

## ANNEX A

### Documents relating to the 2006 change in legislation

1. The Accompanying Documents submitted to Parliament with the Bill are at <http://www.parlamaid.scot/parliamentarybusiness/Bills/25041.aspx> I would draw your attention in particular to the Policy Memorandum for the Bill which I refer to again below.

### Information on stages of the passage of the Bill

2. The Explanatory Notes to the 2006 Act provide information on its Parliamentary passage: <https://www.legislation.gov.uk/asp/2006/2/notes/division/3>

### Sunset clause

3. The 2006 Act does **not** contain any provisions laying down that section(s) of the Act should cease to have effect after a specified date ("sunsetting").

### Guidelines

4. I have not been able to find much on guidelines. The usual practice is that any guidance etc is published after the Bill has become an Act. Explanatory Notes are provided to Parliament when the Bill is introduced and then finalised once the Bill becomes an Act: weblinks are above.

5. The Scottish Government does not give guidance to the courts as these are, of course, independent of Government.

6. I attach at Annex B an email issued on 3 April 2006 about the coming into force of the 2006 Act.

7. I also attach a letter dated 8 December 2006 by the then Deputy Minister of Justice to the Justice 1 Committee on non-legislative measures to accompany the changes to the law made by the 2006 Act. You may be particularly interested in the work planned at the time on Family Contact Facilitators. This work did not proceed. I attach, at Annex C, a note prepared in February 2008 on why this work did not proceed.

8. You may also be interested in this inquiry carried out by the Justice 1 Committee on Family Support Services:

<http://archive.scottish.parliament.uk/business/committees/justice1/Familysupportservicesinquiryhomepage.htm> You may be particularly interested in the following submission, which mentions enforcement of contact orders:

<http://archive.scottish.parliament.uk/business/committees/justice1/papers-06/FSSR1SheriffRADavidson.pdf>

### Information on the key drivers for change

9. The 2006 Act followed Scottish Law Commission (SLC) reports (in the past, the SLC carried out extensive work on family law) and a series of consultation papers issued by the then Scottish Office and the then Scottish Executive. The 2006 Act covers a wide range of areas.

10. The Policy Memorandum gives details of the reports and consultation papers:

- The SLC Report on *Reform of the Grounds for Divorce* (1989): <https://www.scotlawcom.gov.uk/files/3012/7989/7431/rep116.pdf>
- The SLC Report on *Reform of Family Law* (1992): <https://www.scotlawcom.gov.uk/files/5912/8015/2668/Report%20on%20family%20law%20Report%20135.pdf>
- The Scottish Office Consultation Paper *Improving Scottish Family Law* (1999): <http://web.archive.org/web/20001209094800/http://www.scotland.gov.uk:80/library/documents-w8/isfl-00.htm>
- The Scottish Executive White Paper *Parents and Children* (2000): <http://www.gov.scot/Topics/Justice/law/17867/FLSA2006/13804/ParentsandChildren>
- The Scottish Executive Consultation Paper *Family Matters: Improving Family Law in Scotland* (2004): <http://www.gov.scot/Publications/2004/10/19211>

11. The Scottish Government has a page on the 2006 Act on our website at <http://www.gov.scot/Topics/Justice/law/17867/FLSA2006>

12. You asked about the key drivers behind the 2004 consultation, *Family Matters: Improving Family Law in Scotland*. Paragraph 14 of the Policy Memorandum for the Bill noted that this consultation:

“focused on the need to consult further to refresh thinking and, in particular, to canvass opinion on issues on which a settled view had not been reached. Proposals were therefore set into two categories, firm proposals for the Bill (divorce, PRRs for unmarried fathers, changes to the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and some technical amendments) and the issues for further discussion (provisions for cohabiting couples, and stepparent agreements) on which comments were sought. Views were also sought about how best to improve continued contact between children and wider family and make the law work in practice”.

## Domestic abuse

13. On domestic abuse, the Stage 1 report on the Bill by Justice Committee 1 highlighted a number of points: <http://archive.scottish.parliament.uk/business/committees/justice1/reports-05/j1r05-08-vol01-01.htm> The Scottish Executive’s response to the report is at [http://www.parlmaid.scot/S2\\_Justice1Committee/Reports/SEresponseFamilyLawStage1.pdf](http://www.parlmaid.scot/S2_Justice1Committee/Reports/SEresponseFamilyLawStage1.pdf)

14. The Scottish Executive then indicated that it intended to lodge an amendment at Stage 2 of the Bill about contact and domestic abuse: [http://www.parlmaid.scot/S2\\_Justice1Committee/Reports/Scottish\\_Executive\\_Correspondence\\_at\\_Stage\\_2.pdf](http://www.parlmaid.scot/S2_Justice1Committee/Reports/Scottish_Executive_Correspondence_at_Stage_2.pdf)

15. The amendment was then lodged and agreed at Stage 2 <http://archive.scottish.parliament.uk/business/committees/justice1/or-05/j105-3602.htm#Col2235> (please see column 2259). These provisions now form part of section 11 of the Children (Scotland) Act 1995: <https://www.legislation.gov.uk/asp/2006/2/section/24>

## Children

16. You asked how children were considered in relation to the changes. The then Minister indicated when moving the amendment mentioned above that:

“ Amendment 72 has been lodged directly in response to concerns that we heard from Scottish Women's Aid and its partners about contact arrangements for women and children when domestic abuse has occurred. We share those concerns, as does the committee. Domestic abuse is a scourge on society and, when women and children escape an abusive situation, their continued safety and well-being must be ensured.”

