

**FAMILY MATTERS**

# **MARRIAGE IN SCOTLAND**



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scotland**  
SCOTTISH EXECUTIVE

# MARRIAGE IN SCOTLAND

**Where families are strong and working well, Scottish Ministers believe that the government should not get involved. Family life should, wherever possible, be a matter for the families themselves. They believe that the government should help families by supporting good values in family relationships (things like trust, tolerance and fairness), not tell people what to do or tell parents how to bring up their children.**

Family law helps the government to do this by providing legal rules about responsibilities and rights between couples and between children and their parents and other people who have an interest in the children's welfare. Over the last 20 years or so there have been major changes in the way families are formed and how people think and feel about families. Families now come in all shapes and sizes and every family is important no matter how it is formed. With effect from 4 May 2006 the Family Law (Scotland) Act 2006 (after this we say the 2006 Act) updates the law to reflect the way families live today.

Three core principles guided these reforms:

- safeguarding the best interests of children
- promoting and supporting stable families
- updating the law to reflect the reality of family life in Scotland today.

## **What this booklet is for**

This booklet is intended to provide a general idea about the law on marriage and to draw attention to some of the changes to family law that were made in the 2006 Act. These changes were to the law on marriage and divorce as well as to parental responsibilities and rights towards children.

This booklet does not attempt to provide all of the detailed answers to all of the questions you may have about marriage in Scotland, but points out where you can find out more if you want to. If you are facing serious and pressing problems it is important that you seek legal advice as soon as possible. The Law Society of Scotland will be able to provide you with details of solicitors in your area who are accredited as specialists in family law, telephone number 0131 226 7411 or visit their website at [www.lawscot.org.uk](http://www.lawscot.org.uk).

Another source of information is the Family Law Association website at [www.fla-scotland.co.uk](http://www.fla-scotland.co.uk). The Family Law Association is a group of solicitors who either specialise in family law or have considerable experience or interest in all aspects of family law.



## Who can get married

A woman and a man can get married in Scotland if they are both aged 16 or over and are either single, widowed, divorced or have dissolved a civil partnership (provided the marriage would be recognised as valid in any foreign country to which either party belongs).

People cannot get married in Scotland if they are:

- already married or in a civil partnership;
- under 16;
- of the same gender (a transsexual person is considered to have the gender of their birth unless they have obtained a “gender recognition certificate” giving the person legal recognition of having acquired a different gender identity);
- close relatives<sup>1</sup> (i.e. persons related by blood, for example, fathers and daughters, mothers and sons, sisters and brothers, aunts and nephews, uncle and nieces, grandparents and grandchildren. Adopted children may not marry their adoptive parents but they are allowed to marry someone else in the adoptive family); or
- incapable of understanding the nature of the marriage ceremony and of consenting to marriage or were forced into marriage.

A marriage will be considered void (it does not exist) if, at the time of the ceremony, any of these circumstances were the case. A party to a marriage cannot tacitly withhold consent to the marriage at the time it is solemnised. This means that a person cannot go through a marriage ceremony with secret reservations about the marriage and depend on this to get the marriage declared void later.

For more information about who can get married contact your local registration office or visit the General Register Office for Scotland website, [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk). Your local Citizens Advice Bureau can also help or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk).

<sup>1</sup> The Family Law (Scotland) Act 2006 made changes to the rules about which relatives can marry. It removed the last restrictions on former in-laws marrying one another. Previously, for example, a man and the mother of his former wife or a woman and the father of her former husband could only marry if both of their previous partners were dead.

## What do you need to know

You can be married in two ways in Scotland – by a civil, or a religious ceremony.

In each case:

- both parties must complete the marriage notice;
- the marriage must be conducted by either a registrar or an approved celebrant, in the presence of two witnesses aged 16 or over; and
- at the end of the ceremony, both parties and the person who conducted the ceremony must all sign the marriage schedule.

Both of the people who plan to get married have to submit marriage notice forms to the registrar of the district where the marriage is to take place telling them they want to get married. When the Registrar is satisfied there is no legal reason to stop the marriage, they prepare a Marriage Schedule based on the information the couple gave. The Schedule is a most important document – no marriage can take place without it.

