



Higher National Unit specification: general information

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Unit code: FW2T 35

Superclass: EC

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Unit purpose

The purpose of this Unit is to provide candidates with the knowledge and skills required of paralegals working in a law firm, and those who aspire to the role, to prepare the documents and apply the procedures involved in the raising of a divorce action or dissolution of a civil partnership in the Sheriff Court in Scotland. It will also cover separate actions between a husband and wife, between civil partners, both defended and undefended actions.

On completion of the Unit the candidate should be able to:

- 1 Apply the ordinary cause rules from the service of the initial writ until appeal.
- 2 Apply the appropriate documentation and procedures in Sheriff Court divorce actions, civil partnership dissolutions, and simplified divorce/civil partnership dissolution procedure.
- 3 Apply current Family Law legislation in Scotland to a family law action involving children.

Recommended prior knowledge and skills

Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have Communication Skills at SCQF level 6 or equivalent. It would be beneficial, however, if the candidate had knowledge of the Scottish Legal System and Scots Private law. This may be evidenced by possession of HN Units *F1A7 34: Scottish Legal System*, *F19P 34: Scots Private Law*, *FW2R 35: Family Law: Principles and Court Actions*; and *F1A8 35: Sheriff Court Civil Procedure* or similar qualifications or experience.

General information (cont)

Credit points and level

1 Higher National credit at SCQF level 8: (8 SCQF credit points at SCQF level 8*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Core Skills

The Unit should provide candidates with an opportunity to develop the following Core Skills/Core Skill components in this Unit, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Working with Others*
- ◆ *Communication*
- ◆ *Numeracy*
- ◆ *Information and Communication Technology (ICT)*

Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment

Assessment for this Unit is carried out on a holistic basis, with the candidate being presented with at least two scenarios in the form of a case study(ies) to which they have to provide written and/or oral evidence. In addition, candidates will provide written/oral evidence of knowledge on a sampled basis under open-book conditions.

Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate.

Higher National Unit specification: statement of standards

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Please refer to 'Knowledge and/or Skills' for the Unit and 'Evidence Requirements' for the Unit after the Outcomes.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Apply the ordinary cause rules from service of the initial writ until appeal.

Knowledge and/or Skills

- ◆ Current family legislation, in particular The Family Law (Scotland) Acts 1985 & 2006
- ◆ The principles of fair division of matrimonial assets, aliment provisions and maintenance for children
- ◆ Current Sheriff Court Ordinary Cause rules
- ◆ Defended and undefended divorce/civil partnership actions
- ◆ The appeals procedure

Outcome 2

Apply the appropriate documentation and procedures in Sheriff Court divorce actions, civil partnership dissolutions, and simplified divorce/civil partnership dissolution procedure.

Knowledge and/or Skills

- ◆ Territorial jurisdiction and powers of the Sheriff Court
- ◆ Grounds for divorce or dissolution of a civil partnership in Scotland
- ◆ The simplified procedure and the advantages of this procedure
- ◆ The dissolution procedure
- ◆ Preparing first draft Schedule of Matrimonial Property, or civil partnership equivalent
- ◆ Arranging for birth and marriage certificates
- ◆ Preparation of appropriate documentation
- ◆ Preparation of the initial writ including averments, intimations and productions required
- ◆ Service of the initial writ
- ◆ Serving a Citation
- ◆ Drafting Minutes for Decree
- ◆ Preparing and executing Affidavits
- ◆ Drafting Joint Minutes

Higher National Unit specification: statement of standards (cont)

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Outcome 3

Apply current Family Law legislation in Scotland to a family law action involving children.

