1.0 Introduction

1.1 The purpose of this report is to advise the Committee that the Scottish Executive has issued a consultation paper on 'Family Matters - Improving Family Law in Scotland' and to seek approval for the Council's response.

2.0 Background

2.1 Family Law has already changed significantly in the past 20 years. Key reforms between 1985 and 1995 defined the legal relationship between parents and children, removing almost all of the stigma of illegitimacy, and modernising financial provisions on divorce. Additionally the Scottish Law Commission has carried out several important reviews since 1989 which have helped shape the current proposals. These reports on the Reform of the Grounds for Divorce and on the Reform of Family Law suggested updating the law in specific areas and removing anomalies and obsolete provisions.

2.2 More recently, the Scottish Office published a consultation paper in 1999 improving Scottish Family Law that set out proposed changes arising from the Scottish Law Commission's valuable work on family law. This was followed by a Scottish Executive White Paper in 2000, Parents and Children. The proposals within this consultation document do not differ significantly from the White Paper proposals.

2.3 Not all proposed changes to Family Law outlined in Parents and Children are being re-opened. Some of the proposals are self-evidently consistent with the guiding principles for improving Family Law set out by the Executive, namely that:

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

3.0 Proposals/ Considerations

3.1 This document seeks views on 7 specific proposals by Monday 28 June 2004:

- Parental Rights and Responsibilities (PRR's) for Unmarried Fathers (firm proposals)
- Reducing the Non-Cohabitation Periods Required for Divorce (firm proposals)
- Updating the Law on Matrimonial Interdicts and Exclusion Orders (firm proposals)
- Legal Protection for Cohabitants (settled view not yet reached)
- Step-Parent Parental Responsibility and Rights Agreement (settled view not yet reached)
- Contact between Children and Wider Family (views sought)
- Making the Law Work in Practice (views sought).
3.2 It can be seen from the consultation proposals that the status of each of these proposals varies from firm proposals which the Executive plans to included in a future Family Law Bill to proposals on which consultees views are being sought and on which no set view has emerged. The document asks 17 key questions relating to these proposals. A copy of the document is available in the Member's Library.

3.3 The document was circulated to all the members of the Children's Services Strategy Group asking for a response from the members on these key questions. Appendix One provides the summary of their responses regarding these issues.

4.0 Corporate Considerations

4.1 The Council and its partners agree fully that it is essential that Family Law is kept up to date with contemporary family structures so that it provides protection to all of Scotland's families and accept the guiding principles outlined earlier.

4.2 As a result of this there is agreement with the Executive on the majority of the proposals outlined in this consultation. However there is one area which has provoked discussion. That of the provision to create step parent parental rights and responsibility agreements (SPPRRAs).

4.3 There was general disagreement with the proposal to introduce such orders. The reasoning behind this relates to the difficulty to factor in the views of the children to such a process even with the support of mediators and because of the pressure children will feel under to agree with the SPPRRA when all those involved in their care are in agreement.

4.4 Current legislation allows step-parents to apply to the court for parental rights and responsibilities and this would appear to be a preferable route. Should it become too easy for SPPRRAs to be obtained, situations could all too easily develop where children have multiple adults involved in decision making about their lives where adults may in the long term have little investment in the child. We consider that such an important decision should be remain within a system where the child's best interests is of paramount importance.

5.0 Conclusion

5.1 The Council and its partners welcome the consultation document and the opportunity it affords for discussion on these vital issues to family life in Scotland.

6.0 Recommendations

6.1 It is recommended that the Committee:

(i) approve the response to the consultation as outlined in this report and in Appendix One;

(ii) authorise the Chief Executive to submit the response to the Scottish Executive by the due date; and

(iii) otherwise note the contents of this report.

Chief Executive
8 June, 2004
## Consultation Response

### Reference 1(a) - Are there any views you want to record in relation to these firm proposals

- We are in agreement with the proposal to confer parental rights and responsibilities on unmarried fathers who jointly register the birth of a child with the mother. The current legislation is discriminatory and this proposal is welcomed.
- We also agree with the proposal to reduce the period of non-cohabitation required for divorce and consider that this should help to reduce acrimony following the breakdown of a marriage.
- The proposal to update matrimonial interdicts and exclusion orders are also welcome as an important safeguard for victims and for children where domestic violence is an issue.