There are detailed rules that must be followed about giving notice, about arranging a marriage and about marriage ceremonies. For more information contact your local registration office or visit the General Register Office for Scotland website, [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk). Your local Citizens Advice Bureau can also help or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk).

A number of organisations and faiths provide marriage preparation support for couples. If you want to know more you could contact Scottish Marriage Care. Their website is at [www.scottishmarriagecare.org](http://www.scottishmarriagecare.org) or you could contact your church or faith group.



## Marrying abroad

You may decide to get married abroad. For the marriage to be recognised as valid in Scotland, it is very important that you ensure that the ceremony and all paperwork is completed in accordance with the laws and requirements of that particular country. You can get information on this from an Embassy or official representative of the country in Scotland or the UK. Sometimes you need a declaration from your local registrar that you are free to marry.

If, in the future, you discover that your marriage was not valid, this may affect your legal rights. If you think you may be in this situation, you should seek legal advice.

If you want information about whether or not a marriage outside Scotland will be recognised in Scotland, contact your local Citizens Advice Bureau, or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or you may wish to seek advice from a solicitor.

## Common law marriage

It is a common misunderstanding that a couple will have established a “common law marriage” after living together for a period of time. This is not the case. Common law marriage does not exist in Scotland. Even if you have lived with your partner for many years, you do not have the same rights in law as a married person does. There was a type of irregular marriage called “marriage by cohabitation with habit and repute” which could apply to couples who had lived together and were thought to be married. This was rarely used in practice and except for very particular circumstances, was abolished by the 2006 Act.


The 2006 Act has introduced a set of basic rights to protect cohabitants, either when their relationship breaks down, or when a partner dies. **But the law is very clear: couples living together do not have the same rights as married couples and civil partners.** It is very important that you understand this when deciding whether to move in with your partner or to make a formal commitment.

The Scottish Executive has produced this booklet on marriage and the Equality Network has produced a booklet on Civil Partnerships in Scotland. Contact details are at the back of this booklet.

## Legal responsibilities and rights of marriage

Marriage is much more than a set of legal responsibilities and rights. It is about a couple making a public, legally binding, long-term, loving commitment towards one another. For many it holds religious significance, but marriage also brings with it a comprehensive set of legal responsibilities and rights such as:

- a requirement to aliment one another both during and for some time after the end of the relationship (this means the couple must support each other financially);
- the family home and furniture, obtained because they were getting married or while they were married, belong to both of them. This is called matrimonial property and includes any accrued pension rights but excludes gifts or inheritance;
- both married partners have the right to live in the matrimonial home. It does not matter who bought it, or who has a mortgage on it or whose name is on the tenancy agreement. This applies unless a court has ordered otherwise, for example if a couple were separating or divorcing, or if the court excludes one party due to domestic abuse;

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- occupational pension schemes must offer equal benefits for husbands and wives. They also generally offer benefits for dependants;
  - husbands and wives are taxed separately from one another and they can each claim a personal allowance – where at least one person in the couple was born before 6 April 1935, a married couple’s allowance can be claimed as well as the personal allowance;
  - prior and legal rights in succession for the surviving spouse when a spouse dies. This makes sure that a spouse inherits some of the estate (property);
  - if one partner dies the widow or widower may be able to claim a special pension or a retirement pension;
  - a financial settlement on divorce based on the principles of section 9 of the Family Law (Scotland) Act 1985. These principles are:
    - the fair division (usually but not always equal) of matrimonial property;
    - fair account to be taken of economic advantage/disadvantage suffered by either party in the interests of the other party or of the family;
    - the fair sharing of any economic burden of caring for a child under 16;
    - reasonable financial provision for a period of not more than three years for a party who has been dependent to a substantial degree on the other party;
    - financial provision to relieve hardship over a reasonable period.

For more information contact your local Citizens Advice Bureau or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk), or you may wish to seek advice from a solicitor.

## Domestic abuse

If your partner or an ex-partner is abusing you, then you have the right to go to court to get protective orders for your and/or your children's safety.

### Exclusion orders

You can apply to the court for an order excluding your abusive partner from your home.

