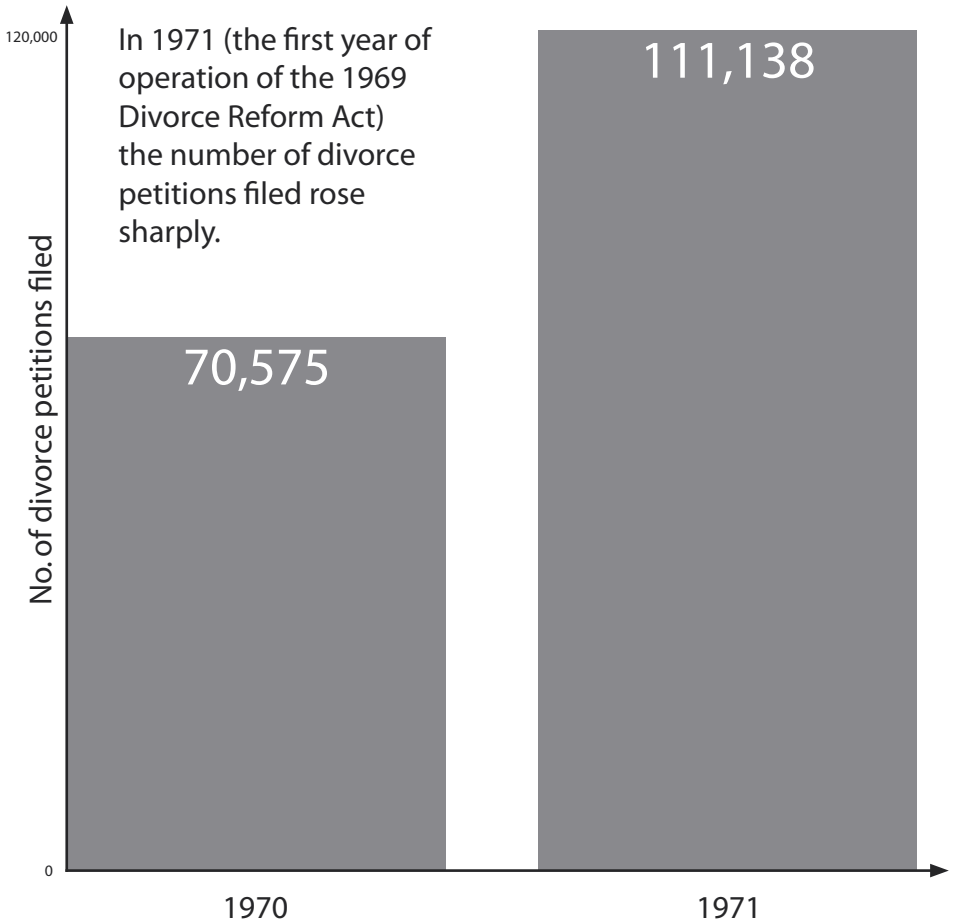
The statistics show that every time the law on divorce has been liberalised, the number of divorces has increased. The introduction of the separation grounds in 1976 put the number of divorces up by 21% in 1980 and by 30% in 1982.²⁰

Number of divorce petitions filed in England and Wales before and after the Matrimonial Causes Act 1937 ²¹



Source: Deech, R, *Divorce Dissent: Dangers in Divorce Reform*, Centre for Policy Studies, 1994, page 22

Number of divorce petitions filed in England and Wales before and after the operation of the Divorce Reform Act 1969 ²¹



Source: Deech, R, *Divorce Dissent: Dangers in Divorce Reform*, Centre for Policy Studies, 1994, page 22

Under the 1976 Divorce (Scotland) Act, there are five “grounds” for divorce:²²

- Adultery;
- Wilful desertion;
- Unreasonable behaviour;
- Two years separation where both parties consent; or
- Five years separation where one party does not consent.

The 1976 divorce reforms for the first time allowed divorce following a period of separation. There was no need to prove a fault. This is often referred as “no-fault divorce”. In Christian theology divorce without fault has never been accepted. Jesus rejected the claim that there could be divorce “for any and every reason”.²³

By allowing no-fault divorce, the existing law is certainly not perfect, but the question is whether divorce should be made easier than it is now.