Knowledge and/or Skills

- ◆ Procedure in actions concerning children
- ◆ Sections 1 and 2 of the Age of Legal Capacity (Scotland) Act 1991
- ◆ Recording views of the child
- ◆ The rights of children and parents in relation to contact
- ◆ Appointment of local authority or reporter to report on a child
- ◆ Referral to Family Mediation
- ◆ The workings of a Child Welfare Hearing
- ◆ Applications for orders to disclose whereabouts of children
- ◆ Applications in relation to removal of children from their home
- ◆ Matrimonial Homes (Family Protection) (Scotland) Act 1981
- ◆ The Family Law Act 1986
- ◆ The Children (Scotland) Act 1995
- ◆ Protection from Abuse (Scotland) Act 2001

Evidence Requirements

Outcomes 1, 2 and 3

Candidates will provide written and/or oral evidence of being able to apply the ordinary cause rules in relation to simplified divorce actions and civil partnership dissolutions from service of the initial writ until appeal.

For the first part of the assessment, candidates will be given at least two scenarios of a client who is intending to either commence proceedings for divorce or dissolution of a civil partnership in the Sheriff Court. Acting in the role of a paralegal under the guidance of a supervising solicitor, candidates will be expected to apply their theoretical knowledge of the law to the particular situation, which should be a defended action.

The candidate should apply their knowledge to:

Provide a clear explanation to the 'client' of:

- i) the grounds for seeking a divorce or dissolution of a civil partnership, and whether they apply in the given situation
- ii) the applicable procedures and documentation
- iii) the appropriate Sheriff Court at which to raise the action, and the powers of the Sheriff Court
- iv) the advantages of using the simplified divorce/dissolution procedure and the ordinary cause rules in relation to divorce and dissolution
- v) how ordinary divorce actions are commenced and how to appeal against a decision by the sheriff
- vi) the range of remedies available to the parties to a divorce/dissolution action in the given scenario.

Higher National Unit specification: statement of standards (cont)

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Candidates will be presented with both scenarios as detailed below:

- 1 The first scenario will involve:
 - ◆ A client who has been separated from their spouse or civil partner for one year who have a child in the home aged 12 or older
 - ◆ There will be joint heritable property
 - ◆ Both parties will have a pension which they will have been contributing to since before the marriage or civil partnership
- 2 The second scenario will involve a client who has been separated from their spouse or civil partner for two years and they have no children. The joint property has already been amicably divided and there are no unresolved financial issues.

Candidates should provide advice to the client covering their rights and responsibilities in relation to the financial aspects in the given circumstances. The advice given should be correct in terms of current legislation and should be in the best interests of the client.

Candidates will be expected to apply the theoretical legal position to the scenarios they are given in order to resolve problems, so their responses should be judged in light of the accuracy with which they have identified the theoretical legal position and how it relates to the circumstances of the case. Candidates also need to provide written and/or oral evidence that they understand how legislation and the common law underpin the rights and duties of parties seeking a divorce/dissolution of a civil partnership in Scotland.

For the second part of the assessment, the candidate will also be expected to produce the following written evidence:

- ◆ A draft writ for 1–2 year separation divorce
- ◆ A draft writ for a civil partnership dissolution
- ◆ Simplified Divorce Application forms (or civil partnership equivalent)
- ◆ First draft Schedule of Matrimonial Property (or civil partnership equivalent)
- ◆ Inventory of Productions, including relevant types of vouching required (such as mortgage balance statements) and methods of obtaining vouching
- ◆ First draft affidavit

The first part of the assessment should be conducted within three hours under open-book conditions in class.

Candidates will be permitted to make full use of class handouts, textbooks and other relevant material. Candidates will not be permitted to see the case study or case studies in advance of the assessment.

The second part of the assessment should be conducted in open-book conditions in the candidates own time.

In addition, written and/or oral evidence of knowledge which cannot be inferred from the practical scenarios may be sampled.

