

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

FAMILY LAW COMMITTEE

MONDAY 05 FEBRUARY 2018 AT 10 AM

JUDGES' DINING ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Lord Brailsford (Chair)
Sheriff Principal Lewis
Sheriff Tait
Lynda Brabender (Advocate, SCJC member)
Stephen Brand (Solicitor)
Rachael Kelsey (Solicitor)
Ian Maxwell (SCJC member)
Fiona Jones (Clan Childlaw)
Professor Frances Wasoff
Catriona Whyte (Scottish Legal Aid Board representative)
Simon Stockwell (Scottish Government representative)

In attendance: David Smith (Legislation Implementation Team, Scottish Courts and Tribunals Service)

Support: Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Inez Manson (Deputy Legal Secretary, Lord President's Private Office)
John Thomson (Deputy Legal Secretary, Lord President's Private Office) – until item 4.1 only

Apologies: Yvonne Anderson (Depute in Charge of Offices of the Court of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those members present and noted apologies from Yvonne Anderson. The Chair welcomed Mandy Williams, Deputy Secretary to the Scottish Civil Justice Council, who is providing temporary policy and secretariat support to the Committee and also John Thomson, who was attending for Item 4.1.

2. Members agreed not to publish the following papers: **2.2, 2.3, 4.1, 4.1A-C, 5.1, 5.1A**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. Simon Stockwell provided an update about civil justice statistics, advising that there would be a delay in their publication. He agreed to confirm with members whether the stakeholder group would meet in advance of their publication.

4. **The Committee approved the minutes of the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

5. Mandy Williams provided an update on the recent resourcing issues within the Secretariat and the impact it has had on the work of the Committee. She advised that the ongoing work in relation to the Form F9 and extension of simplified divorce had been prioritised and, with significant support from LPPO, both were tabled for consideration at the meeting.

6. Members were advised that the resourcing issues have meant that work has not progressed in relation to the sub-Committee's report on case management in family actions. At its November meeting the Council supported the Committee's recommendations and agreed to consult on the recommendations at this stage. The next step will be for the Secretariat to draft a consultation paper, which will come to the Committee for approval. Members of the sub-Committee agreed to consider any draft consultation document in advance of the next Committee meeting.

7. Simon Stockwell advised that the Scottish Government consultation on the review of Part 1 of the Children (Scotland) Act 1995 ("the 1995 Act") is likely to refer to the Committee's work on case management and consideration may need to be given to the timing of the consultations.

8. The Committee noted that it had previously been agreed that priority be given to the joint policy proposal in relation to proceedings under the Children's Hearing (Scotland) Act 2011. Mandy Williams advised the meeting that initial consideration had been given to the paper and that discussions would be taking place between the Scottish Government and the Secretariat and that consideration would need to be given as to whether there was a need for primary legislation to support the proposals.

9. The Committee was advised that discussions had still to take place between the Scottish Government and the Secretariat to review progress with the policy

matters raised in the original Scottish Government policy paper on hearing the voice of the child.

10. Simon Stockwell advised members that the subject of arbitration, ADR and mediation in family cases is also likely to be included in the Scottish Government consultation on the 1995 Act.

11. He also advised the Committee of two outstanding proposals from the UK Government due to be submitted to the Council in relation to family matters. The first relates to parental orders under the Human Fertilisation and Embryology Act 2008. Mandy Williams confirmed that a policy paper has been received by the Secretariat and it was envisaged that this would be considered at the next Committee meeting. The second proposal, still to be submitted, is in relation to removal of passports from child maintenance defaulters.

12. **The Committee noted the progress that had been made on actions since the previous meeting and the update in relation to future matters.**

Item 2.3 – Items by correspondence (Paper 2.3)

13. Members noted Paper 2.3 which provided a summary of the outcome of consideration given to one matter raised by correspondence since the last meeting:

- Sub-Committee Report on Case Management in Family Actions

At the October meeting, minor amendments to the sub-committee's report on case management in family actions were instructed and it was agreed that a final version would be circulated by correspondence for approval.