At present Scotland has a lower divorce rate than England and Wales²⁴ and fewer children are involved in divorces – the Executive states that in Scotland around one-third involve children, whereas in England and Wales 68% of divorces involve children.²⁵ In this respect Scotland is currently in a better position than England and Wales. But the Executive’s proposals will considerably increase the proportion of divorces which involve children.

Most people in Scotland do not believe that divorce should be made easier. The Executive’s consultation in 2004 showed this to be so – 73% of all respondents opposed the time period reduction, with 90% of the individuals who responded opposing this proposal.²⁶ An opinion poll conducted when the Executive’s first white paper was released in 2000, found that 50% of people were against relaxing the law in order to make divorce easier to obtain. Only 34% were in favour.²⁷

Importance of the existing separation periods

The five-year and two-year waiting periods give couples time to think again. They can seek to reconcile or at least carefully consider whether to get divorced. It is well-known that many couples file for divorce, but are reconciled and drop the divorce proceedings.

In the last period for which exact figures were available (1989-1993) an average of 16% of divorces initiated were dropped each year.²⁸ Precise statistics are no longer recorded, but in any one year the number of divorces granted is always lower than the number of divorces initiated. The latest figures show that on average the number of divorces initiated each year is 13% higher than the number of divorces actually granted.²⁹ This is comparable to the figure of 16% recorded exactly until 1993.

The fact that there continues to be a sizeable difference year on year can only mean that *a large proportion of divorce cases are dropped because the couple decide to remain married.*

Obviously the greatest prospects for reconciliation are in those cases where one spouse wishes to remain married. Currently in such cases the law gives such a spouse five years to seek a reconciliation. If this period is cut, then there will be far fewer reconciliations.

The Faculty of Advocates, which represents the Scottish Bar, firmly opposes reducing the time period from five years to two. In its submission to the Justice 1 committee, the Faculty stated:

“It is felt that to do so is one sided, and is an encouragement to the abandonment of marriage and its obligations. The Faculty considers that it appears that insufficient consideration has been given to the deserted party’s position, and this may lead to adverse consequences.”³⁰

The Executive should be promoting reconciliation, not introducing

a conveyor belt to divorce. As Sam Clarke said in *The Evening Times*: “Better surely to devote more energy to helping keep couples together than invent lots more laws to drive them apart.”³¹

Staying together for the sake of the children

In Scotland about a third of divorces involve children.³² When children are involved, some people say “a good divorce is better than a bad marriage.” But many married couples who experience difficulties in their marriage profoundly disagree. They believe in staying together for the sake of their children. This common sense view has now received substantial backing from social science research.

The *Exeter Family Study* found that divorce does not usually reduce conflict for the children – in fact the *opposite* is true:

“...the experience of most children whose parents divorce is of *increased* conflict over an extended period, with the child involved to an extent that may not have been the case while the marriage lasted.”³³

The Exeter Study concluded that:³⁴

- Even with awareness of severe parental conflict, children still say they would have preferred their parents to stay together.
- Conflict may well arise as a direct *result* of the decision to separate rather than being the *cause* of it.
- With parental conflict in marriage, the child may be able to

remain on the side-lines. This does not tend to happen after divorce where there is pressure on the child to take sides.

The Executive argues that its motivation for reducing the separation periods is to discourage the use of the fault-based grounds for divorce. It sees the fault grounds as increasing the acrimony in divorce.³⁵ This analysis is wrong. It is not the mechanism of divorce which causes negative long-term outcomes, but the fact of divorce.

Legislative measures which make divorce easier logically encourage more divorces and thereby increase acrimony within families. The best way to reduce acrimony is to *discourage* divorce and to promote reconciliation between spouses.

Arguments that the five year separation period is a long time for a young child need to be firmly countered with the fact that a life time of having divorced parents is even longer and more damaging. In attempting to reduce as much harm as possible from the divorce procedure, the Bill will inevitably create far more harm in the long run.

Why easy divorce is morally wrong

As the UK Government has said: "... marriage is still the surest foundation for raising children and remains the choice of the majority of people in Britain."³⁶ Legislation which weakens marriage harms children and adults alike. Christians believe that marriage was ordained for the good of society from creation itself (Genesis 2:24). Jesus emphasised that marriage was for life but successive divorce reforms have fostered a rampant divorce culture. Jesus clearly aligned himself against easy divorce (Matthew 19:3-9; Mark 10:11-12).

