

## Higher National Unit Specification



### General information for centres

**Unit title:** Sheriff Court Divorce Procedure

**Unit code:** F19Y 35

**Unit purpose:** The purpose of this Unit is to provide candidates with the knowledge and skills required of solicitors and paralegals working in a law firm who are expected to use the documents and apply the procedures involved in the raising of a divorce action in the Sheriff Court.

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

- 1 Apply the jurisdiction of the Sheriff Court in relation to divorce actions
- 2 Apply the appropriate documentation and procedures in simplified divorces
- 3 Apply the ordinary cause rules from the service of the initial writ until appeal
- 4 Advise clients on the powers and responsibilities of the Sheriff Court in divorce actions

**Credit points and level:** 1 HN 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.*

**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* and F1A8 35 *Sheriff Court Civil Procedure* or similar qualifications or experience.

**Core Skills:** There are opportunities to develop the Core Skills of Problem Solving, Numeracy and Working with Others at SCQF level 6 in this Unit, although there is no automatic certification of Core Skills or Core Skills components.

**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 a scenario in the form of a case study to which they have to provide written evidence of being able to carry out the tasks covered in the Outcomes. 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.

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 jurisdiction of the Sheriff Court in relation to divorce actions

#### **Knowledge and/or skills**

- ◆ Grounds for divorce in Scotland
- ◆ Territorial jurisdiction of the Sheriff Court

### **Outcome 2**

Apply the appropriate documentation and procedures in simplified divorces

#### **Knowledge and/or skills**

- ◆ The simplified procedure
- ◆ The advantages of the procedure
- ◆ Serving a Citation
- ◆ Preparing the appropriate documentation
- ◆ Current Sheriff Court Ordinary Cause rules
- ◆ Current family legislation

### **Outcome 3**

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

#### **Knowledge and/or skills**

- ◆ Birth and marriage certificates
- ◆ Preparation of the initial writ
- ◆ Service of the initial writ
- ◆ Productions submitted by the parties
- ◆ Defended and undefended divorce actions
- ◆ Affidavits in both defended and undefended divorces
- ◆ A minute of agreement in a divorce action
- ◆ The appeals procedure
- ◆ Current Sheriff Court Ordinary Cause Rules
- ◆ Current family legislation

## **Higher National Unit specification: statement of standards (cont)**

**Unit title:** Sheriff Court Divorce Procedure

### **Outcome 4**

Advise clients on the powers and responsibilities of the Sheriff Court in divorce actions

#### **Knowledge and/or skills**

- ◆ Matrimonial interdicts
- ◆ Non-disclosure of accommodation address
- ◆ Exclusion Orders
- ◆ Curator ad litem
- ◆ Mediation
- ◆ Protective measures and procedures involving children:
  - Welfare Hearings
  - Separate representation
  - Consultation
  - Social Work professionals
- ◆ Financial settlements by the court
- ◆ Current family and divorce legislation
- ◆ Current Sheriff Court Ordinary Cause Rules

#### **Evidence Requirements for the Unit**

Candidates will need to provide evidence to show that they can give an accurate and clear explanation of the law as it relates to a given case study or case studies, and to apply the theoretical legal position to the scenario within the case study in order to resolve problems.

Candidates will be given a case study (or case studies) which addresses a scenario of an individual who is involved, or about to become involved, in a divorce action in the Sheriff Court. The case study will require the candidate to take on the role of a paralegal where they would be required to give advice to individuals who are about to commence legal action against their spouse in order to obtain a divorce. As a legal adviser, candidates will be expected to display a sound grasp of the relevant procedures and documentation which are applicable in a divorce action and be in a position to advise the client accordingly. Candidates will also be expected to demonstrate that they understand how legislation and the common law underpin the rights and duties of parties seeking a divorce in Scotland.

The candidate will provide written evidence to show that they can:

- ◆ Apply the jurisdiction of the Sheriff Court in relation to divorce actions
- ◆ Explain the grounds for divorce in Scotland
- ◆ Apply the appropriate documentation in simplified divorce procedure
- ◆ Explain how ordinary divorce actions are commenced and appealed; and
- ◆ Advise clients on the duties and powers of the Sheriff Court in an action for divorce

## **Higher National Unit specification: statement of standards (cont)**

### **Unit title: Sheriff Court Divorce Procedure**

The advice given to clients may either be written or oral and should clearly explain the following matters:

The grounds for seeking a divorce, selection of the appropriate Sheriff Court at which to raise the action, the advantages of using the simplified divorce procedure, the ordinary cause rules in relation to divorce, appealing against a decision of a Sheriff, the powers of the Sheriff Court and the range of remedies sought by the parties to a divorce action.

In addition, written/oral evidence of knowledge which is not apparent from producing the above will be sampled. 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).

Both practical and knowledge assessment should take a total of approximately 2 hours maximum.

