



**Scottish
Civil Justice
Council**

Consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court

May 2018

CONTENTS

	Page
Responding to this consultation	1
Section 1 Introduction	3
Section 2 Background	4
Section 3 Next steps	6

Annexes

Annex A	<u>Report of the Family Law Committee's Sub-Committee on Case Management in Family Actions</u>
Annex B	<u>Respondent Information Form</u>
Annex C	<u>Questionnaire</u>
Annex D	<u>Glossary of legal terms</u>

RESPONDING TO THIS CONSULTATION

The Scottish Civil Justice Council ("SCJC") invites written responses to this consultation by **22 August 2018**.

Please send your response with the completed Respondent Information Form (see "How we will treat your response" below) to:

scjc@scotcourts.gov.uk

or

David Ross
Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

If you have any queries, please contact David Ross on 0131 240 6776.

Please use the questionnaire provided at [Annex C](#) or clearly indicate in your response which questions or parts of the paper you are responding to as this will aid analysis of the responses received.

This consultation paper, responses and the analysis of responses will be published on the SCJC website at:

<http://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations>

How we will treat your response

We need to know how you wish your response to be handled and in particular whether you are happy for your response to be made public.

Please complete and return the Respondent Information Form ([Annex B](#)) with your response as this will ensure that we treat your response appropriately.

If you ask for your response not to be published we will regard it as confidential and we will treat it accordingly.

All respondents should be aware that the SCJC is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider

any request made to it under the Act for information relating to responses made to this exercise.

Where respondents have given permission for their response to be made public (see the Respondent Information Form at [Annex B](#)) and after we have checked (1) that they contain no potentially defamatory or offensive material, and (2) that they do not disclose personal or sensitive information relating to an individual other than the respondent, responses will be made available to the public on the SCJC website.

Information on how the Council processes personal data and your rights is set out in our [Privacy Notice](#).

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help the SCJC reach a view on how to improve the case management of family and civil partnership actions in the sheriff court. It is intended to publish a report on the SCJC website in due course.

Feedback

If you have any comments about how this exercise has been conducted, please send them to:

David Ross
Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

0131 240 6776

E-mail: scjc@scotcourts.gov.uk

SECTION 1 INTRODUCTION

1. The Scottish Civil Justice Council (“SCJC”) was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. It prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system in Scotland. The SCJC established the Family Law Committee (“the Committee”) on 10 June 2013. The Committee’s remit is concerned with the power to make provision about the practice and procedure to be followed in the Scottish civil courts in relation to family actions and proceedings relating to children.

2. In relation to the above remit, the Committee has the following functions:
 - to keep the relevant civil rules under review;
 - to consider and make proposals for modification and reform;
 - to require that family actions and proceedings relating to children be dealt with as expeditiously and efficiently as is possible;
 - to review, develop and promote a case management structure for family actions and proceedings relating to children; and
 - to report to the SCJC with its recommendations and, where applicable, draft rules.

3. In the exercise of the foregoing functions, the Committee is to take due account of the guiding principles of the SCJC:
 - the civil justice system should be fair, accessible and efficient;
 - rules relating to practice and procedure should be as clear and easy to understand as possible;
 - practice and procedure should, where appropriate, be similar in all civil courts; and
 - methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.

4. In addition, in cases involving children, the Committee is to take due account of the need to regard their welfare as the paramount consideration.

SECTION 2 BACKGROUND

5. This consultation is based upon a report by the Family Law Committee's sub-committee on the case management of family and civil partnership actions in the sheriff court. The report is reproduced at Annex A to this consultation document. It has previously been published on the SCJC website and can be found via the following link:

[Report of the Family Law Committee's Sub-Committee on Case Management in Family Actions](#)

6. The report provides the background on the circumstances that led to the formation of the sub-committee, from the Supreme Court judgment in the case of [NJDB v JEG](#) which raised concerns about delay in sheriff court proceedings relating to the welfare of children, to research commissioned by the Committee into the operation of Chapter 33AA of the Ordinary Cause Rules 1993, and a policy paper on case management by the Scottish Government.
7. The report makes a total of thirteen recommendations on how to improve the case management of family and civil partnership actions in the sheriff court. The recommendations include:
- a new case management structure for all family and civil partnership actions in the sheriff court, not just those with a crave for an order under section 11 of the Children (Scotland) Act 1995;
 - allocating actions to a "fast track" or "proof track" procedure, as appropriate;
 - greater judicial control over the sisting (i.e. 'pausing' or staying) of family and civil partnership actions;
 - the adoption of abbreviated pleadings and more detailed witness lists;
 - judicial continuity insofar as possible;
 - provision allowing all family and civil partnership actions to be referred to mediation; and
 - greater judicial control over the use of expert witnesses.
8. Although the focus of the report is on improving the case management of actions relating to the welfare of children, the sub-committee recommends that its proposed new case management structure should be applied to all family and civil partnership actions, not just those relating to the welfare of children (for example, actions for divorce or separation where there are no children).
9. However, it is recognised that the report only contemplates making use of the "fast track" procedure in cases where there is a crave for an order under section 11 of the Children (Scotland) Act 1995. Accordingly, the question of how cases

without such a crave should fit into the proposed new case management structure requires further consideration.

10. The report has been endorsed by both the Committee and the SCJC. The SCJC has agreed to undertake a public consultation on the recommendations at this stage, rather than on draft rules at a later date.
11. As set out in the questionnaire at [Annex C](#), the SCJC would welcome your views on the sub-committee's recommendations, as well as on the possibility of a "fast track" for cases without a crave for a section 11 order.

SECTION 3 NEXT STEPS

12. At the end of the consultation period, all non-confidential responses will be published on the SCJC's website.

13. Responses will be analysed and the SCJC will consider changes to the case management of family and civil partnership actions in the sheriff court in light of the responses received.

14. The SCJC will publish a report on this consultation in due course