'Reconciliation' saves marriages, 'mediation' helps the break up

Many people are confused about the difference between reconciliation and mediation.

Reconciliation

Reconciliation is about saving marriages through counselling. But the proposals place very little, if any, emphasis on saving marriages. Many regret divorce. The standard research shows that amongst divorcees over 50% of men and 28% of women regret getting divorced. In 10% of cases both husband and wife regret divorcing each other.³⁷

Many become reconciled after considering divorce. Hundreds turn back from divorce after proceedings have begun. In the last period for which exact figures were available (1989-1993) an average of almost 1,700 divorces were dropped each year – 16% of all divorces initiated.³⁸ Precise statistics are no longer recorded, but the latest figures show that on average the number of divorces initiated each year is 13% higher than the number of divorces actually granted.³⁹ This sizeable difference year on year can only mean that a large

proportion of divorce cases are dropped because the couple decided to remain married.

Mediation

Mediation attempts to smooth the path to divorce – it does nothing to prevent a divorce. The Executive continues to promote mediation services.⁴⁰ Mediation seeks to be a low conflict way of couples dividing their assets and taking decisions about their children's future. Mediation is a cheaper alternative to litigation.

Mediators, who are not legally qualified, try to help the couple make decisions about their children, house and money. When an agreement is reached, these decisions are usually turned into legal agreements or court orders which ratify what has been agreed.

One of the main problems for the growth of mediation is that people prefer to have proper legal advice. Greater use of mediation was a central feature in the Family Law Act 1996 for England and Wales. The pilot schemes for these proposals were such a disaster that in 1999 the Labour Government abandoned the entire no-fault divorce reforms of 1996, even though whilst in opposition it supported them.⁴¹

Removing the 'grave financial hardship bar', the ban on collusion, and desertion

Severe financial hardship

The Family Law (Scotland) Bill would also remove the “grave financial hardship” bar on divorce. At present a court is prevented from granting a divorce following the non-cohabitation of the parties for five years, if it considers that to do so would result in grave financial hardship to the party who does not consent to the divorce.

This bar acts as a safeguard against destitution of a spouse as a result of being divorced against their will. It is a matter of justice that a spouse who faithfully enters into a lifelong commitment of marriage, who may then have stayed at home in order to raise a family, is protected from severe financial hardship when divorced against their will.

Concerns about this proposal have been raised by the Faculty of Advocates:

“The Faculty is also concerned about the effect of the proposed section, particularly if the period of separation for divorce is cut to two years. There are cases where severe financial hardship may be caused by divorce.”⁴²

Collusion

Collusion is also to be removed as a bar to divorce. Currently under Scots law, if both parties agree to permit a false case to be substantiated or to keep back a good defence, for example falsifying an adulterous relationship in order to achieve a quicker divorce, then such collusion should prevent the divorce going ahead.

In repealing this bar, the Executive argues it will remain: "...the case that at common law the court should not grant a decree of divorce if satisfied that the pursuer has put forward a false case or the defender has withheld a good defence."⁴³ Yet 'collusion' specifically relates to where *both* parties agree to permit a false case to be substantiated, or to keep back a good defence. Removing the bar on collusion can only serve to encourage collusion in order to speed up a divorce.

Such concerns are supported by The Faculty of Advocates, which told the Justice 1 Committee:

"It appears to encourage parties to state to the court that they have been separated for less time than is required, and to produce falsified evidence. It also flies in the face of the requirements of section 8(3) of the Civil Evidence (Scotland) Act 1988 which, exceptionally in civil actions, requires in divorce (and certain other status actions) evidence which consists of or includes evidence other than that of a party to the marriage. The Faculty has difficulty in understanding the purpose of the proposed section."⁴⁴

Abolishing desertion as a ground for divorce

Under the Divorce (Scotland) Act 1976, the three grounds for divorce involving fault were adultery, unreasonable behaviour and wilful desertion. The Scottish Executive's White Paper in 2000 proposed to abolish adultery and desertion as specific grounds for divorce.⁴⁵

However, this time around, the Executive is leaving ‘adultery’ as a specific ground for divorce – following strong objections in the 2000 consultation to its removal.⁴⁶ A faithful spouse should be able to obtain a divorce on the basis of their spouse’s adultery. That is a matter of basic justice. It is welcome that adultery will remain as a specific ground for divorce. Most Christians believe that adultery is a legitimate ground for divorce, citing Jesus’ teaching in Matthew 19.

