

Scottish Women's Convention
response to the Scottish
Government's Consultation on:

Family Law



21st April 2026

Premise

The Scottish Government is using this consultation to explore how family law in Scotland can be reformed to better reflect modern relationships and social realities. By seeking views from the public, organisations and key stakeholders, its aim is to identify where existing laws may be outdated or unclear, particularly in relation to cohabiting couples, and to consider changes that would improve legal certainty and protection for families.

The consultation also examines potential reforms to areas such as marriage, divorce procedures and other legal safeguards with the overall goal being to ensure that family law is effective and suited to contemporary Scottish society.

Our response draws from evidence and recurring themes identified throughout our work over the past few years in such areas as women's economic inequality, access to justice, and their experiences of relationship breakdowns.

"I applied to have my husband, not live in our 'marital home' at weekends, due to his narcissistic behaviour and the effects on my mental health. Evidenced by my GP, Counsellor, Women's Aid...he paid for a barrister and was given the right to stay in the house...I ended up having to make the most of this and it made my life further miserable because he 'won'...I had brought the case so was liable...I am still paying it off and had to borrow off family to survive and provide for my two children...women are too easily dismissed by the police and the court system.

Scottish Women's Convention Programme for Government Survey July 2025



The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels. The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

Question 1

Do you disagree with any aspect of the SLC draft Bill to improve rights of cohabitants when their relationship ends otherwise than on death, or consider that any appropriate provision is missing?

We broadly support the Scottish Law Commission (SLC) draft Bill's aim to strengthen the rights of cohabitants on separation. However, further clarity is needed on how economic disadvantage, particularly when considering women's unpaid care work, could potentially be assessed in practice.

Under current Scots family law, there is an intention to recognise both financial and non-financial contributions. However, our work has consistently shown that unpaid care is often undervalued. SWC engagement consistently highlights that women experience financial insecurity following separation, particularly where they have undertaken caring roles or reduced paid work. Women have described feeling that the law does not recognise the value of unpaid care or contributions within the home leading to outcomes that fall well short of the fairness principle underpinning family law in Scotland.

There is a need to ensure that any revised framework explicitly accounts for the economic consequences of care, reflecting the reality that women's contributions are frequently indirect or non-remunerated but are nonetheless fundamental to a household.

Question 2

Should the scheme for the reform of cohabitants' rights on separation apply to couples who separate after the date of commencement of the legislation implementing the proposed reforms?

Yes, applying the reforms prospectively is appropriate for legal certainty and aligns with the general principles of fairness in legislative change.

However, SWC findings suggest there is currently a very low awareness and understanding of cohabitation rights under Scots law. Many women mistakenly believe in the concept of "common law marriage," which has no legal basis in Scotland. As such, public legal education will be essential if this framework is to be implemented. Without this, even well-designed reforms have a high risk of being ineffective in practice.

Question 3

Do you have any comments on our draft impact assessments on the proposals for improving cohabitants' rights when their relationship ends otherwise than on death?

Any impact assessments would benefit from a stronger gender analysis. Family law operates within a much broader social and economic context where many inequalities persist.

Research carried out by the SWC has repeatedly found that women, particularly those on low incomes or with caring responsibilities, are disproportionately affected by gaps in legal protection when relationships end. A more robust equality analysis would align with Scotland's legal obligations to advance equality and ensure that reforms do not inadvertently reinforce existing structural disadvantages.

Question 4

Do you have any other comments on the proposals for improving cohabitants' rights when their relationship ends otherwise than on death?

Improving accessibility to justice is essential to the effectiveness of any family law reform.

Women attending our events and discussions have consistently highlighted barriers including the cost of legal advice, lack of awareness of rights, and the complexity of certain legal processes. Some women reported that they did not pursue claims due to fear of legal costs or not knowing their rights. This raises concerns over whether existing rights, and even proposed new rights, are genuinely accessible in practice.

Consideration should be given to expanding legal aid provision, simplifying procedures, and ensuring clear, accessible guidance is available.

Question 5

Should the recommended definition of "cohabitant" under the SLC's proposals for reform of cohabitants' rights on separation, also apply to circumstances where a cohabitant is applying for financial provision from their deceased partner's intestate estate?

Yes. A consistent definition of "cohabitant" across legal contexts would improve clarity, reduce litigation, and promote equality. Consistency is a core principle of legal certainty and is particularly important in family law, where individuals often navigate multiple legal systems (e.g. succession, housing, and financial provision).

Question 6

Other than the time limit, what other practical difficulties are encountered by persons making an application for financial provision on intestacy under section 29 of the 2006 Act?

In addition to statutory time limits, practical difficulties include lack of awareness, emotional strain following bereavement, and evidential challenges in establishing the nature of a cohabiting relationship.