### Reference 2(a) - Do you agree that cohabiting couples should have legal protection?

- We agree that cohabiting couples should have legal protection. Given the prevalence of such relationships in Scotland, and in fact that for many couples cohabitation does not signify any less of a commitment to each other than does marriage, legal protection should be available for cohabiting couples.

### Reference 2(b) - Do you consider that the objective is to create legal safeguards rather than a comprehensive package of rights and responsibilities like marriage?

- We consider that legal safeguards are more appropriate than is a comprehensive package of rights and responsibilities. Given the diversity of reasons why couples choose to cohabit, we do not think it appropriate that a comprehensive set of rights and responsibilities should apply to all cohabiting couples. However, couples who do cohabit should have access to legal safeguards as a protection against financial loss and hardship.
- We do consider that there is also a need for a programme of publicity and awareness raising to ensure that these legal safeguards are clearly understood in view of the current confusion about the legal position of cohabitants.

### Reference 2(c) - Do you agree that there should be a presumption of equal shares to household goods and money/property from housekeeping acquired during the period of...

- We consider that in most circumstances this is likely to be a fair and acceptable legal safeguard.

### Reference 2(d) - Do you agree that a former cohabitee should have the right to apply to the court for financial provision where they have suffered undue financial hardship on the termination of their cohabitation arrangement?

- Yes, we do agree that this right should be available to a former cohabitee in such circumstances. We consider the court to be the correct setting for such judgements. Legal aid should be available for such applications.

### Reference 2(e) - Do you agree that on the death of one party to a cohabiting partnership, the surviving cohabitee should be able to apply to the court for discretionary provision out of the deceased's estate?

- Yes, where such provision has not been made in a will, we agree that the surviving cohabitee should be able to apply to the court for such discretionary provision.

### Reference 2(f) - Do you agree that legal safeguards should be for people who live together as a couple?

- Yes we consider this to be a sensible approach. These legal safeguards should apply to all relationships. However we agree that they should not apply to other situations where people choose to share accommodation, such as students in flats and siblings sharing a house, since our view is that people who make such arrangements generally have different expectations of each other in terms of sharing finances, belongings and commitment.

### Reference 2(g) - Are there any other point that you would like to make in relation to the law and cohabiting?

- No
Reference 3(a) - Do you agree that provision to create Spars should be introduced?

- We not agree with the proposal that a provision to create Spars be introduced.
- We have reached this view for a number of reasons:
  - We consider that it would be very difficult to factor the views of children into this process. Even should there be an independent requirement that the child is given the opportunity to discuss his/her views with an independent person, such as in a mediation project, and to have these views represented children are likely to feel under considerable pressure to agree to Spars where all those involved in their care are in agreement. Many children will be unable to express their views because they are too young, have communication difficulty etc., and making the process subject only to the agreement of the parent without impartial consideration of the child's best interests may lead to SPPRRAs being given where this is clearly not in the child's best interests.
  - The current legislation already allows step parents to apply to the court for parental rights and responsibilities. This appears to us to be a preferable route for a course of action which has such profound implications for the child, and where full scrutiny of the application's merits, of the child's views and of the child's best interests can take place.
  - Should it become too easy for SPPRRAs to be obtained, children whose parents have more than one partner, or as in the example where each parent agrees to each step parent obtaining SPPRRAs in order to ensure agreement all round, regardless of the child's best interests, situations can all too easily develop where children have multiple adults involved in decision making about their lives, and where these adults may in the long term have little investment in the child. We consider that such an important decision should remain within a system where the child's best interests is of paramount importance.

If you have answered not to this question please do not answer questions 3(b)

Reference 3(b) - How can your views be factored into SPPRRAs?

- See above.

Reference 3(c) - As an alternative, what improvements could be introduced to step-parents going to court to secure PRRs to make this less daunting?

- We would suggest that step parents be provided with more accessible information about PRRs and about how to apply for them, that legal aid be readily accessible to step parents for such applications and that courts be developed to deal with such family matters, with a more informal approach to the proceedings.
- Should there be an expansion of mediation services, support to step parents in pursuing a PRR might be provided by this service.
- Children's views should actively be sought in such cases, and independent support from a mediation service may be of help in supporting children to express these views.

Reference 4(a) - Do you agree that a right of contact to a child is not appropriate for grandparents and other wider family members?