But the Family Law (Scotland) Bill is to abolish the ground of wilful desertion. Under the current law, for a divorce to be issued on the grounds of desertion there has to be a period of two years non-cohabitation after one party has deserted the other. The Executive argues this ground is no longer necessary because of the proposed reductions in the periods of non-cohabitation from five years to two when one party does not consent.⁴⁷

Although the desertion ground is little used today, it should be available for spouses whose husband or wife abandons them. It is a matter of basic justice that an innocent spouse divorced against their will can obtain a divorce on the basis of ‘desertion’, as opposed to the no-fault ground of separation. Many Christians believe that desertion is a basis for divorce following Paul’s teaching in 1 Corinthians 7:15.

Abolishing wilful desertion will send out the message that desertion (part of Scottish Divorce law since 1573) no longer matters. It will also move Scottish divorce law further away from a fault-based system to a no-fault system.

Proposed new rights for cohabiting couples

Cohabiting couples have, by definition, withheld their mutual consent to marry. They have freely chosen not to marry. Ruth Deech has made this point from her perspective of family law:

“A unique commitment is made by those who marry and not, as they are well aware, by those who refrain from marrying, and no amount of emphasis on the similarities between spouses and cohabitants can obscure the difference, one of the most fundamental in human existence.”⁴⁸

A key component of the Bill is to give cohabiting couples some of the rights of married couples when a relationship ends. The Executive argues:

“...the legal vulnerability arising from the current absence of systematic regulation sits uncomfortably alongside the increasing number of cohabiting couples and the significant number of Scotland’s children living in cohabiting-couple families.”⁴⁹

In fact cohabitation is a transient state. The Executive admits: “cohabitation is primarily a transitional state often lasting around 2 to

3 years; about two-thirds of cohabiting couples proceed to marry and about one-third separate.”⁵⁰

The instability of cohabitation has a negative impact on any children involved. One report showed that nearly 75 per cent of the children who committed criminal offences had cohabiting parents compared with just over 25 per cent with married parents.⁵¹ Children of cohabiting couples appear in larger proportions than children of married couples among those who have used illicit drugs, begun drinking earlier in life and drink more.⁵²

In reality cohabitation is a very different relationship to marriage. The evidence is that, as a group, cohabitees more closely resemble singles than married people.⁵³ Cohabiting couples who have a child and do not marry are six-and-a-half times more likely to split up after the birth of the child than a married couple.⁵⁴

As Professor Hadley Arkes of Amherst College, USA argues:

“Is it better for children to be spawned in random relations, or is it better for them to be begotten in arrangements in which their parents are bound to their offspring by the ties of law as well [as] nature? Would anyone seriously deny that it is altogether more wholesome, more preferable in principle, that parents would be as committed to the nurturance of their children as they are committed to each other as husband and wife?”⁵⁵

The rights afforded to married couples are already available to cohabiting couples – they have simply rejected them by not getting married. Family law already makes financial provision for children. When it comes to adults, they have the opportunity of obtaining all the rights of marriage, including dissolution rights, but have chosen not to do so.

The Bill’s Policy Memorandum states: “The Scottish Ministers do not intend to create a new legal status for cohabitants. It is not

the intention that marriage-equivalent legal rights should accrue to cohabiting couples...”⁵⁶

But whatever the Executive may say, *they have* equated marriage and cohabitation when it comes to finance. By giving cohabiting couples legal rights that mimic those of marriage, the Bill can only discourage couples from getting married. The Bill does not even require a minimum length of cohabitation.⁵⁷

It is wrong to give cohabiting couples, who have chosen not to undertaken a public, life-long exclusive commitment the same rights and protections of those who have. To do so undermines marriage. Circulating fake money cheats those who receive it and can damage the economy. In the same way giving unmarried couples similar rights as marriage devalues the currency of marriage.

It is also wrong to give cohabiting homosexual couples marriage-like legal rights. The Civil Partnership Act only recently became law, providing the legal rights of married couples to homosexuals who register a partnership. If a homosexual couple refuse to sign up to the extensive civil partnership scheme, why should they still be granted new rights by the Family Law Bill?

Removal of ‘forbidden degrees of marriage’

It is intrinsically wrong for a man to marry his mother-in-law or daughter-in-law.