### Interdicts (also known as protective orders)

You can apply to the court for an interdict (a court order) which can protect you if a partner or ex-partner is being violent, by restricting that person's behaviour prohibiting them from coming to your house, your place of work or your children's school.

Domestic abuse is a very serious issue and you may decide that you wish to contact someone to give you support, information or safe temporary accommodation. Or you may decide to seek legal advice from a solicitor.

The Scottish Executive provides a secure website with information about domestic abuse at [www.domesticabuse.co.uk](http://www.domesticabuse.co.uk) or you can phone the free helpline number in confidence at any time: 0800 027 1234.

The helpline can put you in contact with local support and give you immediate practical advice on the options available to you.

Victim Support also run a helpline in Scotland: 0845 603 9213. The emergency number for your local Scottish Women's Aid office can be found in the phone book.



## You and your children – Parental Responsibilities and Rights (PRRs)

### PRRs – what are they?

Family law is an area of the law which affects everybody. No two families are the same, and the problems every family faces will be different. Family law provides rules to help sort out these problems. But it isn't just about solving problems – the law also says how family members should treat each other, and lays down rules about how this should happen.

There are certain things that parents are expected to do for their children while they are growing up. These are known as **parental responsibilities**. To help parents meet these responsibilities, they are given rights. These are known as **parental rights**. Rather than being two separate things, these two sets of rules work together. Parents are expected to use these rights to do things which are in their children's best interests.

Parents have the responsibility to look after their children, to help them to be healthy and encourage their growth, development and welfare. In order to do this, they have the right to have their children live with them, or to decide where their children will live.

They have both the responsibility and the right to say how their children should be brought up. This includes being in charge of, and directing, their behaviour until they are 16<sup>2</sup> and advising and guiding them until they are 18. Certain responsibilities extend until the age of 25 if the child is in full-time education or training.

If the children are not living with them, parents have both the responsibility and the right to stay in touch with, and be involved with the lives of their children. Finally, they have both the responsibility and the right to act for their child in legal proceedings.

<sup>2</sup>The law says that young people over 12 are old enough to have views about, and will increasingly take responsibility for, things that affect them.

## Who has PRRs?

Following the changes made in the 2006 Act (from 4 May 2006), whether or not the parents are married to one another, a child's parents are both given PRRs if they register the child's birth together, and both of their names appear on the birth certificate. It is not necessary for both parents to be at the registration office at the time the birth is registered, as long as the parent registering the birth has written authorisation from the other to do so, and certain forms are completed.

If the mother and father do not agree to jointly register the child's birth, then the father could obtain PRRs by one of the methods outlined in the next paragraph.

Children born in Scotland prior to the changes made by the 2006 Act, will not be affected by these changes. If the child's parents were married to each other at the time of the conception or got married later, then both parents automatically got PRRs.

If a child's parents were not married, then only the mother got PRRs. An unmarried father can get PRRs by:

- marrying the child's mother;
- signing and registering a Parental Responsibilities and Parental Rights Agreement (PRPRA) with the mother. (The mother needs to agree and the form needs to be registered in the Books of Council and Session, a public register kept in Edinburgh); or
- asking the court to give them to him.

Other people with an interest in the child can also apply to the courts for PRRs, for example step-parents, grandparents, aunts or uncles. When making a decision about a child, the sheriff will be concerned about what is best for the child not for the adults in the child's life. The sheriff will ask the child what they would like to happen and will take the child's views into account.

Where more than one person has PRRs, they don't have to ask each other about everything they want to do for the child, only about major decisions. But they must agree if one of them wants to take the child away from Scotland, even on holiday. It is expected that people with PRRs will always do what's best for the child.



## Children's views

Where any big decisions likely to affect the child are being taken, parents should ask their children what they think and listen to what they have to say. As children get older, parents need to listen carefully to their views.

This doesn't mean that parents have to agree with what their children say. It also doesn't mean that children should be made to make decisions or say what they think if they don't want to. It does mean that parents have to give their children the chance to say what they think and then they have to consider their children's point of view.

