

Policy Briefing

Family Matters: Improving Family Law in Scotland Consultation ends 28 June 2004

Introduction

The Scottish Executive issued the document, *Family Matters: Improving Family Law in Scotland* for consultation in April 2004. The consultation ends on 28 June 2004.

The proposals contained in *Family Matters* further develop previous discussion of reforming family law in Scotland. The Scottish Law Commission's *Report on Family Law* (1992) made a number of recommendations relating to parental rights and responsibilities (PRRs). Many of these were given effect in the Children (Scotland) Act 1995. Since then the Scottish Office and Scottish Executive have consulted on the outstanding recommendations in that report both in 1999 in *Improving Scottish Family Law* and in 2000 in the White Paper *Parents and Children*.

Family Law is defined as the legal framework that regulates rights and responsibilities between couples and between children and their parents and others with an interest in their welfare.

The guiding principles for improving family law, as defined in the consultation document, are:

**The best interests of children should be safeguarded
Stability in families should be promoted and supported
The law should be updated to reflect the reality of families in Scotland today**

Headline Issues

The Executive has invited comments on the proposals and have highlighted several consultation questions (see section 6 page 50 of the consultation document). There are however a number of initial issues to be considered;

1. Do the proposals fully address the nature and extent of family formations in Scotland today?
2. Are the proposals for reforming family law consistently child centred?
3. Do the measures discussed in the consultation document consistently ensure that children's views are heard and taken into account in matters that affect them, for example in relation to the proposed Step-Parent Parental Responsibility and Rights Agreements (SPPRRAs)?
4. Do the proposals in relation to support services for families go far enough in addressing the specific needs of children?
5. In relation to the further integration of support services what resources are available, and how will services be monitored to ensure that they are achieving a more coherent and integrated approach?

KEY POINTS

The document is divided into Firm Proposals where there is a firm intention to propose legislation in a future Family Law Bill and Proposals for Consultation, where the law could be changed but consensus has not yet been reached. **Views are particularly sought on the latter.**

Firm Proposals

1. Parental Rights and Responsibilities (PRRs) for Unmarried Fathers

The Executive propose to change the law so that **joint registration of a child by an unmarried couple confers PRRs to both the mother and the father of the child**. This would not be retrospective.

2. Reducing the Non-Cohabitation Periods Required for Divorce

The Executive propose to **reduce the periods of non-cohabitation required to constitute grounds for divorce from 2 years to 1 year with consent and from 5 years to 2 years without consent**.

3. Updating the Law on Matrimonial Interdicts and Exclusion Orders

Reforms relate to **extending the scope of matrimonial interdicts to cover the applicant's home, place of work and school attended by any child** and extending interdicts with 'powers of arrest' to be available to divorced partners and present and former cohabitants.

Proposals for Consultation

4. The extent (if any) of Legal Safeguards for Cohabitants

There are three options given in the consultation paper:

1. **No change in the law** but instead concentrate on information and awareness raising about legal position of cohabiting couples.
2. Give cohabiting couples the **same rights as married couples**
3. Introduce some **legal safeguards for cohabitants**, based on the Scottish Law Commission's recommendations. [This is the Executive's preferred option] These include:

- Household goods and money/ property from housekeeping acquired during the period of cohabitation to be shared equally.
- Giving a person who has suffered financial loss following the end of the cohabitation the right to apply to a court for financial provision.
- In the event of death a right for a surviving cohabitant to apply to the court for discretionary provision out of their deceased partner's estate.

The intention is for these rights to apply to those people who live together as a *couple* including those who are of the same-sex.

5. Step-parents and Parental Rights and Responsibilities

At present step-parents can either seek to adopt their step-children or they can apply to courts for PRRs.

The proposed change in the law is that where a *married* step-parent wishes to secure PRRs for their step-child and *both* birth parents are in agreement, a Step-Parent Parental Rights and Responsibility Agreement (SPPRA) can be drawn up and registered. This would

confer PRRs on the step-parent. The agreement could be revoked by a court where it is in the best interests of a child to do so.

