

Crime and Justice: Civil Justice

Attitudes and Knowledge About Family Obligations in Scotland: After Separation and Death

Fran Wasoff, Centre for Research on Families and Relationships, University of Edinburgh

Major changes in family structure and family life in Scotland have also changed how people think about marriage and cohabitation, the roles of men and women in family life, parenthood and the relationship between family life and paid work. Scots family law has moved to recognise these changes, most recently with the Family Law (Scotland) Act 2006 and the Civil Partnership Act 2004. The Scottish Law Commission is reviewing the law of succession. Two recent Scottish surveys commissioned by the Scottish Executive—on family and sexual attitudes and attitudes towards rules of succession—provide up-to date evidence of public opinion about the obligations and rights of partners when their relationships end either by separation or the death of a partner, and across generations when a parent or partner dies.

Main Findings

- There was very strong support for unmarried fathers having the same parental responsibilities and rights as married fathers; 97% agreed. The Family Law (Scotland) Act 2006 gives unmarried fathers who are registered as the child's father such responsibilities and rights.
- Most people thought that a stepparent with whom a child lives should assume some financial responsibility for the stepchildren, for example, by taking their income into account for the purposes of assessing child support or entitlement to a means-tested student grant. However, most did not think a financial obligation should continue beyond separation.
- There was widespread support for equal treatment of cohabiting couples, same-sex couples and married couples in relation to succession rules, access to partners' occupational pensions, and exemption from inheritance tax.
- Public opinion was divided on the question of claiming financial support from an ex-partner in the case of a separating couple where one partner has a much lower income than the other. While half of those asked thought a married partner should be able to make a claim, 40% thought a cohabitee should and 34% thought a same-sex partner should be able to claim.
- Public opinion was sought about the legal rules that should govern the disposal of the estate of someone who dies without a will (intestate). There was preference for legal rules that specify fixed shares (that is, specifying a fixed proportion) to leaving the decision to a court.
- There was widespread agreement (88%) that if a married person without children dies intestate, their surviving spouse should receive their entire estate, rather than dividing it with their own siblings and parents. Where there are grown up children, opinion was evenly divided between those who thought the children should receive a share and those who thought they should not. A clear majority of opinion favoured treating step-children in the same way as biological children for inheritance purposes.
- Most people thought there should continue to be rules to protect kin from disinheritance. For example, spouses, children - including stepchildren - should be entitled to a share of the deceased's estate even if it was left to others in their will.
- Public attitudes to sexual relationships outside marriage vary. Most people think that sex before marriage is rarely or never wrong, but also consider that underage sex or extramarital sex is mostly or always wrong.

Family change in Scotland

Over the last quarter century, Scotland and other developed countries have seen major changes in family structure and family life (Morrison et al 2004; Wasoff et al 2005). The main changes and features of family structure and family life have been

- Fewer marriages
- Later marriage
- More cohabitation
- Greater visibility of same sex partnerships
- A high, though relatively stable, divorce rate
- Fewer births
- Later parenthood
- Increasing number of married women, and mothers in particular, in paid work, and returning sooner to paid work after the birth of a child
- A high proportion of births to parents not married to each other
- More frequent transitions between family forms
- More fluid and complex family structures and relationships

These fundamental changes have also altered the ways people think about marriage and partnership, the roles of men and women in family life, parenthood, and the relationship between family life and paid work. Some social theorists (Giddens 1992; Beck-Gernsheim 2002) have described this change in terms of increasing individualisation, a process in which bonds of obligation between partners have weakened and personal lives are based more on individual choice and responsibility. Others (Jamieson 1998) have challenged this view, arguing that bonds of partnership and parenthood remain strong, despite changes like those listed above.

With such wide ranging changes in family life, it has also been recognised that law too must be kept up to date, to ensure that it is moving in the same direction as changes in public opinion and that it is more closely in tune with the wider range and more complex family forms and relationships commonplace in Scotland today.

Evidence informed policy

Two Scottish surveys commissioned by the Scottish Executive provide recent evidence of the attitudes of representative samples of Scottish adults aged 16 or over

towards the obligations and rights of partners when their relationships end either by separation or divorce, or by death, whether that partnership was a marriage, or a cohabiting union between a man and a woman, or between same sex partners. Both surveys used a 'scenarios' approach, presenting familiar scenarios to respondents and seeking their views. This *Research Findings* presents key findings from both of these surveys.