- We agree that a right of contact is not appropriate for grandparents and other family members.
- The current legislation already allows grandparents to apply to the court for parental rights and responsibilities. This appears to us to be a preferable route for a course of action which has such profound implications for the child, and where full scrutiny of the application's merits, of the child's views and of the child's best interests can take place.
- Whilst we would agree that contact with the wider family is in most cases in the child's best interests, this is not always the case, and it does not seem appropriate that each extended family member has a right to contact unless it is proven not to be in the children's interests. We would suggest that this could serve to exacerbate the child's difficulties in situations where relationships with extended family members are fraught. We consider it more helpful to make family mediation services more accessible to assist with such difficulties.
- We consider too that where grandparents and/or other wider family members might choose to exercise this right without due consideration of the child's wishes or best interests, this may prove very restrictive to children, with priority being given to each member's contact over all other activities and relationships which the child might prefer to have.
Reference 4(b) - How can the Executive best promote continued contact between children and wider family where voluntary agreements prove elusive?

- We would suggest that information for parents be developed highlighting the importance for the majority of children of being given the opportunity to grow up knowing and having relationships with extended family members and networks.
- We would also suggest that family mediation services be extended, developed, and made more localised and accessible and that promotional material about these services highlight the willingness of the service to become involved in such situations. This would require a considerable investment in mediation services since currently they are not well understood by the public, are not easily accessible, and are not located in local areas in North Lanarkshire.
- In situations where the local authority is seeking the participation of extended family members in the support of a child within the community, the development of the family group conference approach is likely to be of assistance.

Reference 4(c) - An information campaign will accompany changes in family law since a basic prerequisite for family law to be effective is that people understand their rights and responsibilities. What are your views on the issues to be covered in information on family law and how can this best be disseminated?

- We consider that there is still a need to raise awareness and knowledge about the implications of the Children (Scotland) Act 1995 in terms of parental rights and responsibilities.
- In addition, information about the range of work which mediation services can undertake and about how to access these services would be helpful. It is important that these services can be regarded as easily accessible and non-stigmatising, and information should be available about the range of issues with which they can become involved.
- Information needs to be developed about PRRs and about how to apply for these making the process more clear to step parents and to others who may be considering applying for PRR.
- Information should also be available for people choosing to cohabit about the relevant legal safeguards/legal status, clarifying perceptions such as 'common law marriage'.
- Information about good parenting, in particular about decision-making about children when couples separate would be of help. This might include information on the benefits to most children of preserving contact with extended family members, of the need to listen to and to involve children in decision making and to keep their best interests of paramount importance, and of the benefits to children in mediation.
- Information for families where domestic violence features should also be produced, including information about the extended protection available should the proposal to update the law be accepted.
- Information should be produced in a range of formats, such as leaflets in public places such as health centres and libraries, and we would suggest that a series on information 'adverts' be produced for television and radio.
- We would suggest that information be produced for young people in secondary schools for use as part of the curriculum, focusing upon parenting skills, and providing information about parental rights and responsibilities and about family law. Children and young people currently have little access to information about their rights in terms of family law, such as their right to pursue contact orders etc themselves where such issues cannot be resolved within families, and information produced should be clear and child friendly.

Reference 4(d) - A range of support is available for families in difficulties or transition such as mediation and counselling. We would be interested to know if consultees see ways in which the voluntary sector contribution to securing good outcome for families can be strengthened; and in suggestions for further ways in which the complementary skills of counsellors and mediators can be mobilised locally to support families in transition.

- Within North Lanarkshire, no local mediation services exist and these would require to be developed in order to become accessible to local people. Currently North Lanarkshire residents are able to access the services of Family Mediation West, based in Glasgow, which receives funding from the Council of £10,000 per annum.
- We would suggest that there should be a new statutory basis for mediation services to ensure that they can be developed more widely, with adequate funding to become linked with existing services.
Reference 4(e) - When people do have cause to interact with the law, we believe that legal reedy should be accessible and easy to comprehend. We would be interested in hearing consultees experience of using the law in relation to family matters and ideas for possible improvements which can be made in this regard

- We would suggest that there is still considerable scope for improvement in obtaining children's views about family matters in court. Children often require independent information and support to be able to understand their rights to express their views and to be able to participate in this process, and we would suggest that this support should be routinely provided at the request of the court, perhaps by a local mediation service

Do you wish to make additional comments on the proposals for improving Family Law in Scotland?

- No