The law says that young people over 12 are old enough to have views about, and increasingly take responsibility for, things that affect them. However, children under 12 should still be listened to. How much importance their parents give to their views should depend on how much the children understand about what is going on.

For more information about registering a birth contact your local registration office or visit the General Register Office for Scotland website, [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk). For more information about PRRs contact your local Citizens Advice Bureau or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk). Or you may wish to consult a solicitor for legal advice.

## Importance of making a will

If you do not make a will your estate (property) may not be divided up as you would want after your death. If there is no will, the law lays down certain rules about what is to happen to your estate. It now gives the court the power to make an award to a cohabitant. In some cases, these rules could cause problems for your family or for a close partner. Or they may just not be what you would want to happen. Making a will is usually quite simple and need not cost a lot.

You can use your will to leave something to a close friend or body such as a charity. If you own a house with someone else, then it may be necessary for you to state in your will what is to happen to your share of the house after your death. Otherwise, your share of the house may not go to the person you want it to go to and this can cause problems.

In your will, you can appoint an executor, a person who will be responsible for taking care of your estate after your death. For example, you can appoint your spouse, your partner, your adult children or close friends or relatives to be your executor. In some cases, it may be advisable to appoint a solicitor as executor.

For more information you may wish to seek advice from a solicitor. It is usually advisable to seek the help of a solicitor to complete a will. The Scottish Executive produces leaflets: *What to Do After a Death in Scotland* and *Rights of Succession* which can be requested by phoning 0131 244 2193.



## What happens if there are problems

Marriage is special, it is the pillar around which so much of the strength of family life is built, and it deserves to be cherished. But every family has arguments at some time and every relationship can go through difficult times. Often these problems are resolved but sometimes they are not. There are organisations who can provide advice or support, either to the couple together or one partner on their own. They have counsellors who are experienced relationship experts and are professionally trained to work with families to help them resolve their problems.

Support organisations in Scotland that you can speak to in confidence are listed at the back of this booklet.

### When parents separate

Sometimes couples are unable to resolve their differences and may decide to end their marriage by divorce. There are two grounds for divorce in Scotland:

- irremediable breakdown of the relationship; or
- an interim gender recognition certificate has been issued to either spouse (this means that the person has gone through the first stages of legally changing their gender from the one on their birth certificate).

Irremediable breakdown of the relationship can be proved in four ways:

- adultery;
- unreasonable behaviour;
- living apart for 1 year (where both parties agree to the divorce);<sup>3</sup>
- living apart for 2 years (where one party does not agree to the divorce).<sup>3</sup>

<sup>3</sup> The Family Law (Scotland) Act 2006 changed these times from 2 years and 5 years respectively to 1 year and 2 years. If a couple started divorce proceedings in court before these changes were made the court will continue to use the old rules.

Application must be made to a court. Either the wife or husband can apply, normally it would be to the local sheriff court.

The court will want to be satisfied the couple have made arrangements for any children who are under 16. The court will normally expect parents and their children to have come to an agreement about what these arrangements should be. The papers presented to the court must include the details and proposed arrangements for the children's future care. These should include details of who the children will live with in the future, what future contact the children will have with both parents and how relationships with both parents will be maintained.

### Sources of help for separating parents

This is a difficult and emotional time for everyone involved. The Scottish Executive has produced a *Parenting Agreement* pack. This helps parents put aside their problems with one another and focus on their children and their needs and wishes. The pack guides parents through some of the difficult decisions that they may need to make and highlights some of the issues that they might want to think about. Parents will also want to consider who in the wider family (grandparents, aunts and uncles, etc.)

is important to their child and how they will help them to stay in touch. As an aid, the Scottish Executive has produced a *Charter for Grandchildren* to highlight the important role grandparents and the wider family can play in a child's life and how during difficult times, they may be a source of support and stability.

Family Mediation is a service for family members to help them make arrangements for their children through meetings with a trained mediator. Mediators can also help couples to reach agreement on property matters. There are a number of organisations who can help, and details are to be found at the back of this booklet.

Collaborative family law is another way of helping couples to work out financial and child issues after their separation. Collaborative family law helps separating couples to work together with their lawyers and, if necessary, other professionals, to reach solutions tailored to their needs, rather than going to court. This service is designed to make the process of separation and divorce less traumatic and, in most cases, less expensive. Details of collaborative lawyers can be obtained from the Law Society of Scotland and the Family Law Association.