A module on family issues was included in the Scottish Social Attitudes Survey 2004 (*the family module*) in order to canvass public views and knowledge on a range of family matters including knowledge of the law about and attitudes to wider kin relationships. This was intended to provide baseline evidence for recent family law reform that has resulted in the Family Law (Scotland) Act 2005 and the Civil Partnership Act 2004, and for assessing how far these law reforms were in line with public opinion. The survey interviewed a representative sample of 1637 people and focused on their knowledge and attitudes towards unmarried fathers, unmarried cohabiting couples, both opposite and same-sex, stepparents, grandparents and sexual relationships in various circumstances.

The second survey (of 1000 interviews) was an Omnibus survey carried out by *mrug* (mrug research 2005) with a module on succession (*the succession module*) that collected information on attitudes towards succession to inform the work of the Scottish Law Commission who are reviewing the law of succession, to update research in 1986 on public attitudes towards succession law. This survey aimed to explore attitudes among Scottish adults towards the law of succession, the extent to which these accord with the recommendations of the Scottish Law Commission, particularly in relation to intestacy (dying without having made a will), and protection from disinheritance, including cohabiting couples.

Attitudes towards marriage and partnership during the relationship

It is important to understand public attitudes towards partnership and parenthood, and the responsibilities and rights within family relationships if one is to understand the context for attitudes about what should happen when relationships end, either by separation or divorce, or death. The family module asked questions about parental responsibilities and rights of unmarried fathers in a scenario about consent to children's medical treatment and about parental responsibilities and rights of stepparents.

Imagine an unmarried couple who have been living together for ten years. They have a child who needs medical treatment. Do you think the father should or should *not* have the same rights to make decisions about his child's medical treatment as he would if he was married to the child's mother? And do you think he *does* in fact have the *same* rights as a married man to make decisions about this medical treatment, or, does he have *fewer* rights?

There was very strong support for unmarried fathers having the same parental rights as married fathers: (97%), slightly higher than in 2000 when the same question was asked. There was an increasing awareness that unmarried fathers, until 2006, did not have such a right. This was changed by the Family Law (Scotland) Act 2005, which gives unmarried fathers who co-register a child's birth full parental responsibilities and rights.

When asked about whether a stepparent's income should be taken into account for both the purpose of assessing child support levels for the child's father, and for assessing entitlement to a means-tested student grant, most respondents thought that the step-father's income should be taken into account for both purposes. Despite some confusion about stepparents' actual obligations, the replies suggest a high level of support for the notion that step-parents *should* assume some financial responsibility for the stepchildren with whom they live.

While there is strong support for greater parity of treatment for same sex couples on partnership issues, a more complex pattern emerged in relation to parenthood. When asked if a

same sex couple in a stable partnership should be allowed to adopt in the same way as a married couple, most respondents thought they should not be able to do so, but with a clear gender difference: opinion was strongly against male same sex couples being able to adopt on this basis but equally divided for lesbian couples. This suggests that while there may be a high level of support for more egalitarian treatment of same sex and mixed sex couples around partnership issues, this support does not extend to the same extent to parenthood.

After separation or divorce

The breakdown of partnership relationships, whether they are marriages, or opposite or same sex cohabiting relationships, have become commonplace, and one of the important responsibilities of family law is to provide a legal framework to regulate this process and its outcomes. The family module asked about what should happen in various circumstances when a partnership relationship ended in separation or divorce, as in the following two scenarios.

A couple (the same question was asked for married, unmarried cohabiting couple, and same sex couples) have been together for 10 years and have no children, but one of them has a much higher income than the other. They then split up. In these circumstances, should the partner with the lower income be able to claim financial support from the other partner? And do you think the law *does* give someone the right to claim financial support in such circumstances?

Table 1 Attitudes to financial support on relationship breakdown, Scotland 2004

Do you think the partner with the lower income should or should not be able to claim financial support from the other partner?	Married couple	Unmarried couple	Same-sex couple
Should	50	40	34
Should not	47	57	61
Don't know	3	3	6
<i>Unweighted base</i>	1637	1637	1637

Source: Scottish Social Attitudes Survey 2004

The responses shown in Table 1 suggest that public opinion is divided about norms on financial support on relationship breakdown of a childless partnership– even, somewhat surprisingly, in the case of married couples, where opinion was about equally divided between those who favoured support claims and those who did not. Most, 61%, of respondents did not think there should be a support obligation following the breakdown of a same sex couple relationship, with little difference if the couple are male or female, compared with 47% who did not think there should be one for childless married couples, and 57% for cohabiting couples. Thus, there is a surprising level of similarity in views that there should not be a support obligation after separation for all types of childless couples, albeit with higher levels for those not actually married, whether same or opposite sex. This suggests an ambivalence in public attitudes to the role of sharing resources and commitments in relationships, even within marriage where a statutory presumption exists. This could be cited as evidence of a growing ‘individualisation’ (Lewis 2001, Giddens 1992, Jamieson 1998) in modern relationships.

