

FAMILY LAW (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Family Law (Scotland) Bill introduced in the Scottish Parliament on 7 February 2005:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 36-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill seeks to support the aims set out in the Policy Memorandum by introducing changes to update Scottish family law. Family law provides the legal framework that regulates responsibilities and rights between couples and between children and their parents and others with an interest in their welfare. Scotland, in common with many other countries, has, in recent decades, seen significant changes in family formation and in attitudes towards the family. The Bill makes a range of provisions designed to address the legal vulnerabilities experienced by family members in Scotland today and to ensure that family law protects the best interests of children regardless of the type of family to which they belong. The provisions of the Bill impact across a number of aspects of family law and include:

- the rules regulating divorce;
- parental responsibilities and rights (PRRs) for fathers;
- protection against domestic abuse;

as well as introducing new legal safeguards for cohabiting couples and their children and a number of technical amendments designed to remove anomalies and clarify various matters relating to marriage and to the domicile of children.

Marriage

Section 1: Marriage to parent of former spouse: removal of special requirements

5. The Marriage (Scotland) Act 1977 specifies that people who are related to one another by certain ‘forbidden degrees’ may not marry. This applies to people who are connected by close family ties. There are two levels of these forbidden degrees: relationship by ‘consanguinity’ and relationship by ‘affinity’. While the former refers to relationship by blood, the latter refers to relationships which are not. Section 1 removes the provision of the Marriage (Scotland) Act 1977 that makes a marriage void between certain persons related by degrees of affinity. If a marriage is void it is considered never to have taken place.

6. Section 1 removes the barriers to a marriage between:

- a man and the mother of his former wife

- a man and the former wife of his son
- a woman and the father of her former husband
- a woman and the former husband of her daughter

Section 2: Void marriages

7. Section 2 puts into statutory form two grounds that will make a marriage void. Previously these grounds were not set out in legislation but existed at common law. The common law is that aspect of the law comprised of decisions by the courts.

8. A marriage will be void under this section if:

- a party to the marriage was capable of consenting to the marriage but consented only because of duress or error; or
- a party to the marriage was incapable both of understanding the nature of marriage and of consenting to the marriage.

9. Subsection (4) states that a marriage will not be void simply because a party tacitly withheld consent to the marriage at the time the marriage was solemnised.

10. Subsection (5) defines ‘error’ as a mistake as to the nature of the marriage ceremony or the identity of the persons involved in the ceremony for the purposes of section 2.

Section 3: Extension of jurisdiction of sheriff

11. Actions for declarators of marriage and declarators of nullity of marriage are family actions currently competent only in the Court of Session and governed in certain respects by special rules of procedure. Section 3 provides that actions for declarator of marriage or nullity of marriage are competent not only in the Court of Session but also in the sheriff courts with the exception of those cases where an action is raised after the death of both parties. In such circumstances, actions should continue to be raised only in the Court of Session.

Matrimonial homes

Section 4: Occupancy rights: duration

12. Section 4 concerns the matrimonial home and the rights of the “non-entitled” spouse to occupy the home. An “entitled” spouse is one who has a right to occupy the matrimonial home, whether because he or she is the owner or tenant or because he or she is allowed by a third party to occupy it. A spouse with no such right is a “non-entitled” spouse. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (“the 1981 Act”) gives the non-entitled spouse a right to live in the matrimonial home by providing that, if already living there, he or she has the right to continue to occupy it and where not living there he or she has a right to occupy it. Section 4 introduces a time bar to this latter right. Where there has been no cohabitation between a married couple for two years during which the non-entitled spouse has not occupied the matrimonial home, the non-entitled spouse will cease to have occupancy rights.

Section 5: Occupancy rights: dealings with third parties

13. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 contains provisions designed to protect the non-entitled spouse from the entitled spouse's "dealing" e.g. selling the house to a third party. However, it may be the case that a third party purchases a house from someone, who is not themselves the entitled spouse, unaware that there is a non-entitled spouse who, subsequent to the sale, seeks to exercise their occupancy rights.

14. The 1981 Act, therefore, provides circumstances where the occupancy rights of a non-entitled spouse shall not be exercisable where a third party has bought the house in good faith from a person who is not the entitled spouse. Section 5 further modifies this part of the 1981 Act. The 1981 Act currently stipulates that if five years have passed since the entitled spouse has ceased to be entitled to occupy the matrimonial home and the non-entitled spouse has not occupied the home during that period then the non-entitled spouse loses their occupancy rights. Subsection (3) of section 5 reduces that qualifying period from five years to two years.

Section 6: Occupancy rights: proposed dealings with third parties

15. Section 7 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 details the circumstances in which courts can dispense with the consent of the non-entitled spouse to the dealing of a matrimonial home. Paragraph (b) of section 6 of this Bill amends the 1981 Act by further defining these circumstances making them subject to conditions, including: that negotiations on the sale of the home to a third party must not have begun, or at least the price not yet agreed; the agreed sale price is no less than that specified in the court order; and that the contract for sale be concluded within a specified time period.

16. An additional amendment at section 6(c) of this Bill provides that if courts refuse an application to dispense with the consent of the non-entitled spouse, they may make an order requiring the non-entitled spouse who becomes the occupier of the matrimonial home to either make specified payment to the owner of the home or otherwise comply with specified conditions.

Section 7: Amendment of definition of "matrimonial home"

17. This section amends the 1981 Act's definition (at section 22) of the term "matrimonial home". This amendment provides that where the tenancy of a matrimonial home has been transferred from one spouse to the other with the intention that it is to be the other spouse's separate residence, it should no longer be regarded as the matrimonial home.

Matrimonial interdicts and powers of arrest

Section 8: Matrimonial interdicts

18. Matrimonial interdicts relate to restraining the conduct of one spouse towards another (or a child of the family) or from being in or near to the matrimonial home. Subsection (2) of this section amends section 14 of the 1981 Act to extend the scope of matrimonial interdicts to include not only a matrimonial home but also any other home occupied by the applicant, the applicant's place of work and the school attended by any child in the applicant's care. However,

subsection (3) provides that a matrimonial interdict cannot be used as an easy alternative to an exclusion order (this is when a court orders someone to leave the matrimonial home). It specifies that a matrimonial interdict should not be available to exclude an entitled spouse, or a spouse with occupancy rights, from the matrimonial home unless the interdict is ancillary to an exclusion order or to a refusal by the court of leave to exercise occupancy rights.