Yet incredibly the Executive intends to allow this for the first time by repealing some of the ‘forbidden degrees’ of marriage that prevent people connected by close family ties from marrying. Under the Bill, a man will be allowed to marry his daughter-in-law or his mother-in-law and a woman will be able to marry her father-in-law or son-in-law.⁵⁸

The Executive still sees that marriage between close blood family members is incestuous and therefore wrong. Yet it believes that ties created by marriage are of less importance than blood ties. Morally speaking this is to redefine ‘incest’ and a defiance of the Western Tradition regarding incest. This tradition sees *affinity* [close legal family ties] as incestuous and so as prohibitive as *consanguinity* [close blood family ties].

This also goes completely against the true understanding of marriage. Marriage has traditionally been held to create family relationships that are equivalent to blood relationships – this is part of marriage’s stabilizing and unifying influence on society. This is why the mother of a man’s wife is specifically called his ‘*mother-in-law*’.

This Western Tradition sees the importance of de-eroticizing the immediate and the near-extended family. Families are such “close” units. The wisdom of the ages, therefore, has seen a level of “sexual space” important for healthy and unthreatening social interaction between adults and, of course, between adults and children. Sexual relationships are only for the married couple who are to come from separate families.

Harmful to society

Commenting on this proposal in *The Sunday Times*, Katie Grant wrote:⁵⁹

“The rules about relationships acceptable for marriage were not made as a joke. The ban on marriage with daughters-in-law or sons-in-law was made because, when they join the family, daughters-in-law and sons-in-law are supposed to be cherished as true sons and daughters. If widowed or left a widower, the daughter-in-law or son-in-law is supposed to feel secure in the knowledge that the parents-in-law will continue to treat them like their own flesh and blood.”

She continued:

“The strictures against in-law marriage may sound old-fashioned in today’s ‘anything goes’ world, but they nevertheless contain seeds of sense. To add to the already potentially explosive in-law relationship, the possibility of the daughter-in-law divorcing the son, then pushing the mother-in-law out by marrying her father-in-law, and all with the full blessing of the Scottish Parliament, opens up whole new cans of hitherto unthinkable worms.”

Whilst the Bill purports to be child-centred, these proposals fail to consider the confusion and damage that could be unleashed on children. Here is a potential scenario under the Bill.

Alasdair is eight years old. He lives with his mother, Clare, and his father, Simon. Following his parents' divorce, Alasdair remains with his mother and his father leaves home. In the months after the divorce Simon becomes increasingly close to Clare's mother, who is also divorced. A year later, Simon marries Clare's mother. Alasdair, who is now nine years old, has to comprehend that his father is married to his grandmother, who in turn is now his step-mother as well as his grandmother.

A family created by marriage – mother, father, grandparents, aunts and uncles etc – is an extended framework that brings tremendous benefits for children. The family is put together by a marriage. For example, the groom's close relatives become close relatives of the bride, with his father becoming the bride's 'father-in-law'. This is a new tie created by marriage, obviously not by a sexual relationship, and so it brings a tangible security for adults and children alike. A woman can care very deeply for her father-in-law in the safety of society's taboo against any sexualising of the relationship. But if the law permits sexual relationships to be formed by a further marriage *within the existing family unit* the existing emotional ties are exploited. It is an abuse of trust; it is incestuous.⁶⁰ It creates a permanent disruption in the family unit and leaves any children in the family in utter emotional confusion.

Questions have also been raised about whether a man could marry his mother-in-law in a tax-avoidance move to evade inheritance tax on her death.

Whatever else, this proposal undermines marriage in Scots law and belittles it in the eyes of the public. It is a strange and unnecessary tampering with law and custom. It is yet another example of public policy undermining the traditional family unit.

The roots of the Western legal tradition

The sociologist Talcott Parsons (1902-1979) noted that "...the incest taboo is a universal of human societies".⁶¹ The Western legal tradition is directly based on Judaeo-Christian teaching. Nor is this simply an ancient Old Testament taboo.

Certainly the Old Testament is clear. In the book of Leviticus, sexual relations between a man and his sister are forbidden, along with those between a man and his father's sister (aunt).⁶² These are examples of forbidden degrees by blood.

Yet the book of Leviticus also explicitly forbids incestuous sexual relations between close family members by marriage: Leviticus 18:15 states: "Do not have sexual relations with your daughter-in-law. She is your son's wife; do not have relations with her". Marriage between a man and the mother of his former wife are clearly prohibited in Leviticus 18:17: "Do not have sexual relations with a woman and her daughter."

