

Family Law (Scotland) Bill

Justice 1 Committee Consultation

Response from The Christian Institute

1. The Christian Institute is a registered charity which seeks to uphold the truth and standards of the historic Christian faith. Our work is supported by 2,300 individuals from across the Christian denominations in Scotland of which 370 are Church leaders. Our public policy work has included research in the fields of family policy, religious liberties, sexual offences, and education.

Marriage is good for society

2. In the past marriage was 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.”¹
3. 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.”²
4. 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.”³
5. 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.⁴
6. 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.”⁵
7. 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.⁶ Currently over half of the whole adult population of Scotland is married, whilst only 7% of adults are cohabiting

and only 5% are divorced.⁷ 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.

8. 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. We fear that this will happen under the proposals to cut the separation periods for divorce. The result will be more pain and hurt to children and adults.

Proposed changes to divorce law (sections 10-15)

9. We oppose reducing the separation periods required for divorce. The vast majority of divorces in Scotland are already obtained on these grounds – some 82% of all divorces in Scotland.⁸ The Executive is proposing to liberalise what is already the most popular route for divorce. This change will hugely increase the number of future divorces.
10. The statistics show that every time the law on divorce has been liberalised, the number of divorces has increased.⁹
11. At present Scotland has a lower divorce rate than England and Wales¹⁰ 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.¹¹ 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.
12. 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 the plans.¹² 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.¹³
13. The five-year and two-year waiting periods give couples time to seek to reconcile or, failing that, time to 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.¹⁴ 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 15% higher than the number of divorces actually granted.¹⁵ 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 a spouse or a married couple decided to remain married.

14. 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.
15. 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."¹⁶
16. 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. We welcome the fact that adultery remains as a specific ground for divorce.

The mechanism of divorce

17. The Executive argue that its motivation for reducing the separation periods is in order to discourage the use of the fault-based grounds for divorce. It sees the fault grounds as increasing the acrimony in divorce. We believe that 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.

18. Reliable research evidence has shown that the actual divorce has the worst impact of all – on adults and children alike. 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 have divorced 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.’¹⁷

The Exeter Study concluded that:¹⁸

- 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.
- In 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.

Proposed new rights for cohabitants (sections 18-23)

19. Cohabiting heterosexual couples have chosen not to marry. They freely refuse to commit themselves to each other publicly. 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.

20. Cohabitation is a very different relationship to marriage. The evidence is that, as a group, cohabitantes more closely resemble singles than married people.¹⁹ 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.²⁰

21. 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.”²¹

22. By giving cohabiting couples legal rights that mimic marriage the Bill can only discourage couples from getting married. The Bill does not even require a minimum length of cohabitation (Clause 18).

23. 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 25 per cent with married parents.²² 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.²³

24. The Christian Institute also strongly opposes the Bill’s plan 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?

Other provisions in the Bill

25. The Christian Institute opposes Clause 1 of the Bill, which destroys some of the categories of 'prohibited degrees of marriage'.
26. Under this provision, a man would be allowed to marry his daughter-in-law or his mother-in-law. The Executive seems to believe that ties created by marriage are of less importance than blood ties. But marriage has traditionally been held to create familial relations that are equivalent to blood relations – this is part of marriage's stabilizing and unifying influence on society.
27. Others have publicly opposed this proposal: "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."²⁴ 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.
28. Whatever else, Clause 1 undermines marriage in Scots law and belittles it in the eyes of the public. It appears to be a strange and unnecessary tampering with law and custom. It is yet another example of public policy undermining the traditional family unit.