Our previous discussions with women suggested that many are unaware that they are required to take legal action within strict timeframes and may only discover this after deadlines have passed. This totally undermines the protective intent of the law. Consideration could be given to greater judicial discretion or more clarity in notification mechanisms.

Question 7

Should the Scottish Government legislate to raise the minimum age of marriage and civil partnership to 18?

Absolutely yes. Raising the minimum age of marriage and civil partnership to 18 aligns with safeguarding principles. All of our previous work in this area has highlighted concerns about young women entering relationships before they are financially or emotionally secure, which can increase vulnerability and curtail their future independence.

Question 8

Do you agree or disagree that the Scottish Government should legislate to extend the forced marriage offence?

We fully agree on this. Extending the offence of forced marriage to all under-18s supports a preventative and protective approach.

Previous SWC work has emphasised the importance of early intervention and ensuring that young people are protected before harm occurs, rather than relying solely on remedies as an afterthought.

Question 9

Do you have any comments on our draft impact assessments about the minimum age of marriage and civil partnership?

There is clear evidence of harm linked to early marriage, including disruption to education, reduced economic opportunities, and increased vulnerability to dependency and control.

Many of the women we spoke to have described how early relationships can limit future opportunities and increase dependence, reinforcing gender inequality over the life course.

Question 10

Do you have any other comments on the minimum age of marriage and civil partnership?

Legislative change should be supported by education, outreach, and accessible advice services.

This response reflects longstanding SWC calls for improved public understanding of rights and responsibilities within family law. Without this, women and girls, particularly those already disadvantaged, may not benefit from any potential reforms.

Question 11

Should the Scottish Government lay down qualifying requirements for religious or belief bodies to meet when they solemnise marriage or register civil partnership?

Yes. Clear qualifying requirements would help ensure consistency, reduce uncertainty, and safeguard women from arbitrary or unfair outcomes.

Question 12 -----

Question 13 -----

Question 14

Should the Scottish Government and National Records of Scotland draw up a code of conduct for celebrants instead of laying down qualifying requirements?

A Code of Conduct could be useful in promoting good practice, particularly in areas such as mediation and dispute resolution. However, it should complement, rather than replace, minimum legal standards and enforceable rights.

Question 15

Do you have any comments on the draft impact assessments about the qualifying requirements?

Impact assessments should more explicitly consider equality impacts, particularly for women, low-income households, and marginalised groups.

This is consistent with SWC findings demonstrating that family law outcomes are not gender-neutral in practice. A stronger intersectional approach would improve the strength of any proposals.

Question 16 -----

Question 17

The Scottish Government is considering making simplified divorce and dissolution procedures available in cases where:

- there are children (one or more) of the family under 16; and
- the spouses or civil partners have agreed about the upbringing of the children and so neither applies for an order under section 11 of the 1995 Act in relation to the children.

We agree with this on the basis that there are appropriate safeguards. Family law must recognise that decision-making within relationships is not always on an equal standing.

Previous SWC work has found that power imbalances, particularly where there is financial dependency or caring responsibilities, can significantly affect decision-making, including in relation to children. Safeguards are necessary to ensure that consent is meaningful and informed.

Question 18

Should Ministers amend the Orders which helped establish the simplified divorce and dissolution procedures to remove the references to “mental disorder” and instead exclude only cases where one of the parties actually “lacks capacity”?

Yes. Removing this avoids stigma. Adopting this practice also firmly aligns with modern principles of dignity and respect within legal frameworks.

Question 19

Considering these points, do consultees think any changes are required to the procedures for withholding addresses in simplified divorce and dissolution cases?

Further safeguards may be required for individuals experiencing domestic abuse.

SWC reports consistently stress the importance of safety, confidentiality, and trauma-informed approaches within legal processes. Without these, individuals may be deterred from engaging with the system or may be placed at further risk.

Question 20

Do you have any comments on our draft impact assessments about extending the simplified divorce and dissolution procedures?

Impact assessments should more fully reflect risks for vulnerable women, including those experiencing coercive control.

Family law must take into account the realities of abuse, including non-physical forms such as financial and psychological control, which can significantly affect a woman’s ability to assert her rights.

Question 21

Do you have any other comments on extending the simplified divorce and dissolution procedures?

While simplification of legal processes is welcome, SWC evidence highlights that simplification alone is not sufficient.

Adequate support, clear guidance, and access to independent advice are essential to ensure that women can effectively navigate the system and achieve fair outcomes.

The proposed reforms represent a positive and necessary step in modernising Scots family law. However, evidence from the Scottish Women's Convention demonstrates the importance of ensuring that reforms meaningfully address gender inequality, properly recognise unpaid care, and improve access to justice.

Without these considerations, there is a risk that formal legal rights will not translate into substantive fairness in practice.

Conclusion

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on Family Law. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views, please contact:

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