However, the New Testament also underlined the importance of the principle of this taboo. There was a notorious case of a man marrying his step-mother in Corinth. This was seen as quite forbidden.⁶³

It is on this basis that the Westminster Confession of Faith states:

"Marriage ought not to be within the degrees of consanguinity *or affinity* forbidden by the Word. Nor can such incestuous marriages ever be made lawful by any law of man or consent of parties, so as those persons may live together as man and wife. The man may not marry any of his wife's kindred, nearer in blood than he may of his own: nor the women of her husband's kindred, nearer in blood than of her own."⁶⁴ [Emphasis added]

References

- ¹ Scottish Executive Press Release, *Family Law Bill Published*, 8 February 2005
- ² Government Actuary's Department Press Release, *New Marital Status Projections for England and Wales*, NR 2005/1, 10 March 2005 and *Marital Status Projections for England and Wales*, Government Actuary's Department, 2003-based data published 10 March 2005 see http://www.gad.gov.uk/marital_status_projections/2003/event_projections.htm as at 9 June 2005
- ³ *Family Law (Scotland) Bill Explanatory Notes*, The Scottish Parliament, 2005, page 23, para.102
- ⁴ Data from the Scottish Social Attitudes Survey in 2000 – see *Family Formation and Dissolution: Trends and Attitudes among the Scottish Population*, Centre for Research on Families and Relationships, Research Findings 43/2004, Scottish Executive, page 2
- ⁵ *Scotland's People: Results from the 2003 Scottish Household Survey Annual Report*, Scottish Executive, 2004, Table 3.6, page 11
- ⁶ *Population Trends*, 119, Spring 2005, ONS, Table 2.1, pages 49-50
- ⁷ *Family Law (Scotland) Bill: Grounds For Divorce (Updated)*, SPICe briefing 05/22, Scottish Parliament, 21 April 2005, Table 1, page 6
- ⁸ *Family Matters: Improving Family Law in Scotland*, Scottish Executive, 2004, page 16
- ⁹ Halsey, A H, quoted in Dennis, N and Erdos G, *Families Without Fatherhood*, IEA, 1993, page xii
- ¹⁰ McAllister, F (Ed.) *Marital Breakdown and the Health of the Nation*, One plus One, 1995, pages 16, 20, 23
- ¹¹ Census 2001, Scottish Census Results online, Table T16, see <http://www.scrol.gov.uk> as at 31 March 2005. The figure for 'lone parent' households includes a) households where the parent is divorced or separated, b) households where the parent has never been married, and c) those households where the parent is widowed. A more detailed breakdown was not available. Total exceeds 100% because of rounding of figures.
- ¹² *Family Matters: Improving Family Law in Scotland*, *Op cit*, page 5
- ¹³ Halsey, A H, quoted in Dennis, N and Erdos G, *Op cit*, page xii
- ¹⁴ See *Divorce and Separation: The Outcomes for Children*, Foundations Series, Joseph Rowntree Foundation, June 1998, page 1. The full report is published as Rodgers, B and Pryor, J, *Divorce and Separation: The Outcomes for Children*, Joseph Rowntree Foundation, 1998
- ¹⁵ McAllister, F (Ed.), *Op cit*, pages 16, 20, 23
- ¹⁶ Waite L J, Browning D and Doherty W J et al, *Does Divorce Make People Happy? Findings from a Study of Unhappy Marriages*, Institute for American Values, 2002, page 6
- ¹⁷ Lindsay, D (Ed.) *The Cost of Family Breakdown*, Family Matters, 2000, page 5
- ¹⁸ *Scotland's People: Results from the 2003 Scottish Household Survey Annual Report*, *Op cit*, Table 3.6, page 11
- ¹⁹ *Scotland's Population 2003: The Registrar General's Annual Review of Demographic Trends*, General Register Office for Scotland, July 2004, page 30 see <http://www.gro-scotland.gov.uk/files/2003-ar.pdf> as at 14 June 2005
- ²⁰ *Registrar General Scotland Annual Report 1976*, Part 2: Population and Vital Statistics, HMSO, Table R1.2, page 140; *Registrar General Scotland Annual Report 1980*, HMSO, Table R1.2.2, page 301; *Registrar General Scotland Annual Report 1982*, HMSO, Table R1.2.2, page 196
- ²¹ Deech, R, *Divorce Dissent: Dangers in Divorce Reform*, Centre for Policy Studies, 1994, page 22
- ²² The Gender Recognition Act 2004 added a further ground for divorce – that an interim gender recognition certificate has been issued to either spouse. The Act allows a man to obtain a 'gender recognition certificate' which makes him a woman in law and so he can marry another man. However, if the man has a pre-existing marriage he must get a divorce before the full certificate can be issued. See *Family Law (Scotland) Bill: Grounds For Divorce (Updated)*, SPICe briefing 05/22, *Op cit*, page 5
- ²³ Matthew 19:3-9
- ²⁴ *Population Trends*, 119, *Op cit*, Table 2.1, pages 49-50
- ²⁵ *Family Matters: Improving Family Law in Scotland*, *Op cit*, page 16; and *Marriage, Divorce and Adoption Statistics*, ONS, Series FM2 no.30, 2005, Table 4.10, page 86 (data from 2002)
- ²⁶ *Improving Family Law in Scotland: Analysis of Written Consultation Responses*, Scottish Executive, 2004, Table 2, page 20
- ²⁷ *The Herald*, 27 November 2000
- ²⁸ *Civil Judicial Statistics Scotland 1989*, Scottish Courts