Conclusion

29. Each of the three proposals objected to above would undermine marriage in Scotland. However, the State has an obligation to uphold and promote marriage – if for no other reason than that it is for the good of society. Marriage creates stable family units for children and adults alike. Research shows that marriage is head-and-shoulders above other types of human relationships in terms of the benefits it gives to adults and children. Divorce has a damaging effect on both adults and children. Cohabitation cannot provide the benefits of marriage.
30. The Christian Institute is concerned about any legislation, public policy, benefit or tax requirement that undermines marriage and Christian family patterns. The family is a fundamental carrier of values and is at present being undermined. This is evident not least in the area of divorce. Jesus emphasised that marriage was for life, but successive reforms of the divorce law have fostered a rampant divorce culture. Jesus clearly aligned himself against easy divorce (Matthew 19:3-9; Mark 10:11-12). The Bible's teaching on marriage is relevant to Christians and non-Christians because marriage was ordained for all people from creation (Genesis 2:24). Marriage is meant for the good of all people – not just Christians.
31. The Family Law (Scotland) Bill is misguided and will profoundly undermine marriage and family life in Scotland. The big message which is sent out is "no-fault divorce in a year".

We would welcome an opportunity to present further evidence to the Committee.

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Notes

¹ *Family Matters: Improving Family Law in Scotland*, Scottish Executive, 2004, page 5

² Halsey, A H, quoted in Dennis, N and Erdos G, *Families without Fatherhood*, IEA, 1993, page xii

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- ³ See *Divorce and separation: The outcomes for children*, Foundations series, JRF, June 1998. The full report is published as Rodgers, B and Pryor J, *Divorce and Separation: The outcomes for children*, JRF, 1998
- ⁴ McAllister F (Ed.) *Marital Breakdown and the Health of the Nation 2nd Edition*, One plus One, 1995, pages 16, 20, 23
- ⁵ 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
- ⁶ Lindsay, D, *The Cost of Family Breakdown*, Family Matters, 2000, page 5
- ⁷ *Scotland's People: Results from the 2003 Scottish Household Survey Annual Report*, Table 3.6
- ⁸ *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 5 April 2005
- ⁹ Figures from England show that in 1936 some 5,915 divorce petitions were filed. In 1938 (the first year of operation of the more liberal provisions of the Matrimonial Causes Act 1937) there were 10,350 divorce petitions. By 1961 there were around 32,000 new divorce petitions a year. In 1971 (the first year of operation of the 1969 Divorce Reform Act) the number rose sharply to around 110,000. See Deech, R, *Divorce Dissent – Dangers in Divorce Reform*, Centre for Policy Studies, 1994, page 22. Figures compiled from *Marriage and Divorce Statistics (England and Wales) 1993*, Table 2.1, OPCS, 1995 and comparable earlier editions in Murray, C, *Underclass: The Crisis Deepens*, IEA, 1994, page 33
- ¹⁰ *Population Trends*, 119, ONS, Spring 2005, pages 49-50, Table 2.1
- ¹¹ *Family Matters: Improving Family Law in Scotland*, Scottish Executive, 2004, page 16; and *Marriage, Divorce and Adoption Statistics*, Office of National Statistics, Series FM2 no.30, 2005, page 86, Table 4.10
- ¹² *Improving Family Law in Scotland: Analysis of Written Consultation Responses*, Scottish Executive, see <http://www.scotland.gov.uk/library5/justice/iflcar-05.asp> as at 6 April 2005
- ¹³ *The Herald*, 27 November 2000 – poll conducted by Scottish Opinion
- ¹⁴ *Civil Judicial Statistics Scotland*, Reports 1989-1993, Table 8
- ¹⁵ *Civil Judicial Statistics*, Reports 1999-2002, Scottish Executive, Table 3.7
- ¹⁶ *The Evening Times*, 10 February 2005
- ¹⁷ Cockett, M and Tripp, J, *The Exeter Family Study: Family Breakdown and its impact on Children*, University of Exeter Press, 1996, page 58
- ¹⁸ *Ibid*, pages 57-58
- ¹⁹ 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, 2002, page 4
- ²⁰ Kiernan, K, 'Childbearing Outside Marriage in Western Europe', *Population Trends*, 98, Winter 1999, Office for National Statistics, The Stationery Office, page 19
- ²¹ *Family Matters: Improving Family Law in Scotland*, Scottish Executive, 2004, page 5
- ²² Morgan, P, *Marriage-Lite, The Rise of Cohabitation and Its Consequences*, Institute for the Study of Civil Society, 2000, page 45
- ²³ *Loc cit*
- ²⁴ Katie Grant writing in *The Sunday Times*, 13 February 2005