Section 9: Powers of arrest

19. Section 9 amends the 1981 Act so that power of arrest attached to an interdict will no longer automatically fall on the termination of the marriage but instead it will fall after a period of 3 years has elapsed since the application for power of arrest had been granted.

Divorce

Section 10: Divorce: reduction in separation periods

20. Section 10 amends the Divorce (Scotland) Act 1976 to reduce the periods of non-cohabitation required to establish the irretrievable breakdown of a marriage.

21. Under Scots law, the sole ground for divorce is the irretrievable breakdown of the marriage. The 1976 Act provides a list of the ways in which it is possible to establish such a breakdown. Two of these are:

- the non-cohabitation of the parties to the marriage for a period of two years where both parties consent to the divorce
- the non-cohabitation of the parties to the marriage for a period of five years where one party does not consent to the divorce.

22. Section 10 reduces the periods of non-cohabitation in the 1976 Act to one year where both parties consent and two years where one party does not consent to the divorce.

Section 11: Irretrievable breakdown of marriage: desertion no longer to be ground

23. Section 11 removes desertion as a way to establish the irretrievable breakdown of a marriage. Under section 1(2)(c) of the Divorce (Scotland) 1976 Act it is only possible to establish the breakdown of the marriage on the grounds of desertion if there has been two years' non-cohabitation after one party has deserted the other. This provision is no longer necessary because of the reductions in periods of non-cohabitation introduced at section 10.

Section 12: Non-cohabitation without consent: removal of bar to divorce

24. Section 1(5) of the Divorce (Scotland) Act 1976 prevents the court 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. Section 12 of the Bill repeals this provision.

Section 13: Collusion no longer to be bar to divorce

25. The aim of this section is to replace collusion as a bar to divorce, but it remains 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. ‘Collusion’ is whether the parties to a marriage agree to permit a false case to be substantiated, or to keep back a good defence. For example, this might involve the spouses falsifying an adulterous relationship in order to achieve a quicker divorce. However, given that there is broad agreement that existing legislative provisions relating to collusion no longer serve a useful purpose, section 13 of this Bill provides that any rule of law which would prevent spouses from divorcing if they colluded, will cease to have effect.

26. Section 13(2) repeals section 9 of the Divorce (Scotland) Act 1976. Section 9 of the 1976 Act abolished the oath of calumny. The oath of calumny was an oath by a pursuer to swear that there was no agreement between the parties to put forward a false case or to hold back a good defence. However, as collusion is being removed by section 13(1) there is no longer any need to maintain the repeal at section 9 of the 1976 Act. The oath of calumny is not revived.

Section 14: Financial provision: valuation of matrimonial property

27. This section seeks to address the potential for an unfair division of matrimonial property between divorcing spouses. It introduces a measure of discretion for courts when considering the value of matrimonial property on divorce. This includes, for example, the value of the matrimonial home or the occupational pension of one of the parties.

28. Scots law favours a clean break in divorce settlements. This is based on the fair sharing of the net value of all matrimonial property. This provision, which amends section 10 of the Family Law (Scotland) Act 1985 allows courts, on the application of either party, to consider and take account of, any changes in the value of matrimonial property subsequent to the valuation at the ‘relevant date’, usually the date at which the couple separate. However, while this provision is aimed at enhancing protection and fairness in the division of matrimonial assets by offering some flexibility, it does not in any way alter the general presumption towards the relevant date as being the point at which such assets should be divided.

Section 15: Financial provision: incidental orders

29. Section 15 provides sheriffs with the power to direct a sheriff clerk to execute deeds relating to moveable property. Currently the sheriff can do so in relation to heritable property where the grantor of deeds cannot be found, refuses or is unable, or fails to execute the deed. However, in an increasing number of matrimonial cases, courts are being asked to make orders for the transfer of movable property, e.g. insurance policies. This section removes the existing anomaly in the law.

Domicile of persons under 16

Section 16: Domicile of persons under 16

30. Section 16 takes steps to further eradicate the remnants of the condition of illegitimacy in Scots law. Currently, the domicile of a child is dependent on the child's father, if the parents are married and the mother if the parents are unmarried. Section 16 does away with this distinction. It details the presumptions which will apply when deciding the domicile of a child. It provides that a child's domicile before they have reached the age of 16 will be that of the country with which the child is for the time being most closely connected. There will therefore no longer be a link between a child's domicile and that of his or her parents' marital status in relation to both the domicile of origin and dependant domicile.

Unmarried fathers: rights in relation to children

Section 17: Parental responsibilities and parental rights of unmarried fathers

31. Subsections (2) and (3) of section 17 amend the Children (Scotland) Act 1995. The amendment in subsection (2)(b) gives parental responsibilities and parental rights to unmarried fathers who, in the future, register the birth of their child jointly with the mother. The registration must be under one of the provisions referred to in subsection (3). At present, a father will only automatically acquire such responsibilities and rights if he was married to the child's mother at the time of conception or subsequently.

32. Subsection (3) refers to the relevant provisions for registration in Scotland, England, Wales and Northern Ireland. It also gives Scottish Ministers the power to make regulations to give parental responsibilities and parental rights to fathers who were never married to the child's mother and who are not registered as the child's father in the provisions for registration referred to above. This is intended to be used to regulate for recognition of parental responsibilities and rights of fathers with children whose births were registered outwith the United Kingdom.

33. Subsection (4) makes it clear that a man whose child's birth was registered under any of the provisions for registration referred to in subsection (3) will not gain parental responsibilities and parental rights as a result of the amendment made to the Children (Scotland) Act 1995 by subsection (2)(b).

Cohabitation: new rights

Section 18: Meaning of "cohabitant" in sections 19 to 22

34. This section defines the term "cohabitant" as it is used in this legislation and, at subsection (4), describes the factors which courts will take into account when determining whether a person is a cohabitant for the purposes of sections 19 to 22.

Section 19: Rights in certain household goods

35. The provisions relating to cohabitants are designed to give legal protection to unmarried cohabitants on the breakdown of the relationship or when a partner dies. Subsection (2) specifies that, on the break up of a relationship, it shall be presumed that each party has the right to an

equal share of any household goods which were acquired during the period of the cohabitation. This excludes items which were received as gifts or acquired by succession from a third party. Subsection (4) further defines what is meant by “household goods”.

