Justice Committee

Remit and membership

**Remit:**

To consider and report on:
- a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
- b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

**Membership:**

Roderick Campbell  
John Finnie  
Christine Grahame (Convener)  
Colin Keir  
Jenny Marra (Deputy Convener)  
Alison McInnes  
David McLetchie  
Graeme Pearson  
Humza Yousaf

**Committee Clerking Team:**

Peter McGrath  
Joanne Clinton  
Andrew Proudfoot  
Christine Lambourne
The Committee reports to the Parliament as follows—

1. The draft Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 was laid on 13 February 2012 and referred to the Justice Committee as lead committee.

The draft instrument

2. The draft Order removes the requirement for a sheriff or the Court of Session to see evidence from a third party before granting a dissolution of a civil partnership under the simplified dissolution of civil partnership procedure.

Scrutiny by the Subordinate Legislation Committee

3. The Subordinate Legislation Committee considered the draft Order on 28 February 2012 and agreed that no points arose (11th Report, 2012).

Scrutiny by the Justice Committee

The draft Order was considered by the Justice Committee on 20 March 2012 when it took evidence from Nicola Sturgeon, the Cabinet Secretary for Health, Wellbeing and Cities Strategy. In her opening remarks, the Cabinet Secretary explained that when the Civil Partnership Act 2004 was being implemented in 2005, an order should have been made to remove the need for third-party evidence for dissolution of civil partnerships under the simplified procedure, but that was unfortunately not done. The Cabinet Secretary indicated that around 150 civil partnerships had been dissolved using the simplified procedure without the court seeing third-party evidence. Ms Sturgeon said that while the Scottish Government was of the view that the court decrees in those cases were legally valid, the Committee decided to consider the draft Order.

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effective, there was a risk of challenge, although the likelihood of such a challenge being successful was low.

4. While the draft Order would remove any future requirement for evidence from a third party under the simplified procedure, the Cabinet Secretary confirmed that primary legislation would be introduced, as soon as a suitable opportunity arose, to prevent a challenge to any existing decrees of dissolution that used the simplified procedure without the court seeing third-party evidence.

5. During questioning, Ms Sturgeon said that the need for the draft Order was noticed by Scottish Government officials and that the instrument would now ensure equality between the dissolution of civil partnerships and divorces in that no third-party evidence will be required.

6. The Cabinet Secretary moved motion S4M-2365. The motion was agreed to without debate or dissent.

7. Accordingly, the Justice Committee recommends to the Parliament that it approves the draft instrument.

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3 S4M-2365—That the Justice Committee recommends that the Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 be approved.
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