## Asking the court to decide

If divorcing or separating parents can't agree about the financial arrangements or the arrangements for their children, they can ask the court to make a decision. Where the disagreement is about the arrangements for the children, the court will normally hold an early "Child Welfare Hearing" so that the difficulties can be discussed. In practice Child Welfare Hearings tend to be quite informal occasions. They are held in private. Although their legal representatives will be present, the parents are required to appear and take part. The sheriff will normally try to encourage the parents to reach agreement. The sheriff may appoint an independent person to make inquiries and report to the court to assist early decisions.

Where there is a dispute which affects the welfare of a child, the law says that the child must be given the chance to express their views about what their parents are asking the court to do. They don't have to say anything if they don't want to but they must be asked. If they do say what they think, the sheriff will take what they have said into account when making a decision.

When making a decision the most important thing for the sheriff will be to make sure the arrangements are best for the child, not for the adults in the child's life.

The normal age for a child to be asked for views is 12, but younger children are often asked too.

For more information about relationship counselling or mediation see the contact points at the back of this booklet. For more information about the rules for divorce contact your local Citizens Advice Bureau or visit their website at [www.adviceguide.org.uk](http://www.adviceguide.org.uk). Or you may wish to consult a solicitor for legal advice.

To get copies of the *Parenting Agreement for Scotland* or the *Charter for Grandchildren* visit the Scottish Executive website at [www.scotland.gov.uk/familylaw](http://www.scotland.gov.uk/familylaw), or phone 0131 244 3581 or contact your local Citizens Advice Bureau.

## Legal aid

Legal aid is intended to help individuals on low and modest incomes gain access to the legal system. In relation to family matters, there are two main types of legal aid. These are Advice and Assistance and Civil Legal Aid.

Advice and Assistance enables persons of limited means to obtain legal advice from a solicitor, or where appropriate, from counsel, on any matter of Scots law.

Applications for this type of legal aid must be made to a solicitor. The solicitor will carry out a test to see if you are financially eligible to receive Advice and Assistance. You may have to pay a contribution to your solicitor.

Your solicitor will let you know the size of any contribution when the financial eligibility test is carried out.

Civil Legal Aid may be available for a solicitor to represent you in most civil proceedings in courts and in a number of proceedings before tribunals. Applications for Civil Legal Aid must be made through a solicitor who will assist in the completion of the application form and send this to the Scottish Legal Aid Board (SLAB). SLAB carries out statutory eligibility tests for Civil Legal Aid. You may be required to pay a contribution to SLAB. The opponent in any case where you receive Civil Legal Aid will be informed and given the chance to object to the application.

Information on eligibility limits can be found on the SLAB website:  
[www.slab.org.uk](http://www.slab.org.uk)



## FAMILY MATTERS PUBLICATIONS

The Scottish Executive has produced a range of Family Matters booklets which give information on family law in Scotland. They are *Family Matters: Marriage in Scotland*; *Family Matters: Living together in Scotland* and *Family Matters: Family law and young people in Scotland*. They can be downloaded from [www.scotland.gov.uk/familylaw](http://www.scotland.gov.uk/familylaw) or copies can be obtained by phoning 0131 244 3581.

To get copies of the Equality Network leaflet, *Civil Partnerships in Scotland* phone 07020 933 952 or visit the website at [www.equality-network.org](http://www.equality-network.org).

To get copies of the *Parenting Agreement for Scotland* or the *Charter for Grandchildren* visit the Scottish Executive website at [www.scotland.gov.uk/familylaw](http://www.scotland.gov.uk/familylaw), phone 0131 244 3581 or contact your local Citizens Advice Bureau.