Section 20: Rights in certain money and property

36. This section specifies that money deriving from any allowances made by either cohabitant for their joint household expenses – or any property purchased from such money – will be treated as belonging to each cohabitant in equal shares. Subsection (3) makes it clear that “property” does not here include the cohabitants’ family home.

Section 21: Financial provision where cohabitation ends otherwise than by death

37. On the break up of a committed cohabiting relationship, one party may find themselves in a position of financial vulnerability and section 21 seeks to make provision for such situations. It provides that one party can apply to the court for a limited financial settlement from their former cohabitant. Subsection (2) states that courts may require the defender to pay a capital sum, payable as described at subsection (4). Courts may also require the defender to make payment in respect of the cost of caring for any child of the relationship under the age of 16, also payable as described at subsection (4).

38. In considering such applications for financial support, courts will consider (subsection (3)) whether the defender has derived any economic advantage from contributions made by the applicant and conversely whether the applicant has suffered any economic disadvantage. Subsection (5) specifies that any application to the court under this section would have to be made within a year after the day on which the cohabitation ended.

Section 22: Application to court by survivor for provision on intestacy

39. This section makes provision to allow applications to be made to the court by the surviving partner on the death of a cohabitant when that person has died intestate. The surviving partner may make such an application for a share in the deceased partner’s estate although this is qualified by subsection (4) which specifies that any such award cannot exceed the amount which the survivor would have been entitled to under statutory rules of intestacy had the survivor been the spouse of the deceased.

40. Subsection (2) provides that, if appropriate, courts may award either a capital sum or a transfer of property from the estate. A capital sum may be paid either on a specified date or in instalments, as is specified at subsection (8). Subsection (3) describes the matters which courts may take into account when considering making an order under section 22. Such matters include the size of the deceased cohabitant’s estate and the nature and extent of any other claims on the estate.

41. Subsection (6) specifies that an application to the court under section 21 must, ordinarily, be made within 6 months of the date on which the deceased died, although subsection (7) allows the court to consider applications which fall outwith this period if they are satisfied with the

reason for the late application. Subsection (11) provides definitions of certain expressions used in the section.

Section 23: Administration of Justice Act 1982: extension of definition of “relative”

42. Under the Administration of Justice Act 1982, it is competent for a “relative” of an injured person to raise a court action for a claim of liability against the responsible person. This section amends the definition of “relative” under the Act to include a same-sex cohabiting partner.

Cohabitation: domestic interdicts

Section 24: Domestic interdicts

43. This section introduces into the 1981 Act the concept of “domestic interdicts” which will apply to unmarried cohabitants, either opposite-sex or same-sex. Domestic interdicts will have much the same effect in relation to cohabitants as matrimonial interdicts have for married couples with similar scope as is defined in section 8, above. Section 24(3) introduces into the 1981 Act five new sections relating to domestic interdicts. Section 18A describes what a domestic interdict is, who it will apply to and what the scope of such interdicts are. Section 18B provides further detail as to the application of domestic interdicts. Section 18C describes the attachment of a power of arrest to domestic interdicts. Section 18D provides for police powers after an arrest in these circumstances and section 18E deals with the procedure after arrest.

Amendments of Civil Partnership Act 2004

Section 25: Amendments of Civil Partnership Act 2004

44. This gives effect to schedule 1 which amends the Civil Partnership Act 2004.

Application of 1981 Act to cohabiting couples of same sex

Section 26: Application of 1981 Act to cohabiting couples of same sex

45. Section 26 introduces amendments to the Matrimonial Homes (Family Protection) (Scotland) Act 1981 extending the provisions on occupancy rights of cohabiting couples (section 18) to same sex couples.

Jurisdiction

Section 27: Jurisdiction: actions for declarator of recognition of certain foreign decrees

46. This section provides rules as to jurisdiction in the Court of Session and the Sheriff Court in actions where a pursuer is seeking recognition in Scotland of a decree of divorce, nullity or separation granted in a country outwith the European Union.

Private international law

Section 28: Validity of marriages

47. The rules as to which law governs the validity of marriage in cases involving a foreign element (such as where one of the spouses is domiciled in one country but married in another) depend partly on statute and partly on common law. Section 28 offers more clarity in this regard by providing for which rules will apply, in certain circumstances. It provides that, subject to the Foreign Marriages Act 1982, the formal validity of a marriage be governed by the laws of the place of celebration.

Section 29: Matrimonial property

48. This section provides for the rules which will apply in defining matrimonial property in marriages involving a foreign element.

Section 30: Aliment

49. This section provides for the rules which will apply in defining aliment in marriages involving a foreign element.

Declarator of freedom and putting to silence: action no longer competent

Section 31: Action for declarator of freedom and putting to silence to cease to be competent

50. An action for a declarator of nullity of marriage is not available if there is not even a semblance of marriage or pretended marriage that can be declared null. In the past, the remedy for this situation has been an action for declarator of freedom and putting to silence in which the pursuer asks the court for a declarator that he or she is free of any marriage with the defender and for a decree ordaining the defender to desist from asserting that he or she is the spouse of the pursuer and putting the defender to silence thereafter. Whilst there may have been a need for this type of action in days when irregular marriages were common and there was often doubt as to whether a couple had privately exchanged consent to marry, the action is now virtually unknown and has become obsolete. Section 31 therefore removes the remedy by providing that it shall no longer be competent to raise an action for declarator of freedom and putting to silence.

General

Section 33: Minor and consequential amendments and appeals

51. Section 33(1) gives effect to schedule 2 which provides for minor and consequential amendments while section 33(2) gives effect to schedule 3 which provides for minor and consequential repeals.

Schedule 1: Amendments of the Civil Partnership Act 2004

52. Schedule 1 makes amendments to the Civil Partnership Act 2004. Paragraphs 2 to 5 relate to the occupancy rights of civil partners with regard to the family home. Paragraph 6 extends the scope of interdicts to include the family home, place of work and school attended by a child in

the care of the applicant civil partner. Mirroring the changes made for married couples in section 9 of the Bill, paragraph 7 provides that interdicts relating to civil partners will fall 3 years after the day on which the application for interdict was granted. Paragraph 8 reduces the qualifying non-cohabitation periods for dissolution of a civil partnership from two years to one year where the parties consent and from five years to two where one of the parties does not consent. Paragraph 9 amends the definition of “family homes” in section 135 of the Civil Partnership Act 2004 to include the condition that where one civil partner transfers tenancy to the other civil partner (either by agreement or under any enactment) then from that point the house ceases to be the “family home”.