It is not only partners who will be affected by separation or divorce, but also any children of the family as well as wider kin, such as stepparents when people re-partner, and grandparents. While most people thought that step-parents *should* assume some financial responsibility for the stepchildren they live with, most did not think this obligation should continue to longer term support if the stepparents split up. In contrast, over three quarters of respondents thought that a stepfather should have the same rights to contact as a natural father. Thus, there were mixed opinions about the obligations a stepparent should have where the relationship between a stepfather and a child’s mother had broken down.

It is widely recognised that grandparents play an important part in the lives of their grandchildren, and that when a child’s parents split up, it is generally valuable to children to maintain contact with their wider family, including grandparents, particularly when contact is voluntarily negotiated and takes children’s views and interests into account. The family module collected information on opinions about what grandparents rights and responsibilities should be and public knowledge about what they are, based on several scenarios raising different issues about contact and care when a parental relationship breaks down. It found widespread support for giving paternal grandparents the same rights of contact with a child as a father. The module did not explore the considerable complexities that surround this issue, such as where parents and grandparents disagree about what is in a child’s best interest as far as contact is concerned. However most respondents correctly recognised that paternal grandparents do not have a right of contact.

Although grandparents do not have parental responsibilities, whether they should have them in certain limited circumstances, was an issue raised. There is a widely held view that grandparents should have a responsibility to provide a home for a young child if they can and its parents are unable to do so.

After death

Both the family module and the succession module asked people what they thought should happen in families when a partner died. The succession module looked at public opinion about what the legal rules should be governing the disposal of a deceased’s estate when they have died without having made a will (intestacy) in various family circumstances, and whether there was a preference in the legal rules for fixed shares (e.g. a legal rule that specifies a fixed proportion) or whether that decision should be left to a court. In addressing the greater variety of family relationships common today, it also sought opinion on the relative claims of close kin and wider kin, of children and stepchildren, and of cohabiting partners.

In relation to intestacy, it found that most people agreed (88%) that if a married person dies and is survived by their spouse (but no children) as well as their own siblings and parent(s), the deceased’s person’s husband or wife should receive their entire estate. Opinions were rather more mixed if other members of the immediate family were excluded. Where the person who dies is married and has grown up children, half (46%) of the respondents felt that they were entitled to leave their entire estate to their spouse with the children receiving nothing. However, an equal proportion felt the children should be entitled to something (47%). In the next scenario, respondents were asked if they agreed that the person’s spouse should receive a fixed amount (or all the estate if this is less than the fixed share) with anything left over divided equally between the spouse and the grown up children. Two thirds feeling this to be appropriate. Under current law, step-children who are accepted as children of the family are not entitled to receive anything if their stepparent dies without making a will. Despite the current legal rule, three quarters considered it appropriate to allow step-children to receive something from their deceased stepparent’s estate. If a deceased person is survived by both their own children (from a previous marriage) as well as step-children, again over two thirds (68%) felt that the stepchildren should be treated equally for the purposes of sharing the estate.

In relation to the rules that should apply to protect kin from disinheritance, the succession module found that where a married person is survived only by their spouse and they

leave their estate to others, most agreed (75%) that the spouse should be entitled to claim a share of the estate. In another scenario involving dependent children, the vast majority agreed (87%) that young, orphaned children should be entitled to claim a share of their deceased parent's estate should it all be left to charity. Most also agreed (70%) that adult children (aged over 25) should still be entitled to claim a share of the deceased parent's estate even if the will left it all to charity. Where a married person dies, and is survived only by their step-children (who they had accepted as their own) but has left their estate to others, two thirds of respondents (65%) thought the step-children should be entitled to claim a share. Similarly, if the married person who dies is survived by their own children as well as their stepchildren, two thirds felt that all the children should be treated equally for the purposes of sharing the estate. If a deceased person is survived only by their own, grown up children (aged over 25) and leaves their estate to only one of the children, over three quarters (77%) of respondents thought the others should be entitled to claim a share (77% agreement). In contrast, opinion was quite evenly divided (53% for; 40% against) about whether the adult children of a deceased person should be entitled to a share of the estate if their will instructed that the entire estate is to be left to the surviving spouse.