## Main contacts for more help and advice in Scotland

### **Barnardo's Scotland**

[www.barnardos.org.uk](http://www.barnardos.org.uk)

### **Children 1st**

0131 446 2300

[www.children1st.org.uk](http://www.children1st.org.uk)

### **Children in Scotland**

0131 228 8484

[www.childreninScotland.org.uk](http://www.childreninScotland.org.uk)

### **Couple Counselling Scotland**

0845 119 6088

[www.couplecounselling.org](http://www.couplecounselling.org)

### **Equality Network**

07020 933 952

[www.equality-network.org](http://www.equality-network.org)

### **Families Need Fathers**

0207 613 5060

Helpline - 08707 607 496

[www.fnf.org.uk](http://www.fnf.org.uk)

### **Family Mediation Scotland**

0845 119 2020

[www.familymediationscotland.org.uk](http://www.familymediationscotland.org.uk)

### **General Register Office for Scotland**

0131 334 0380

[www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk)

### **Grandparents Apart**

### **Self Help Group Scotland**

0141 882 5658

[www.grandparentsapart.co.uk](http://www.grandparentsapart.co.uk)

**One Parent Families Scotland**

0131 556 3899

Helpline - 0808 801 0323

[www.opfs.org.uk](http://www.opfs.org.uk)

**One Plus**

0141 333 1450

[www.oneplus.org](http://www.oneplus.org)

**Scotland's Commissioner for  
Children and Young People (SCCYP!)**

0131 558 3733

[www.sccyp.org.uk](http://www.sccyp.org.uk)

**Scottish Child Law Centre**

0131 667 6333

Helpline - 0800 328 8970

[www.sclc.org.uk](http://www.sclc.org.uk)

**Scottish Marriage Care**

0141 222 2166

[www.scottishmarriagecare.org](http://www.scottishmarriagecare.org)

**Scottish Women's Aid**

0131 514 9981

[www.scottishwomensaid.co.uk](http://www.scottishwomensaid.co.uk)

**Shelter Scotland**

0808 800 4444

[www.scotland.shelter.org.uk](http://www.scotland.shelter.org.uk)

**Stepfamily Scotland**

0131 514 9981

Helpline - 0845 122 8655

[www.stepfamilyscotland.org.uk](http://www.stepfamilyscotland.org.uk)

**The Law Society of Scotland**

0131 226 7411

[www.lawscot.org.uk](http://www.lawscot.org.uk)

**The Scottish Legal Aid Board**

0131 226 7061

[www.slab.org.uk](http://www.slab.org.uk)

**Young Scot**

0131 313 2488

[www.youngscot.org.uk](http://www.youngscot.org.uk)

**WEBSITES****BBC Parenting Homepage**

[www.bbc.co.uk/parenting](http://www.bbc.co.uk/parenting)

**Citizens Advice Scotland**

[www.cas.org.uk](http://www.cas.org.uk) or

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

**Domestic Abuse**

[www.domesticabuse.co.uk](http://www.domesticabuse.co.uk)

**The Family Law Association**

[www.fla-scotland.co.uk](http://www.fla-scotland.co.uk)

**HELPLINES**

**ParentLine:** 0808 800 2222

**ChildLine:** 0800 11 11

**Domestic Abuse:** 0800 027 1234

Further copies of this document are available, on request, in audio and large print formats and in community languages. Please contact 0131 244 3581.

اس دستاویز کی مزید کاپیاں آڈیو کیسٹ پر اور بڑے حروف کی چھپائی میں اور کیٹیجی کی اس دستاویز میں طلب کیے جانے پر دستیاب ہیں، برائے مہربانی اس پتہ پر رابطہ کریں: 0131 244 3581

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Gheibhear lethbhreacan a bharrachd ann an cruth ris an èistear, ann an clò mòr agus ann an cànan coimhearsnachd. Cuir fios gu: 0131 244 3581

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此文件有更多備份，如果需要，語音版本和大字體版本及少數種族語言版本也可提供，請聯絡: 0131 244 3581

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The information in this booklet is correct at May 2006. It provides general information about family law. Specific issues should always be checked with the appropriate agencies or legal advisers.

The Scottish Executive has produced a range of Family Matters documents. These are available from [www.scotland.gov.uk/familylaw](http://www.scotland.gov.uk/familylaw), by e mail [family.law@scotland.gsi.gov.uk](mailto:family.law@scotland.gsi.gov.uk) or by phoning 0131 244 3581

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