

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: CONSULTATION ON PROPOSALS TO AMEND THE LAW ON COMPELLABILITY OF SPOUSAL WITNESSES
From: THE DIRECTOR OF ADMINISTRATION		
Date: 14 August 2006	Ref: WBK/AH	

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1. The Criminal Procedure Division of the Justice Department of the Scottish Executive issued a Consultation Paper on Proposals to Amend the Law on Compellability of Spousal Witness and is seeking views from all interested parties, including the Council.

2. THE CURRENT LAW

- 2.1. A witness who is permitted by law to testify is known as a competent witness and any witness who can be required to attend court to give evidence is known as a compellable witness. A competent and compellable witness who fails to give evidence may be guilty of contempt of court. However, there is an exception to this rule and a witness who is the spouse or civil partner of the accused can in circumstances not be compelled to give evidence.
- 2.2. If a spouse of an accused is the victim of the crime of which the accused is charged, then their marital status is of no consequence. A spouse and an unmarried partner would be a compellable witness for the prosecution. It is only where a spouse is not the victim that he or she can decline to give evidence for the prosecution. Therefore when the victim is a child of the couple, the spouse of the accused may be an important witness, however, they would not be a compellable witness, whereas an unmarried partner would be.
- 2.3. A person who has been, but is no longer married to the accused, is compellable to give evidence as if they have never been married. They are therefore compellable on behalf of the prosecution, the accused or any co-accused, whether evidence relates to events which occurred before, during or after the terminated marriage.
- 2.4. The law in relation to persons who are in a civil partnership is similar to the law in relation to spouses.
- 2.5. The current position in Scotland contrasts with that in England and Wales where the spouse of an accused is a compellable witness for the prosecution where the offence charged involves personal violence against the other spouse or against a child under the age of 16 and a sexual offence against such a child.

3. PROPOSED OPTIONS FOR CHANGE

- 3.1. Option 1 - Repeal Section 264 of the Criminal Procedure (Scotland) Act 1995 and Section 130 of the Civil Partnership Act 2004 which would result in a spouse being treated no differently to any other witness. Provision would also be required to overturn the common law provisions regarding the status of the spouse as a witness.
- 3.2. Option 2 - Remove the right not to give evidence against a spouse which would involve a change to Scot's law in order to bring the law broadly in line with that which applies to England and Wales (see 2.5 above). This proposal goes further than the position in England and Wales and removes the right not to give evidence in relation to any offence committed against a child, not just offences involving personal violence or sexual abuse.
- 3.3. Option 3 - Proposes retention of the current law and the rules governing the compellability of a spouse and a civil partner would remain.

4. THE CONSULTATION PAPER

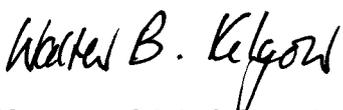
- 4.1. The Consultation Paper which has been published can be found at <http://www.scotland.gov.uk/consultations>.
- 4.2. The draft response which is set out in the Appendix to this report has been prepared and is recommended for adoption as the Council's response to the consultation.

5. CORPORATE CONSIDERATIONS

- 5.1. The issues contained in this report will impact on the Council's Child Protection policies.

6. RECOMMENDATION

- 6.1 That the Committee authorise a response to the consultation as set out in the Appendix.


p. **Director of Administration**

Members seeking further information on the contents of the report are asked to contact Aileen Howson, Chief Solicitor on extension 2526.

Note of Comments by North Lanarkshire Council to the Consultation on Proposals to Amend the Law on Compellability of Spousal Witnesses being undertaken by the Justice Department of the Scottish Executive.

North Lanarkshire Council are of the view that option 1 is the preferred option.

It is North Lanarkshire Council's view that the current legal position could be seen as discriminatory by not applying to cohabiting couples. It also continues to apply where a married couple are separated which is difficult to justify. The rule does not extend to the wider family unit as there is no rule of exclusion between siblings or between parent and child and it is capable of exploitation and causing abuse of the institution of marriage.

Moreover, and more importantly the current rule raises child protection issues where a perpetrator could continue to abuse a child with the knowledge that important and material evidence may not be heard against them.

North Lanarkshire Council agree with the view that whilst respect for the matrimonial relationship and for the privacy that should be afforded to that relationship are factors that are to be valued and should genuinely be preserved, they are not absolutes and need to be assessed alongside other considerations. The need to promote and safeguard the welfare of children should be our paramount consideration.

**Director of Administration
North Lanarkshire Council
August 2006**