FINANCIAL MEMORANDUM

INTRODUCTION

53. The Policy Memorandum which is published separately explains in detail the policy intention of the Family Law (Scotland) Bill. The purpose of this Financial Memorandum is to set out the costs associated with the reform measures introduced by the Bill and as such it should be read in conjunction with the Bill and the Policy Memorandum.

AREAS OF REFORM

54. The Bill seeks to modernise family law in Scotland across a number of areas. Family law is central to life in Scotland and these reforms will have a wide impact across many areas. With the exception of some technical amendments, there are five principal reforms being introduced by the Bill. These are as follows:

- granting parental responsibilities and rights (PRRs) to unmarried fathers on the registration, with the mother, of a child’s birth;
- reducing the non-cohabitation periods required for divorce;
- updating the law on matrimonial interdicts;
- introducing the concept of domestic interdicts for cohabitants; and
- introducing greater legal protection for cohabitants.

55. This memorandum discusses the financial consequences of each area of reform introduced by the Bill and a summary table detailing these costs is included at the end of the document. In making a calculation of the financial impact of the Family Law (Scotland) Bill, the approach taken has been to err towards a higher rather than a lower figure. Nevertheless, the cost impact of the Bill will not be major. The total figure arrived at includes costs relating to judicial salaries, court costs and legal aid costs. The overall figure is £4.25m per annum but of this figure around £1.06m will be short-term and it is estimated that this portion of the increase in

costs will not be sustained beyond a period of between 18 months and 2 years after introduction. (See summary table at paragraph 112).

METHODOLOGY

56. Since the costs arising from the reforms in the Bill all fall on the Scottish Administration, it has not been necessary to produce a Regulatory Impact Assessment. We have, however, considered widely the impact of the policy reforms and have consulted closely with those likely to be affected. Only the direct costs associated with the provisions in the Bill are examined in this document. Any costs associated with supplementary work, for example for a public information campaign, are not assessed here as they are not directly consequential on the Bill.

57. Where possible, we have examined existing research data to estimate the likely impact of the reforms. In March 2004 social research findings¹ were published which draw together Scottish data on trends in family formation and dissolution. These research findings highlight the extent of family change in Scotland in recent years and the increasing complexity of family life.

58. This analysis, compiled with data from the Scottish Court Service, Scottish Legal Aid Board and others allows an informed estimate to be made of the impact of the Bill's reforms. Using information from relevant sources, it has been possible to provide a best estimate of the financial consequences of the provisions of the Bill.

PARENTAL RESPONSIBILITIES & RIGHTS FOR UNMARRIED FATHERS (PRRS)

What the Bill provides

59. Parental responsibilities and parental rights (PRRs) were introduced by the Children (Scotland) Act 1995. Parents have those rights which are necessary to enable them to fulfil their responsibilities to: safeguard and promote the child's health, development and welfare; provide appropriate direction and guidance; maintain personal relations and contact with the child and act as the child's legal representative. Mothers secure PRRs automatically on the birth of a child and a man married to the mother of his child also has PRRs. At present, should an unmarried couple wish the father to have PRRs, they need to complete a Parental Responsibilities and Parental Rights Agreement form (PRRA). This form has to be submitted to the Keeper of the Registers of Scotland for registration in the Books of Council and Session. The alternatives are either for the couple to marry (which would automatically confer PRRs on the father) or for the father to seek PRRs through the courts.

60. This legislation introduces an additional means for unmarried fathers to attain PRRS. From the date of commencement of the Bill, the joint registration of a child's birth by both unmarried parents will confer PRRs on the father.

¹ Scottish Executive and Centre for Research on Families and Relationships (2004), Family formation and dissolution: Trends and attitudes among the Scottish population, Research Findings No. 43/2004.

Data

61. The 2003 census data shows that 24,000 children (around 45.5%) were born to couples that were not married at the time of the birth. The trends over the past 10 years suggest that the percentage of children born to unmarried parents will continue to increase in the foreseeable future and those born to married parents will decrease. The table below shows the census information in this area over the last 10 years²:

Table 1: Trends in children born to married/unmarried parents

Year	Married parents		Unmarried parents		Total
	Number	Percentage of total	Number	Percentage of total	
1993	43,482	68.7	19,855	31.3	63,337
1994	42,432	68.8	19,224	31.2	61,656
1995	39,785	66.3	20,266	33.7	60,051
1996	37,936	64.0	21,360	36.0	59,296
1997	37,052	62.3	22,388	37.7	59,440
1998	35,000	61.1	22,319	38.9	57,319
1999	32,425	58.8	22,722	41.2	55,147
2000	30,451	57.4	22,625	42.6	53,076
2001	29,767	56.7	22,760	43.3	52,527
2002	28,736	56.0	22,534	44.0	51,270
2003	28,568	54.5	23,864	45.5	52,432

The Keeper of the Registers of Scotland

62. Parental Responsibilities and Parental Rights Agreement forms (PRRAs) became available following the Children (Scotland) Act 1995 and are a means of unmarried fathers gaining PRRs. The number of forms submitted annually has risen from 6 in 1996, to 492 in 2003³. In the immediate period following enactment of the Family Law (Scotland) Bill, it is likely that there will be a small increase in the normal rate of PRRAs submitted to the Keeper of the Registers of Scotland by unmarried couples who already have children. The reasoning is that the public information campaign which will follow these family law reforms will alert more unmarried fathers to their lack of PRRs and will prompt them to take action to acquire them.

63. However, the expected increase in the registration of PRRAs will be cost neutral. A fee is charged for processing PRRAs (currently £20.05) which covers the administration costs to the Keeper. In the longer-term, it is likely that there will be a reduction in the number of PRRAs completed as more unmarried fathers who jointly register the birth of their child with the mother receive PRRs by this means.

² Extracted from Table 3.1 – Live births, numbers and percentages, by age of mother and marital status of parents, Scotland, 1946 to 2003, General Register Office for Scotland, 2004

³ Figures supplied by Registers of Scotland

Scottish Court Service

64. When two unmarried parents cannot agree to the use of a PRRA, the father may wish to acquire PRRs through the courts. Calculating the anticipated additional short-term costs or longer-term savings associated with unmarried fathers seeking PRRs through the courts is complicated by the fact that the courts do not keep specific records of the number of unmarried fathers who acquire PRRs by means of an order under section 11(2)(b) of the Children (Scotland) Act 1995. However, the Scottish Court Service (SCS) were able to provide recent figures for the total number of people (unmarried fathers and others) who apply for PRRs in this way.