Higher National Unit specification: statement of standards (cont)

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Assessment Guidelines for Outcomes 1, 2 and 3

The Unit could be assessed by one assessment opportunity comprising of a single case study or set of case studies. The knowledge evidence could be obtained in response to short answer questions or an extended response contained in a case study or case studies. Should there be ambiguity regarding a candidate's response to the assessment, or authenticity of the candidate's response, oral questioning may be used to eliminate any doubt as the candidate's understanding of the legal principle. The lecturer should note questions and responses.

It is not essential that candidates are assessed on both scenarios at the same time; if centres choose to split the first assessment then each scenario could be assessed within 1.5 hours.

Candidates will be expected, as much as possible, to apply the theoretical legal position to the scenario within the case study in order to resolve problems, so it important that the case study is sufficiently complex to allow this to happen.

A suggested situation for the first scenario could be one in which the child had been removed from the jurisdiction by the defender to another part of the UK without the consent of the pursuer and the defender is refusing to disclose the whereabouts of the child. The scenario could be extended to suggest that the pursuer wanted to move abroad with the child.

It is highly recommended that candidates be provided with computer templates or hard copies of styles of legal correspondence commonly used in the various stages of a divorce action before the Sheriff Court. Candidates should not be expected to attempt to draft styles of legal correspondence or official documentation from scratch.

Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate. A role play exercise may be suitable for certain assessments depending on class size and at the centre's discretion.

The assessment of this Unit could be integrated with the assessment of the HN Unit *FW2R 35: Family Law: Principles and Court Actions*.

The sampling strategy could cover knowledge of each Outcome or one or a combination of Outcomes, depending upon the evidence already provided in the case study (or case studies).

Higher National Unit specification: support notes

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

Guidance on the content and context for this Unit

The Unit is primarily intended to give candidates a practical insight into aspects of procedures for divorce and dissolution of civil partnerships as it applies to the Sheriff Court in Scotland. It is also applicable to those who have relevant work experience as it will give them a theoretical understanding of the legal principles relating to the conduct of divorce actions.

This Unit is specifically geared towards Scottish Law. It is highly recommended that candidates be reacquainted with the following areas:

- ◆ General principles of family law
- ◆ The Scottish legal system
- ◆ Ordinary Cause procedure in the Sheriff Court; and
- ◆ The geographical jurisdiction of the Sheriff Court in civil matters

The Unit should also demonstrate how legislation has, and is being developed, the use of case law in settling legal matters and how this affects the rights and obligations of all the parties involved in a family law action.

The suggested allocation of teaching time when delivering this Unit is as follows:

Outcome 1 — 40%
Outcome 2 — 20%
Outcome 3 — 40%

The Unit can be approached by using relevant case studies which are related to events which require to be acted upon, or explained in terms of legal solutions or relevant case law. Wherever possible, centres should adopt a proactive approach towards the teaching of this Unit by using reported cases from current law journals and other relevant sources. Likewise, candidates should be encouraged to source all information, eg the internet, professional journals and newspapers. Candidates should also be encouraged to use these articles as discussion topics in the classroom environment. It is also vital that candidates are made fully aware of the growing importance of information technology in the modern law practice. It is highly recommended that candidates be provided with computer templates or hard copies of styles of legal correspondence or Sheriff Court documentation commonly used in divorce actions.

Higher National Unit specification: support notes (cont)

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Guidance on the delivery of this Unit

Centres are recommended to follow the sequence of Outcomes which will provide the candidates with a clear understanding of the legal issues which apply procedures for divorce or dissolution of civil partnerships in the Sheriff Court in order to comply with current professional standards.

Centres should emphasise to candidates that they require to transfer knowledge gained from the completion of the HN Units '*Scottish Legal System*', '*Sheriff Court Civil Procedure*' and '*Scots Private Law*' especially with regard to the jurisdiction of the Sheriff Court in civil matters, the current Ordinary Cause Procedure used by the Sheriff Court and general principles of family law in Scotland.

Candidates will be expected, as much as possible, to apply the theoretical legal position to each of the assessments, in order to resolve problems within the context of the case study. It is recommended that a bank of case studies should be prepared to cover the knowledge and understanding of all Outcomes within this Unit.

