

[Family Law \(Scotland\) Bill](#)

Bill Number: SP Bill 36
Introduced on: 7 February 2005
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 15 December 2005
Royal Assent: 20 January 2006

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Passage of the Bill

The [Family Law \(Scotland\) Bill](#) [SP Bill 36] was introduced in the Parliament on 7 February 2005. Stage 1 commenced on 15 March 2005 with the Justice 1 Committee as the lead committee. The Stage 1 (general principles) debate took place on [15 September 2005](#) and the [Bill was passed](#) following the Stage 3 parliamentary debate on [15 December 2005](#).

Purpose and objectives of the Bill

The Bill makes a number of significant changes to Scottish family law including changes to the periods of separation prior to divorce, new legal rights for cohabiting couples and new parental rights and responsibilities for unmarried fathers.

At the time of the Bill's introduction, the Scottish Executive also announced a range of non-legislative measures designed to complement the legislation. These included the Grandparent's Charter (which was ultimately renamed the Grandchildren's Charter), intended to improve the relationships of children with their grandparents, and the Parenting Agreement, a tool that parents could use to resolve conflicts over time spent with children after separation.

Provisions of the Bill

There are currently two grounds of divorce in Scots law based on periods of separation by the parties concerned. The Bill reduces the relevant separation periods. Specifically, in relation to the ground of divorce where both parties consent to the divorce, the change to the relevant period provided for by the Bill is from two years to one year. In relation to the ground of divorce where one party does not consent to the divorce the change to the relevant period is from five years to two years.

In relation to cohabiting couples, the Bill creates a range of new legal rights and responsibilities applicable to them. Most notably it provides that where one party dies intestate (ie without having a will) it will be possible for his or her cohabitant to apply to the court for financial provision out of his or her

deceased partner's estate. Furthermore, where the relationship ends other than by death it will be possible for a cohabitant to apply to the court for financial provision to be made by his or her partner. In deciding whether to grant such applications on death and separation the court takes a range of factors into account. The provisions in the Bill on cohabitants also apply to same sex couples.

The Bill also makes it easier for unmarried fathers to acquire a range of parental rights and responsibilities (PRRs) in respect of their children. At present, unmarried fathers do not have PRRs automatically (contrasting with the position for mothers and fathers who are, or have been, married to the child's mother). Unmarried fathers can acquire PRRs by court application or by entering into a formal agreement with the child's mother. The Bill provides that joint registration of the birth with the child's mother will in future result in the acquisition of PRRs by an unmarried father.

In addition to the major changes described above, the Bill also makes a series of minor changes to Scottish family law in relation to areas such as matrimonial homes, court orders intended to protect individuals from domestic abuse and private international law (the law covering situations between private individuals with an international element).

Parliamentary consideration

In relation to the divorce proposals the majority view of the Justice 1 Committee at Stage 1 was that insufficient social research evidence had been received by the Committee to justify the Executive's specific proposals to reduce the separation periods. At Stage 2 a non-executive amendment was passed by the Committee to shorten the relevant periods to three years (where one party did not consent to the divorce) and eighteen months (where both parties consented to the divorce). At Stage 3 the Executive's original proposals were reinstated by a parliamentary majority.

Another concern of the Justice 1 Committee at Stage 1 was that there were problems relating to the enforceability of 'contact orders' (court orders permitting the parent that does not live with the child to see him or her) and that these problems were not dealt with by the Bill. Various amendments were tabled at Stages 2 and 3 aimed at addressing this issue. Notably, at Stage 2 an amendment was passed which required courts to warn parties of the consequences of a breach of a contact order at the time when it was imposed. At Stage 3 this requirement was removed. However, the Executive did give various non-legislative commitments relating to contact orders, including that it would undertake further research in this area.

In relation to the non-legislative measures which accompanied the legislation the Justice 1 Committee concluded at Stage 1 that the structure of family support services should be reviewed and that the Scottish Court Service should consider creating specialist family courts across Scotland. At Stage 3 the Executive announced extra funding for family support services in 2006–2007.