Table 2: Orders imposed in terms of section 11(2)(b) of the Children (Scotland) Act⁴

YEAR	NUMBER OF ORDERS
1999	120
2000	182
2001	135
2002	203
2003	155

65. Using the figures in Table 2, and based on an average of 175 applications per annum⁵, it is estimated that the total cost to judicial salaries is in the region of £35k per annum and SCS staffing costs around £9k per annum. If we were to estimate that 75% of such orders relate to unmarried fathers this would put the current annual costs at £26,250 in judicial salaries and £6,750 in staffing costs. In paragraph 62, it is suggested that - following the enactment of these provisions - there is likely to be a short-term increase in these costs (perhaps for the first 2 years) followed by a decrease in the longer term. If we estimate that the short-term increase in such applications from unmarried fathers will be as high as 50% this would represent an increase of **£13k** in judicial salaries and an increase **£3.4k** in court costs for approximately the first 2 years.

Legal aid

66. As is discussed above, it is reasonable to expect that the provisions relating to PRRs for unmarried fathers will, in the longer term, result in fewer unmarried fathers resorting to the courts to obtain these rights. As the new system becomes established, we would similarly expect the demand for civil legal aid and advice and assistance to be reduced.

67. At present, legal aid funding can be made available for initial advice and assistance and/or for civil legal aid for a court action should an unmarried father wish to apply to the court for PRRs (assuming of course that the financial and statutory tests for obtaining civil legal aid are met and the financial eligibility test is met for obtaining advice and assistance). Once this Bill is enacted, a short-term increase in the number of people approaching the courts to pursue or defend against the conferring of PRRs can be expected for cases where a child's birth has already been registered before the commencement of the Bill and a PRRA has not been registered. While precise figures are difficult to reach, we can however make the following estimate:

⁴ Information supplied by the Scottish Court Service.

⁵ It is likely that not all such applications will be successful

Table 3: Legal aid to pursue and defend PRRs in year 2003/2004⁶

	No of cases legal aid granted for PRRs	Average case cost	Total paid
Court of Session	1	£3,962	£3,962
Sheriff Court	40	£1,569	£62,751
TOTALS	41		£66,713

68. In terms of **court costs**, if we were to estimate that an extra 50% or 20 applications for legal aid are made in the first year (and assuming that these applications are made in the sheriff court) the extra cost/expenditure to the Legal Aid Fund would be (20 x £1,569) = **£31,380** for each of the first 2 years.

69. It should also be noted that civil legal aid granted to pursue or defend a case relating to PRRs will, ordinarily, be preceded by a grant of **advice and assistance**, assuming that the client is financially eligible. While the Scottish Legal Aid Board were unable to provide figures on this, they were able to advise that it is not unusual for a client to incur advice and assistance costs of £300-£500 prior to raising a court action. These costs will consist of meetings with the client, negotiations and correspondence with the opponent and applying to the Board for civil legal aid to pursue the action in court. So if we were to assume the higher figure of £500 for an additional 20 applications, this would give rise an additional cost for advice and assistance of **£10k for each of the first 2 years**.

70. The Fund is also likely to have to deal with the impact of additional advice and assistance costs regarding **obtaining PRRs through the use of a Parental Responsibilities and Parental Rights Agreement**. SLAB were able to provide the following figures in this respect.

Table 4: Advice and assistance parental rights agreements accounts paid 2001 to 06/04/2004⁷

	2001-02	2002-03	2003-04	TOTAL
No of Intimation Paid	129	111	50	290
Total Amount Paid	£12,849.91	£10,777.70	£3,104.00	£26,731.61

71. Therefore it can be seen that the average advice and assistance case cost for a PRRA in 2002/03 was (10,777.70 ÷ 111) = approximately £97. If we estimate that there will be in as many as 50 additional applications for PRRA's in the first year then this would cost (97 x 50) = **£4,854** in each of the first 2 years. So, taking together the estimated short-term increases for legal aid funding which might arise as a result of the Bill's provisions on PRRs for unmarried fathers we can estimate that the total additional cost will be in the region of **£46k**. Again, it is anticipated that after the first 2 years of so there would actually be a decrease in requests for funding for such action.

⁶ Table provided by the Scottish Legal Aid Board

⁷ Table provided by the Scottish Legal Aid Board

Mediation and counselling

72. If, in the period immediately following commencement, more unmarried fathers become aware that they do not have PRRs, some may wish further advice in considering whether to complete a PRRA form and may contact one of the voluntary sector family bodies for advice. However, we expect this to be in a very small number of cases and any associated costs to be negligible and able to be absorbed from within existing resources.

General Register Office for Scotland

73. The Bill introduces changes relating to the registration of a birth. While these changes will have an impact for unmarried fathers, they do not introduce any changes to the registration process, so there will be no cost implications for the registration service.

Summary: Parental responsibilities and rights (PRRs) for unmarried fathers

While the introduction of automatic parental responsibilities and rights for unmarried fathers on joint registration by a couple of their child's birth will have cost implications, it is anticipated that these will largely be confined to the first 2 years following commencement.

As some unmarried fathers become aware of their lack of parental responsibilities and parental rights, they may seek to acquire these through the courts and we estimate the total costs to the Scottish Court Service to be around £16k. Equally, there may be an immediate increase in requests for legal aid funding for advice and assistance, court costs and assistance in preparing Parental Responsibilities and Parental Rights Agreement forms. The estimated increase in these costs is estimated at around £46k.

However, these increases in costs are not expected to continue beyond the first 2 years following commencement and after this it is reasonable to expect that both the Scottish Courts Service and the Scottish Legal Aid Fund will experience a gradual reduction in costs.

REDUCING THE NON-COHABITATION PERIODS REQUIRED FOR DIVORCE

What the Bill provides

74. The Bill reduces the periods of non-cohabitation which qualify for divorce from 5 years without consent to 2 years and from 2 years with consent to 1 year. This is designed to help lessen the number of couples resorting to fault-based divorces. As a consequence, this will reduce acrimony and enable couples who are determined to end their marriage to do so without unnecessary conflict and recrimination, allowing them and their children to move on.