Opportunities for developing Core Skills

All elements of the Core Skill of *Problem Solving* — Critical Thinking, Planning and Organising, Reviewing and Evaluating — are naturally developed as candidates analyse fictitious case studies, identify possible remedies available and, under the supervision of a solicitor, complete work relating to the application of current Family Law legislation in Scotland. Accessing a range of complex information, candidates should identify and analyse all relevant factors, including communication methods, for sensitively negotiating positive Outcomes before drafting required documents. Although candidates must independently complete practical tasks, discussions centred on real and fictitious case studies would offer opportunities to reinforce skills in analytical evaluation of potential solutions.

Paralegals have to build and maintain effective Written and Oral Communication with a range of others, including the Supervising Solicitor, clients and colleagues. The need to select language and format appropriate to the particular situation and/or client should be emphasised. There are opportunities for enhancing interpersonal and listening skills in formative discussion and oral explanation.

Documentation and procedures require assessing and advising on fair division of matrimonial assets, aliment provisions and maintenance for children. *Numeracy* skills could be developed flexibly, using appropriate software packages, to support accurate calculation and presentation of data in an appropriate format.

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

This Unit is designed to introduce you to the basic concepts of raising an action for divorce and dissolution of Civil Partnerships in the Sheriff Court in Scotland. You will be expected to give legal advice, under the supervision of a supervising solicitor, to individuals who are seeking to legally end their relationships. You will also become familiar with the procedures and the documentation which are used by the Sheriff Court in ordinary divorce actions, civil partnership dissolutions and simplified divorce procedures. You will have to demonstrate that you can select the appropriate Sheriff Court at which the action should be heard. You should be able to state the types of measures that the court thinks most appropriate to apply in the circumstances of a particular divorce action. Every divorce action will throw up its own peculiarities or problems which the Court must address.

There are three Outcomes in this Unit, which will be assessed on a holistic basis. All Outcomes will be assessed by use of a case study, or case studies to test your understanding of the legal principles and how they can be applied. The assessment will take the form of an open-book exercise; you will be permitted to use textbooks and class handouts during the assessment event.

In this Unit, you will cover:

- ◆ The jurisdiction of the Sheriff Court in relation to divorce and civil partnership dissolution actions
- ◆ The appropriate documentation in simplified divorce/civil partnership dissolution procedure; and
- ◆ How ordinary divorce/civil partnership dissolution actions are commenced and appealed

Outcome 1

- ◆ Current Sheriff Court Ordinary Cause rules
- ◆ Current family and divorce legislation
- ◆ The principles of fair division of matrimonial assets, aliment provisions and maintenance for children
- ◆ The rights of children and parents in relation to contact

Outcome 2

- ◆ Current Sheriff Court Ordinary Cause rules
- ◆ Current family legislation
- ◆ Territorial jurisdiction of the Sheriff Court
- ◆ Grounds for divorce/civil partnership dissolution in Scotland
- ◆ The simplified procedure and the advantages of this
- ◆ Preparing appropriate documentation
- ◆ Preparation of the initial writ for divorce/civil partnership dissolution
- ◆ Service of the initial writ
- ◆ Serving a Citation
- ◆ Productions submitted by the parties
- ◆ Drafting Minutes for Decree
- ◆ Preparing and executing Affidavits
- ◆ Drafting Joint Minutes
- ◆ The appeals procedure

General information for candidates (cont)

Unit title: Sheriff Court Procedure for Divorce and Dissolution of Civil Partnerships

Outcome 3

- ◆ Matrimonial Homes (Family Protection) (Scotland) Act 1981
- ◆ The Family Law Act 1986
- ◆ The Age of Legal Capacity (Scotland) Act 1991
- ◆ Children (Scotland) Act 1995
- ◆ Protection from Abuse (Scotland) Act 2001