As cohabitation, and longer term cohabitation in particular, has become more widespread, policy makers are reviewing the legal rules that should apply when cohabiting relationships end by the death of one of the partners. The succession module presented several scenarios involving the protection of cohabittees from disinheritance and in all, public opinion is broadly in favour of giving succession rights to surviving cohabittees. In one scenario, a large majority of respondents (81%) agreed that a surviving partner should be entitled to a share of their deceased partner's estate if they have no other immediate family and they leave all they have to others (e.g. charity). Support was equally strong for a surviving cohabitee to be entitled to claim a share of their deceased partner's estate if the deceased had been previously married and their will instructed that the estate is to be left to their surviving spouse. Conversely, if the will of the deceased left the entire estate to the surviving cohabitee with no provision for the surviving spouse, opinion was divided, nearly half (45%) agreed that the deceased's spouse should be entitled to claim a share but over a third (37%) disagreed. In all of these scenarios, a clear preference was expressed for fixed shares, rather than allowing a court to decide.

The family module also explored public opinion about various scenarios about what should happen after a partner dies. For example, in the following scenarios involving cohabittees; similar questions were asked about same-sex couples.

An unmarried couple have been living together for ten years. The man dies. He worked for a company whose occupational pension pays a pension to the surviving husband or wife in the event of death. Should the surviving partner be entitled to receive a pension on the same basis? They live in a house bought in the man's name and when he dies he leaves the property to his partner in his will. Should the surviving partner be exempt from having to pay inheritance tax on the property in just the same way as a married person would be?

Imagine another unmarried couple without children who have been living together for ten years and live in a house bought in the man's name. Say he dies without making a will. Do you think the woman should or should not have the same rights to keep the home as she would if she had been married to him? And do you think she *does* in fact have the *same* rights as a married woman to remain in this home, or, does she have *fewer* rights?

Clear majorities of respondents supported greater parity of treatment between married spouses, cohabittees and same-sex partners not in a civil partnership in relation to rights to pensions, staying in the family home and inheritance tax concessions, with slightly higher levels of support for opposite sex cohabittees than for same sex couples. There is growing awareness that the cohabitee's position in law is weaker than that of the married partner. When comparing how views vary within the population according to major social divisions such as age, gender, social class and educational level, it was found that those with some educational qualifications are more likely than those with none to favour parity of treatment between married couples, cohabittees and same sex partners in relation to staying in the shared home, being exempt from inheritance tax and eligibility for a deceased partner's occupational pension. Similarly, women are more likely than men to support parity of treatment across different types of adult partnerships. No significant differences appeared in relation to social class, marital status or housing tenure.

Changing sexual morality?

Many of the recent changes in family life have taken place in parallel to changing sexual behaviour and attitudes. To set the earlier findings in context, the family module asked questions about public attitudes towards sexual relationships in a range of contexts outside marriage and towards the place of marriage in people's lives. Some of the same questions were asked in a family module in the Scottish Social Attitudes Survey 2000.

Public attitudes towards sexual relationships outside marriage vary according to the context of the relationship and perceived harm to others. Sexual relations before marriage are considered to be either rarely wrong or not wrong at all by a large majority. However underage sex is thought to be mostly or always wrong by a large majority. A large majority also consider extramarital sexual relations are mostly or always wrong, about the same proportion as in 2000.

There is increasing acceptance of homosexual sexual relations, which are thought to be rarely wrong or not wrong at all by 42% of respondents, a higher proportion than the 37% who thought so in 2000. It is perhaps not surprising that 39% of respondents thought that gay or lesbian couples should be able to marry if they wish.

A narrow majority, smaller than in 2000 believe, erroneously, that 'common law marriage' exists in Scotland, that is, the belief that after a period of time, cohabiting partners acquire

the same rights as married couples. The institution of marriage continues to command support on a number of indicators, and is seen as preferable to some other forms of partnership, although there is also evidence of growing neutrality and tolerance for other partnership forms. As far as whether parenthood is best within the setting of marriage, a changing picture emerges. There is support, though declining, for marriage as a preferred setting for having children. A declining minority of the population agreed with the claim that married couples make better parents than unmarried ones.

Thus, a picture of changing sexual mores emerges, with higher levels of approval for some sexual relationships outside marriage, but disapproval of others: a high degree of tolerance or approval for sex before marriage, except for underage sex, and same sex sexual relationships, but a low level of tolerance or approval for extramarital sexual relations.

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About the Study

This Research Briefing summarises the findings of these two studies, both of which can be downloaded from the Scottish Executive website.

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Scottish Government Social Research
4th Floor West Rear
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG
Tel: 0131 244 7560
Fax: 0131 244 5393
Email: socialresearch@scotland.gsi.gov.uk
Website: www.scotland.gov.uk/socialresearch

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