Data

75. The 2002 Civil Judicial Statistics show that of the 10,826 divorces granted that year, 6,082 were granted on the grounds of 2 years non-cohabitation, and 2,552 on the grounds of 5 years non-cohabitation. The Scottish Court Service have advised that most applications for divorce based on 2 years non-cohabitation are made immediately upon the qualifying period being reached. Similarly, around 75% of applications based on 5 years non-cohabitation are submitted immediately on the qualifying period being reached.

Scottish Court Service

76. It would be reasonable to assume that the reduction in the non-cohabitation periods for divorce from 5 years to 2 years (without consent) and from 2 years to 1 year (with consent) will result in an increase in the number of divorce cases being handled by the courts in the period immediately following commencement. However, this increase will only exist in the short-term while a number of outstanding divorce cases come to court more quickly than would previously have been possible. **As this should not cause an increase in the overall number of divorces, there will be no impact beyond the first few years.**

77. Quantifying the short-term financial impact requires estimating figures based on current trends. The SCS estimate that in the initial period following commencement, there would be an additional 6,000 cases on the grounds of 2 years non-cohabitation (i.e. a full year's extra cases) and an additional 5,750 cases for those on the grounds of 5 years non-cohabitation (i.e. 75% of cases for 3 years). It is anticipated that the bulk of the increase is likely to start approximately three months after commencement of the legislation and that it will continue for a period between 18 months and 2 years. Thereafter, it is expected that current levels of business will be resumed.

78. So, for the initial period following commencement, the Scottish Court Service can expect to more than double its divorce workload, i.e. an increase of 11,750 cases. The Service cannot absorb that within existing resources and will require to redeploy existing staff and take on additional casual staff. On the assumption that 40%, (the current proportion) of applications, or 4,700, use the simplified procedure, and that of the 7,050 ordinary applications, 9%, or 635, are defended, it is estimated that the SCS staff costs will be in the region of £272k over the first 2 years (**i.e. £136k in year 1 and £136k in year 2**).

79. The SCS estimate that the chambers work for the judiciary arising out of the undefended cases is expected to average out at two hours per head per month. At this level, it will be capable of being absorbed within existing resources. The 635 or so defended cases, however, would represent around 10% of the SCS defended caseload and would therefore be likely to result in claims for part-time shrieval assistance. It is estimated that this additional demand would add to the costs of judicial salaries by £126k (**i.e. £63k in year 1 and £63k in year 2**).

Legal aid

80. As suggested by the Scottish Court Service, during the period between 18 months and 2 years after commencement, there could be some additional 11,750 divorce cases proceeding through the courts based on periods of non-cohabitation. Since some couples will be eligible for advice and assistance and civil legal aid for the court costs, the additional number of cases will

have an impact on the Scottish Legal Aid Fund. The cost to the Fund for divorces based on the periods of non-cohabitation differs on a case-by-case basis but the Scottish Legal Aid Board does keep statistics both of total aid awarded as well as average case costs.

81. Therefore, looking at the legal aid costs for divorce cases over the last few years, it is possible to estimate the additional pressure on the legal aid fund in the period immediately following commencement. The table below⁸ gives the latest statistics (2003-04) on legal aid costs for divorce on the basis on non-cohabitation.

Table 5: Average divorce case costs to SLAB on basis of 2 and 5 years non-cohabitation – 2003-04

COURT	CATEGORY	AVERAGE CASE COST	TOTAL PAID	NUMBER OF CASES
Court of Session	2 years non-cohabitation	£0	£0	0
Sheriff Court	2 years non-cohabitation	£573	£515,879	900
Court of Session	5 years non-cohabitation	£10,389	£31,167	3
Sheriff Court	5 years non-cohabitation	£876	£458,043	523

82. In estimating the costs to the Fund, we have adopted the same approach as is outlined in paragraph 78 in calculating the number of additional divorce cases likely to arise in the short-term. In cases of 2 years non-cohabitation with consent, most applications for divorce are made immediately the qualifying period is reached. It is therefore reasonable to assume that in the period immediately following commencement there will be a doubling in applications for legal aid. In cases of 5 years non-cohabitation without consent, the calculation is a little more complicated. As we know that, at present, in around 75% of such cases divorce is applied for immediately on the qualifying period being reached, we can estimate an additional 3 years of applications for legal aid will be received on this basis. This can be calculated at 75% of the total number of cases where there is not consent and where there has been non-cohabitation for 2 years, for 3 years and for 4 years.

83. The latest data available is for the year 2003-04. In this year the legal aid costs for divorce on the grounds of non-cohabitation, in both the Court of Session and the Sheriff Court, were:

- £515,879 on divorce after 2 years with consent;
- £489,666 on divorce after 5 years without consent.

84. Using these figures as a basis, we can estimate that the additional legal aid costs will be £515,897 (a full extra year's costs in cases of 2 years non-cohabitation) plus £1,101,748 (75% of

⁸ Extract from Family Matrimonial Figures: Average case costs of civil law action 2001-2004, supplied by Scottish Legal Aid Board

3 additional years of cases of 5 years non-cohabitation) coming to an estimated total of **£1.6 million** to the legal aid budget over the first two years or so (**i.e. £0.8m in Year 1 and £0.8m in Year 2**).

85. It is important to note that this increase will only result from the bringing forward of divorce actions. These divorces would have taken place in any case over the following three years and would therefore have resulted in the same impact on the Scottish Legal Aid Fund.

86. The initial costs will not be sustained beyond the first few years after commencement and therefore will not have any long-term cost implications. In fact, it is anticipated that the reduction in non-cohabitation periods, especially where there is no consent, is likely to lead to a decrease in divorces pursued on adversarial grounds, such as unreasonable behaviour, which will in turn result in a longer term reduction in claims for legal aid funding for these purposes. It is reasonable to say, therefore, that in the long-term there will be savings as fewer couples opt for fault-based divorces as a means to ending a marriage more quickly. (Fault based divorces are inevitably more expensive than non-cohabitation divorces).

Summary: Reducing the non-cohabitation periods required for divorce

The reduction of non-cohabitation periods for divorce will have no major long-term financial consequence. It is likely to result in an increase in the number of divorce cases handled by the courts in the immediate period following commencement. The additional cost to the Scottish Court Service during the period between 18 months and 2 years following commencement are estimated at around £272k with judicial salaries requiring an additional £126k over the 2 years.

This will have an impact on the demand for legal aid funding. The cost to the Scottish Legal Aid Fund will be around £1.6m over the first 2 years.