- Administration, Table 8, page 24; *Civil Judicial Statistics Scotland 1990*, Scottish Courts Administration, Table 8, page 24; *Civil Judicial Statistics Scotland 1991*, Scottish Courts Administration, Table 8, page 26; *Civil Judicial Statistics Scotland 1992*, Scottish Courts Administration, Table 8, page 26; *Civil Judicial Statistics Scotland 1993*, Scottish Courts Administration, Table 8, page 25
- ²⁹ *Civil Judicial Statistics Scotland 1999*, Scottish Executive, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2000*, Scottish Executive, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2001*, Scottish Executive, 2002, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2002*, Scottish Executive, 2004, Table 3.7, page 14
- ³⁰ Written Submission from Faculty of Advocates, Justice 1 Committee Family Law (Scotland) Bill Evidence, The Scottish Parliament, 11 April 2005
- ³¹ *The Evening Times*, 10 February 2005
- ³² *Family Matters: Improving Family Law in Scotland*, *Op cit*, page 16
- ³³ Cockett, M and Tripp, J, *The Exeter Family Study: Family Breakdown and its Impact on Children*, University of Exeter Press, 1996, page 58
- ³⁴ *Ibid*, pages 57-58
- ³⁵ *Family Law (Scotland) Bill Policy Memorandum*, SP Bill 36-PM, The Scottish Parliament, 2005, page 6, paras 26-27
- ³⁶ *Supporting Families: A Consultation Document*, The Home Office, 1998, page 4, para. 8
- ³⁷ House of Commons, Hansard, 25 March 1996, col. 800
- ³⁸ *Civil Judicial Statistics Scotland 1989*, *Op cit*, Table 8, page 24; *Civil Judicial Statistics Scotland 1990*, *Op cit*, Table 8, page 24; *Civil Judicial Statistics Scotland 1991*, *Op cit*, Table 8, page 26; *Civil Judicial Statistics Scotland 1992*, *Op cit*, Table 8, page 26; *Civil Judicial Statistics Scotland 1993*, *Op cit*, Table 8, page 25
- ³⁹ *Civil Judicial Statistics Scotland 1999*, *Op cit*, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2000*, *Op cit*, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2001*, *Op cit*, Table 3.7, page 14; *Civil Judicial Statistics Scotland 2002*, *Op cit*, Table 3.7, page 14
- ⁴⁰ Scottish Executive Press Release, *Family Law Bill Published*, 8 February 2005 and Scottish Executive Press Release, *Children at Heart of Family Law*, 31 May 2005
- ⁴¹ Lord Chancellor's Department Press Release, *Implementation of Family Law Act II Delayed Pilots Show Disappointing Response to Information Meetings*, No 159/99, 17 June 1999
- ⁴² Written Submission from Faculty of Advocates, Justice 1 Committee Family Law (Scotland) Bill Evidence, *Op cit*
- ⁴³ *Family Law (Scotland) Bill Explanatory Notes*, *Op cit*, page 6, para. 25
- ⁴⁴ Written Submission from Faculty of Advocates, Justice 1 Committee Family Law (Scotland) Bill Evidence, *Op cit*
- ⁴⁵ *Parents and Children: A White Paper on Scottish Family Law*, Scottish Executive, 2000, pages 17-18, paras 4.7-4.8
- ⁴⁶ *Family Matters: Improving Family Law in Scotland*, *Op cit*, page 17
- ⁴⁷ *Family Law (Scotland) Bill Explanatory Notes*, *Op cit*, page 5, para. 23
- ⁴⁸ *The Case Against Legal Recognition of Cohabitation*, Deech R, in *Marriage and Cohabitation in Contemporary Societies*, Eckelaar J M and Katz S N, Butterworth, 1980, page 302
- ⁴⁹ *Family Law (Scotland) Bill Policy Memorandum*, *Op cit*, page 13, para. 64
- ⁵⁰ *Family Matters: Improving Family Law in Scotland*, *Op cit*, page 5