17. More generally, the Policy Memorandum (link above) produced at the time outlined the then Executive's approach to children.

### **Child contact and contempt of court**

18. On 16 November 2005, at Stage 2 of the Bill, the Justice 1 Committee spent some time considering amendments on the enforcement of contact orders: <http://archive.scottish.parliament.uk/business/committees/justice1/or-05/j105-3702.htm#Col2291> (please see columns 2298 to 2318).

20. One of these amendments [the courts, when making or varying a contact order, having to attach to it a notice warning of the consequences of failing to comply with the order] was passed but was then removed at Stage 3: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4622&mode=pdf> [please see columns 21876 to 21884 and columns 21892 to 21894].

### **Scrutiny by the Justice Committee in 2016**

21. The Justice Committee carried out post-legislative scrutiny of the 2006 Act, including of provisions relating to Parental Responsibilities and Rights.

22. The Committee's report is at <http://www.parlamaid.scot/parliamentarybusiness/CurrentCommittees/97604.aspx> The Scottish Government response is at [http://www.parlamaid.scot/S5\\_JusticeCommittee/General%20Documents/20160622MfCSLA-FLA2006.pdf](http://www.parlamaid.scot/S5_JusticeCommittee/General%20Documents/20160622MfCSLA-FLA2006.pdf)

### **Conclusion**

23. I am happy to meet at any time to discuss any points arising.

**Family and Property  
Justice  
February 2018**

## ANNEX B: EMAIL ISSUED ON 3 APRIL 2006

Dear Reader

I am writing to let you know about the commencement of the Family Law (Scotland) Act 2006. On Thursday 4 May 2006, the Act will come into force, taking effect as part of Scottish law.

You can view the Act online or download a printable copy using the links below.

View online: <http://www.opsi.gov.uk/legislation/scotland/acts2006/20060002.htm>

Printable copy: [http://www.opsi.gov.uk/legislation/scotland/acts2006/asp\\_20060002\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060002_en.pdf)

The Executive cannot give you legal advice about how the Act will affect you. You may want to take independent legal advice from a solicitor or a Citizens Advice Bureau. The Law Society of Scotland ([www.lawscot.org.uk](http://www.lawscot.org.uk)) can give you details of suitably qualified solicitors. You can find your local Citizens Advice Bureau online at [www.cas.org.uk](http://www.cas.org.uk).

We know that the area most people asked to know about is divorce. Below you will find a short summary of the way divorce law will change from 4 May.

I hope that you find this information helpful.

Yours sincerely

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### Divorce

The new law shortens the periods of "non-cohabitation" required for divorce. The law lets you apply for a divorce if you have been living apart for a certain period of time.

Under the current law these periods are:

- Two years when both spouses consent to the divorce
- Five years when one spouse does not consent to the divorce

From 4 May, these periods will be:

- One year when both spouses consent to the divorce
- Two years when one spouse does not consent to the divorce

Any period of non-cohabitation before 4 May will count towards the periods above. However, this change in the law will only apply to any court actions started on or after 4 May.

## **ANNEX C: NOTE PREPARED AT THE TIME ON WHY FAMILY CONTACT FACILITATOR PILOT DID NOT PROCEED**

### **FAMILY CONTACT FACILITATOR**

The intention to undertake a Family Contact Facilitator pilot project was announced at the time the Family Law (Scotland) Act 2006 was progressing through Parliament. The Executive at the time recognised that data on contact and contact enforcement was not reliable and a pilot project to test whether access to a facilitator would assist sheriffs in family cases where there was breach, or the risk of breach, of a contact order could be useful. The pilot was intended to run alongside ongoing research work on understanding child contact cases in Scottish courts.

The pilot projects were developed and terms of reference agreed with sheriffs. The Scottish Government ran a procurement exercise to secure a host organisation which would recruit and manage the postholders in 2 sheriff courts. Unfortunately, the procurement exercise did not attract a tender which met the specifications. It was therefore not possible to let the contract and proceed with the pilot.

### **RESEARCH**

A research project on court contact is under way and is collecting and analysing data on child contact actions made within Scottish courts when relationships break down, over a period of 3 years. The project will provide an insight into how cases are conducted and the experience of those involved. Previous research includes *A Survey of Sheriff Clerks' Perspectives on Child Contact Enforcement in Scottish Sheriff Courts*, published in October 2006, and a literature review by Edinburgh University's Centre for Research on Families and Relationships was published in October 2007. Both publications are available from the Scottish Government website.

<http://www.scotland.gov.uk/Publications/2006/10/16092253/0>

<http://www.scotland.gov.uk/Publications/2007/10/25160036/0>