UPDATING THE LAW ON MATRIMONIAL INTERDICTS AND INTRODUCING DOMESTIC INTERDICTS

What the Bill provides

87. The Bill amends domestic abuse legislation to ensure that protection extends to cover the victim's everyday life and offers protection to vulnerable cohabitants, including same-sex couples, as well as spouses.

Data

88. Gathering data on the current use of matrimonial interdicts is not a straightforward task. Each of the eight police forces gather their own statistics. In addition, a breach of a matrimonial interdict is not always recorded in its own right. The police have advised that, in practice, the breach of such an interdict usually involves other common law crimes such as a breach of the peace, or an assault against the spouse or partner who the interdict is aimed at protecting.

89. Police officers in dealing with such matters will normally defer to the common law power of arrest and in any subsequent report to the Procurator Fiscal the commission of the assault, breach of the peace or other crime would be cited as the principal issue with the breach of interdict detailed only as a supporting fact. For this reason, some forces were unable to provide any data pertaining specifically to breaches of matrimonial interdicts whilst there were inconsistencies between the forms of data recorded by others.

90. However, to give an indication of the current level of breaches of matrimonial interdicts across Scotland, the following information has been gathered⁹:

Table 6: Breaches of matrimonial interdicts by police force, 2001 – 2004

POLICE FORCE	2001-2002	2002-2003	2003-2004
Central Scotland Police	29	20	26
Dumfries & Galloway	2	2	7
Fife Constabulary	-	-	-
Grampian Police	20	16	21
Lothian & Borders	20	62	36
Northern Constabulary	-	-	-
Strathclyde Police	-	-	-
Tayside Police	-	-	-

91. Matrimonial interdicts are to be extended to cover the applicant's home, place of work and the school attended by any child in the care of the applicant spouse. In addition, interdicts with a power of arrest will be made available to divorced partners and present and former cohabitants.

Police

92. It is not anticipated that these changes will lead to an increase in the number of interdicts being issued and indeed the implications for the police are likely, if anything, to result in less work and thereby cost savings. The extension of interdict will not alter the fact that the police would still be required to attend an incident e.g. at a place of work. At the moment, without interdict, in a situation where police officers are called to attend a domestic dispute, they will either attempt to arbitrate between the parties or they will resort to other powers. With the former, there is every chance that officers may have to return to the home if there is a recurrence of the dispute, either to give further advice or to make an arrest, e.g. for breach of the peace or assault. An interdict, as is proposed by the Bill, which has a power of arrest attached to it would make such situations much more straightforward for the police in that, where appropriate, they will be able to effect an arrest immediately.

93. While cost savings may be to some extent offset by the fact that there will be more opportunities to involve the police (to make an arrest outwith the home) the net result is still likely to result in a saving both in terms of police time and resources.

⁹ '-' indicates that no information is available.

Scottish Court Service

94. The Scottish Court Service advise that these changes to the application of matrimonial and introduction of domestic interdicts are unlikely to result in any measurable increase in costs.

Legal aid

95. There do not appear to be any legal aid cost implications in respect of the provisions on matrimonial and domestic interdicts.

Summary: Updating the law on matrimonial interdicts

The changes to matrimonial interdicts made by the Bill, while offering greater protection to vulnerable people, will simplify existing processes and are expected to result in a slight reduction in the costs presently associated with these interdicts and orders.

LEGAL PROTECTION FOR COHABITANTS

What the Bill provides

96. The Bill does not seek to introduce a new legal status for cohabiting couples. It is not the intention that marriage-equivalent legal rights should accrue to cohabiting couples. Rather, the Bill seeks to reflect the trend towards increased cohabitation and ensure that such couples are not disadvantaged by having insufficient protection at the end of the relationship, whether on the break up of the relationship or the death of one of the partners. In general terms, a cohabiting couple will be defined as a couple living together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the couple are of the same sex.

97. The Bill will create legal safeguards for cohabiting couples, principally:

- a presumption of equal shares in property and money acquired during the period of cohabitation
- a presumption of equal shares in household goods acquired during the cohabitation
- the right – where the cohabitation ends other than by death - to apply to the court for financial provision from the other party under certain circumstances
- the right to apply to the court for discretionary provision from a deceased cohabitant's estate where that person dies intestate.

Data

98. Family formation and dissolution research¹⁰ points to and explains the growth in unmarried cohabitation. Among UK women under 50, for example, the proportion experiencing

¹⁰ Scottish Executive and Centre for Research on Families and Relationships (2004), Family formation and dissolution: Trends and attitudes among the Scottish population, Research Findings No. 43/2004.

cohabitation at some time in their lives more than trebled between 1976 and 1998, from 9% to 29%. Cohabitations tend not to be as long-lasting as marriages, however, and data from the Scottish Social Attitudes Survey in 2000 suggests that the median length of cohabitation in Scotland is about 3 years.

99. The following tables illustrate changing trends in terms of family formation (Table 7) and from the perspective of dependent children (Table 8).

Table 7: Percentage of families by type in Scotland, 1991 and 2001 censuses¹¹

Family type	1991	2001
Married couple family	51%	43%
Cohabiting couple family	4%	7%
Lone parent family	10%	11%
Ungrouped individuals	36%	40%
TOTAL	100%	100%

Table 8: Percentage of dependent children living in family types, 2001 census¹²

Family type	1991	2001
Married couple family	76%	64%
Cohabiting couple family	4%	10%
Lone parent family	19%	25%
Not in a family	0% ¹³	1%
Total	100%	100%

100. The introduction of greater legal safeguards for cohabiting couples will have the effect that, on separation, individuals may be able to go to court to seek some limited financial support from a former partner. This right will be only be available under certain circumstances in consideration of economic disadvantage experienced by the pursuer. There will also be

¹¹ GROS; base in 2001 = 2,352,535

¹² GROS; base in 2001= 1,072,669

¹³ the 1991 definition of dependent child means that no child could be defined as 'not in a family'

provision for former cohabitants to seek a discretionary share of a deceased partner's estate where that person has died intestate. This will mean new cases coming to court.

101. However, it is expected that the great majority of cohabiting couples whose relationships break up will not seek to apply to the court. Many cohabitations are of short-term duration or are casual relationships in which the parties have not become significantly financially intertwined. It would neither be necessary nor appropriate for people emerging from such relationships to seek financial support from one another through the courts.