- ⁵¹ Morgan, P, *Marriage-Lite: The Rise of Cohabitation and Its Consequences*, Institute for the Study of Civil Society, 2000, page 45
- ⁵² *Loc cit*
- ⁵³ Nock, S, 'A Comparison of Marriages and Cohabiting Relationships', *Journal of Family Issues*, 16, 1995, pages 53-76; and Rindfuss, R R and Vanden Heuval, A, 'Cohabitation: A Precursor to Marriage or an Alternative to Being Single?', *Population and Development Review*, 16(4), 1990, pages 702-726 cited in *Does Marriage Matter?*, Civitas, 2003, page 4
- ⁵⁴ *Population Trends*, 98, Winter 1999, ONS, page 19
- ⁵⁵ Arkes H in *Homosexuality and American Public Life*, Wolfe C (Ed.), Spence Publishing Company, 1999, page 177
- ⁵⁶ *Family Law (Scotland) Bill Policy Memorandum*, *Op cit*, page 13, para. 65
- ⁵⁷ *Family Law (Scotland) Bill 2005*
- ⁵⁸ *Family Law (Scotland) Bill 2005*. Under the Bill, a marriage will be permitted between the two parties provided the two parties are divorced from their respective former spouses. Under existing legislation it is only possible for the two parties to marry if their respective former spouses have both died. See Thomson, J M, *Family Law in Scotland* (Third Edition), Butterworths/Law Society of Scotland, 1996, page 26
- ⁵⁹ *The Sunday Times*, 13 February 2005
- ⁶⁰ Although a true understanding of marriage's place in society means that violation of the family unit is always incest, criminal law only views sexual intercourse between two blood relatives as 'incest' – see Gordon, G H, *Criminal Law*, W. Green, 2001, para. 35.01, page 523. Therefore a sexual relationship between a father-in-law and his daughter-in-law is not a criminal offence in current Scottish Law.
- ⁶¹ Parsons T in Coser R L (Ed.) *The Family: Its Structures and Functions*, Macmillan, 1974, page 29 cited in Johnston, O R, *Who Needs the Family? A Survey and Christian Assessment*, Hodder and Stoughton, 1979, page 42
- ⁶² Leviticus 18:9,12
- ⁶³ 1 Corinthians 5:1, 11-13
- ⁶⁴ *Of Marriage and Divorce*, The Westminster Confession of Faith, Chapter XXIV, para. 4

Marriage: worth fighting for

How the Family Law (Scotland) Bill undermines marriage

The Scottish Executive's Family Law (Scotland) Bill undermines marriage.

- The Bill would make divorce quicker and easier. It would drastically cut the time it takes to get a divorce on the ground of separation, from the current five years to two where only one spouse consents, and from two years to one where both consent.
- Cohabiting couples who live together are to be given financial rights that mimic those of marriage, allowing them to have equal rights to property and money when they split up.
- The Bill will also allow for the first time a man to marry his mother-in-law or daughter-in-law.

Statistics show that every time the law on divorce has been liberalised, the number of divorces has increased. Though the Executive may have good intentions, making divorce procedure quicker reduces the opportunity for couples to be reconciled and so more people will get divorced. That in turn will mean misery for countless thousands of children and adults alike.

The Bill sends out the message throughout Scotland: "no-fault divorce in a year". It chips away at the foundation of society – the married family.



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