### **Assessment Guidelines for the Unit**

The assessment will be conducted in controlled conditions. Time allocated will be 2 hours maximum. The assessment opportunity or opportunities should be conducted under open-book conditions and 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 opportunity.

The Unit could be assessed by one assessment opportunity comprising 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 to the candidate's understanding of the legal principle. The lecturer should note questions and responses.

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 is important that the case study is sufficiently complex to allow this to happen.

The assessment opportunity or opportunities should be conducted under open-book conditions and 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 opportunity.

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.**

## Administrative Information

**Unit code:** Sheriff Court Divorce Procedure

**Unit title:** F19Y 35

**Superclass category:** EC

**Original date of publication:** March 2007

**Version:** 02 (September 09)

### History of Changes:

Version	Description of change	Date
02	Assessment guidelines amended to allow centres greater discretion in designing assessments.	26/08/09
	Wording revised relating to guidance for candidates with additional support needs.	

**Source:** SQA

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## **Higher National Unit specification: support notes**

### **Unit title:** Sheriff Court Divorce Procedure

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 divorce procedure 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 acquainted 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 divorce action.

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

Outcome 1 — 10%

Outcome 2 — 25%

Outcome 3 — 40%

Outcome 4 — 25%

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 should be 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 Divorce Procedure

### **Guidance on the delivery and assessment 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 to divorce procedure 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***

Elements of the Core Skill of Problem Solving, that is, planning and organising, critical thinking, and reviewing and evaluating, will be naturally developed and enhanced as candidates undertake the Unit, which requires the practical application of theoretical knowledge to a given complex situation. Identifying and analysing all factors impacting on the legal responsibilities of assisting and advising clients in relation to actions of divorce will involve a high level of analytical thinking. Applying knowledge of current legislation and regulatory requirements whilst dealing with clients in a way which assures sensitivity, accuracy and efficiency is critical to achievement.

Communication skills are not discretely assessed but candidates research and analyse complex legal information and theory, and have to present written documentation which is accurate, to a professional standard. Recognition of factors affecting and maximising success in communicating with people, including methods for negotiating positive Outcomes and overcoming potential barriers, will be an element of competence. Although candidates must independently complete and present evidence, discussions centred on case studies and exemplar materials would offer opportunities to reinforce skills in analytical evaluation of issues and Outcomes.

Accuracy in interpreting, calculating, applying and presenting complex financial information underpins the competencies developed in the Unit. Candidates should have formative opportunities to enhance skills in the interpretation and presentation of financial data with an emphasis on Numeracy as a tool to be applied efficiently and critically in practical contexts.

### **Open learning**

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in this specification must still be applied if this method of delivery is chosen.

## **Higher National Unit specification: support notes (cont)**

**Unit title:** Sheriff Court Divorce Procedure

### **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](http://www.sqa.org.uk/assessmentarrangements)

## **General information for candidates**

### **Unit title: Sheriff Court Divorce Procedure**

This Unit is designed to introduce you to the basic concepts of raising an action for divorce in the Sheriff Court in Scotland. You will be expected to give legal advice to individuals who are seeking to divorce their partners. You will also become familiar with the procedures and the documentation which are used by the Sheriff Court in divorce actions. 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. You must be able to address issues such as the rights of children, the division of property and financial settlements between the parties.

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 actions
- ◆ The appropriate documentation in simplified divorce procedure
- ◆ How ordinary divorce actions are commenced and appealed; and
- ◆ The duties and powers of the Sheriff Court in an action for divorce

#### **Outcome 1**

- ◆ Grounds for divorce in Scotland
- ◆ Territorial jurisdiction of the Sheriff Court

#### **Outcome 2**

- ◆ The simplified procedure
- ◆ The advantages of the simplified procedure
- ◆ Serving a Citation
- ◆ Preparing appropriate documentation
- ◆ Current Sheriff Court Ordinary Cause rules
- ◆ Current family and divorce legislation

#### **Outcome 3**

- ◆ Birth and marriage certificates
- ◆ Preparation of the initial writ
- ◆ Service of the initial writ
- ◆ Productions submitted by the parties
- ◆ Defended and undefended divorce actions
- ◆ Affidavits in both defended and undefended divorces
- ◆ A minute of agreement in a divorce action
- ◆ The appeals procedure
- ◆ Current Sheriff Court Ordinary Cause Rules
- ◆ Current family and divorce legislation

## **General information for candidates (cont)**

**Unit title:** Sheriff Court Divorce Procedure

### **Outcome 4**

- ◆ Matrimonial interdicts
- ◆ Non-disclosure of accommodation address
- ◆ Exclusion Orders
- ◆ Curator ad litem
- ◆ Mediation
- ◆ Protective measures and procedures involving children:
  - Welfare Hearings
  - Separate representation
  - Consultation
  - Social Work professionals
- ◆ Financial decisions affecting the assets of the parties
- ◆ Current family and divorce legislation
- ◆ Current Sheriff Court Ordinary Cause Rules