The court process would remain the route to take for an unmarried cohabiting partner and in situations where only one parent has PRRs of a child.

The Executive is undecided on whether or not SPPRRA's should be included in a future family law bill.

6. Right of Contact

Under provision in the Children (Scotland) Act 1995 anyone with an 'interest in the child' can apply to courts for contact and PRRs. The only other option for the wider family members eg. grandparents to maintain contact with the child when a relationship breaks down is on the strength of the relationship with the parent(s) of the child.

One proposition is that **grandparents should have a right of contact** with their grandchildren. Parents would have to go to court and demonstrate that this was not in the child's best interests where this was not appropriate. There is no clear definition of a right of contact in the document and who potentially could apply for such a right eg. only family members, (former) foster parents etc.

The Executive does not agree with right of contact for grandparents and would like views on how best to promote contact with wider family members or family friends when voluntary agreements cannot be reached.

Making the law work in practice

7. Information

The consultation document refers several times to the need to improve the information available to people about their legal rights and responsibilities. Views are sought on the coverage and dissemination of information on family law.

8. Supporting Families

The consultation document highlights the importance of appropriate support services being available to families with relationship difficulties or in transition. The Executive are interested to know in what ways the voluntary sector contribution to securing good outcomes for families can be strengthened and ways in which the complementary skills of counsellors and mediators can be mobilised locally to support families in transition.

9. Legal Process

The Executive is also keen to hear views on how accessible and easy to understand the legal process is for people and any ideas for improvements for those using the law in relation to family matters.

FURTHER DISCUSSION OF HEADLINE ISSUES

1. Do the proposals fully address the nature and extent of family formations in Scotland today?

The document recognises that family law should reflect the actuality of family structures in society and the implications of varied family relationships eg. gender roles. It is therefore important that consistency in approach to family formations is maintained. A future family law bill will contain measures to ensure unmarried fathers have equal PPRs to mothers however the proposed stepparent agreements, SPPRRAs would only be applicable to married couples.

2. Are the proposals for reforming family law consistently child centred? Changes in family law can be seen as a continuation of the Children (Scotland) Act 1995 which places children's needs and interests at the centre. One of the guiding principles for improving family law is safeguarding the best interests of children. Almost all of the proposals affect children directly but do they ensure that the child remains the focus. For example does an automatic right of contact for wider family members place the child or the adult at the centre?

3. Do the measures discussed in the consultation document consistently ensure that children's views are heard and taken into account in matters that affect them, for example in relation to the proposed SPPRRAs? Increasingly legislation refers to the right of the child to express their opinion and to have these views taken into account in matters that affect them. The court process in relation to PPRs ensures that this happens. It is unclear from the document what mechanisms would be in place to ensure children's views are taken into account in relation to voluntary measures such as SPPRRAs and how this would be monitored. There is a need for clarity about the mechanisms used to listen to children's views.

4. Do the proposals in relation to support services for families go far enough in addressing the specific needs of children? The consultation document does not give a great deal of attention to how support services for families will address the specific needs of children when divorce and separation occurs in families. While counselling and mediation services have the child's best interests at the centre they are largely adult based services and there is disparity between adult based services and child based services. Children should have an automatic right to such services.

5. In relation to the further integration of support services what resources are available, and how will services be monitored to ensure that they are achieving a more coherent and integrated approach? The consultation document does not give a great deal of attention to how support services would be resourced and does not mention how a more integrated approach would be monitored. To be able to deliver these services effectively adequate, long term targeted funding is essential while supporting existing local services and not creating additional and conflicting funding structures.

Family Matters: Improving Family Law in Scotland and the other documents mentioned in this briefing can be found at www.scotland.gov.uk/familylaw or by contacting the Executive at 0131 244 4097.