102. The 2001 census suggests that there are around 163,000 cohabiting couples. Research shows that around 60% of cohabiting relationships result in marriage. The remaining 40% will tend to dissolve within 10 years, with the median length of cohabiting being around 3 years. Some of these relationships could result in civil partnerships once the Civil Partnership Act comes into force but the numbers are expected to be relatively insignificant. As a rough estimate, therefore, there could be around 65,000 relationships ending on break up or death of one of the parties every three years – around 21,800 every year.

Scottish Court Service

103. Quantifying the likely costs of the Family Law (Scotland) Bill's provisions relating to cohabitants requires a certain level of speculative calculation. A projection has been made by comparison with statistics relating to divorce. The Scottish Court Service advise that, at present, around 55% of divorce cases relate either to financial settlement and/or the making of provisions for residence or contact with children. However, due to the nature and length of many cohabitations, fewer of these relationships will result in financial dependence by one party on the other than is the case with married couples.

104. If 55% of divorce actions relate at least partly to reaching a financial settlement, it can perhaps be estimated that the proportion of cohabitations which in future would go to court on dissolution might be around 10%. If we accept this figure, we can perhaps suggest that 10% of the 21,800 cohabitations which dissolve each year will be likely to proceed through the court as one party seeks financial support from the other, i.e. around 2,000 cases annually.

105. The Scottish Court Service have advised that the likely costs which might fall to them would be in the region of £52k per 1,000 cases per annum, and that the additional cost to judicial salaries would be £63k per 1,000 cases per annum. Therefore, on the basis of around 2,000 cases per year (10% of all dissolutions), we estimate the annual cost to the Scottish Court Service to be around **£104k** plus a further **£126k** for judicial salaries. These additional costs could not be met from existing funds and therefore the SCS would require extra resources.

Legal aid

106. More court cases arising from the cohabitation provisions in the Bill will inevitably lead to additional applications for legal aid funding. Again, quantifying what these costs will be requires a certain amount of approximate calculation. Taking firstly the dissolution of cohabitations, the process by which advice and assistance and civil legal aid for court costs are allocated will be broadly similar to the process which exists in cases for aliment and therefore we

can assume that the average cost of such a case to the Scottish Legal Aid Fund would be similar to the average case cost for aliment.

107. Statistics provided by SLAB¹⁴ show that in 2003-04 the average case costs to the Fund for an action for aliment in the sheriff court was £1,478. In paragraph 104, we estimated that there might be in the region of 2,000 cases annually where a dissolved cohabitation might lead to court action for financial settlement. On this basis we can estimate that the additional annual cost in legal aid funding for this purpose will be **£2.96m**.

108. The Bill also makes provision for people to go to court to seek a discretionary share of a deceased cohabitant's estate where they die intestate. While there are no published figures available on the number of people who die intestate, a preliminary study of data provided by the Commissary Section of Edinburgh Sheriff Court indicates that the figure may be around 30%. This includes all deaths – those who were married and unmarried, those who were cohabiting and those who were not.

109. If we accept that around 7%¹⁵ of the 30% proportion of people who die intestate were cohabiting, then this would suggest that only around 2% of intestate deaths involve cohabitants. And as it is reasonable to expect that people with significant personal worth are more likely to make wills, we can anticipate that only a small proportion of this 2% of cases is likely to lead to court action using the new provisions in the Family Law (Scotland) Bill. Taking all of this into account, therefore, we consider that the provisions allowing cohabitants to go to court seeking a discretionary share of a partner's estate will be negligible.

Summary: Legal protection for cohabitants

The introduction of legal safeguards for cohabiting couples will result in an additional and ongoing cost for the Scottish Court Service and the Scottish Legal Aid Fund. While quantifying the scale of these costs is not a simple process, with the assistance of the Scottish Court Service and the Scottish Legal Aid Board it is estimated that the costs to these organisations annually will be approximately £104k to the SCS with an additional £126k for judicial salaries.

The estimated additional demand for legal aid funding as a consequence of the provisions for cohabitants in the Bill is £2.97m per annum.

TECHNICAL AMENDMENTS

What the Bill provides

110. As is described in detail in the Policy Memorandum, in addition to the main provisions in the Bill some technical amendments have also been made to tidy up the existing law, principally:

¹⁴ Scottish Legal Aid Board, 'Family Matrimonial Cases: Average case costs of civil family law action 2001-2004'

¹⁵ See Table 7.

- children – provision is made to further reduce the status of illegitimacy;
- sharing of matrimonial property on divorce – provision is made allowing courts greater scope in the methodology applied in valuing matrimonial property to further ensure fairness and equality;
- Administration of Justice Act 1982 – provision is made in relation to claims for damages for the effects of personal injury under the Act, extending to same-sex cohabiting partners the right to be considered relatives.

111. These are technical amendments which do not make significant changes. These amendments will have no financial consequences for the foreseeable future.

SUMMARY

112. The estimated costs associated with the provisions in the Family Law (Scotland) Bill are summarised below.

SUMMARY TABLE OF COSTS ON THE SCOTTISH ADMINISTRATION

	Refer to Paragraph	Cost in Year 1	Cost in Year 2	Annual Cost in Subsequent Years
		£m	£m	£m
Judicial salaries	Para 65 Para 79 Para 105	0.013 0.063 <u>0.126</u> 0.202	0.013 0.063 <u>0.126</u> 0.202	0.126
Scottish Court Service	Para 65 Para 78 Para 105	0.003 0.136 <u>0.104</u> 0.243	0.003 0.136 <u>0.104</u> 0.243	0.104
Legal aid	Para 68-71 Para 82-84 Para 107	0.046 0.800 <u>2.960</u> 3.806	0.046 0.800 <u>2.960</u> 3.806	2.960
TOTAL		£4.25m	£4.25m	£3.19m

COSTS ON THE SCOTTISH ADMINISTRATION

113. All of the estimated costs fall on the Scottish Administration.

COSTS ON LOCAL AUTHORITIES

114. No costs to fall on local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

115. No costs estimated for other bodies, individuals or businesses.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

116. On 7 February 2005, the Minister for Justice (Cathy Jamieson) made the following statement:

“In my view, the provisions of the Family Law (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

117. On 3 February 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Family Law (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Family Law (Scotland) Bill (SP Bill 36) as introduced in the
Scottish Parliament on 7 February 2005*

FAMILY LAW (SCOTLAND) BILL

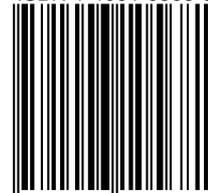
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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-0568-6



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