The revised draft was circulated to members of the sub-committee on 30 October 2017 and was subsequently approved. The final version was circulated to members of the Committee on 14 November 2017 and published on the Council's website shortly thereafter.

Item 3: Work programme

Item 3.1 – Update from the Scottish Government (Oral)

14. No separate oral update was provided, matters having been raised under item 2.2.

Item 4: Research and consultations

Item 4.1 – Proposals for Rules: Extension of Simplified Divorce and Dissolution (Papers 4.1 and 4.1A-C)

15. John Thomson attended the meeting and introduced Paper 4.1 which invited members to consider and approve for submission to the Council revised draft rules (at Paper 4.1A) and a revised draft consultation document (at Paper 4.1B) in relation to the extension of simplified divorce and dissolution. An illustrative marked-up version of the sheriff court simplified procedure divorce rules was provided for assistance at Paper 4.1C.

16. Members thanked John for his work and noted that the revised drafts had been updated to reflect the discussions that took place at the last Committee meeting. Members considered a number of arising matters that have been included in the draft at Paper 4.1A.

17. Members noted that legal aid provisions would need to be reviewed in light of the changes as currently Simplified Procedure cases are exempt from legal aid.

18. Members approved the revised draft instrument and revised draft consultation paper for submission to the Council for approval.

19. Members noted that the consultation has been drafted on the basis that it will be launched to coincide with the Scottish Government's consultation on a draft order under section 8(4) of the Civil Evidence (Scotland) Act 1988 – the making of such an order being a pre-requisite of the extension of the simplified procedure. Simon Stockwell agreed to provide the Secretariat with an update on timings for the Scottish Government consultation. Members expressed urgency for the consultations to be launched as soon as possible.

Item 5: Proposals for rules

Item 5.1 – Hearing the Voice of the Child – Form F9 (Papers 5.1 and 5.1A)

20. Inez Manson introduced Paper 5.1 which invited members to consider an illustrative draft instrument at Paper 5.1A, which inserts into the rules the new forms that will replace Forms F9, CP7 and 49.8-N and makes some ancillary changes to the rules relating to hearing the voice of the child in family actions.

21. Inez advised members that a number of additional points have arisen as part of the drafting process and therefore the draft is illustrative only at this stage to facilitate further discussions at the meeting.

22. Members recorded thanks to Inez for the work undertaken so far. The Committee noted that the project has extended beyond a simple exercise of inserting a new form and that the proposals involve changes to procedure, including specifying procedure fully in the rules for the first time. The Committee endorsed the drafting approach adopted, particularly in setting out how the rules apply in different scenarios in order to provide clarity to parties.

23. Members considered and discussed the drafting points raised and provided feedback to the drafter on the issues raised. It was agreed that a revised draft instrument would be circulated for consideration by correspondence in advance of it being expanded to include provision about Chapter 33A of the Ordinary Cause Rules and Chapter 49 of the Rules of the Court of Session. It was also agreed that further work would be undertaken in relation to the development of guidance to accompany the form.

Item 6: AOB

24. Members discussed Paper 2.1A, a report submitted by the Scottish Courts and Tribunals Service about the structure of hearings in family and civil partnership actions at child welfare hearings in the sheriff court, in particular protection of parties when the court is made aware of domestic abuse or violent conduct being alleged or proved in a case. This report was produced in response to questions raised at the October Committee meeting.

25. Members noted the issue did not appear to be raised frequently with the courts and noted the lack of motions being made to the court. Simon Stockwell advised that the matter was likely to be included in the Scottish Government consultation to review the 1995 Act that was previously mentioned. **It was agreed that this paper be published.**

Item 7: Dates of future meetings

26. Members noted the future meeting dates:

- 9 April 2018 at 10am
- 2 July 2018 at 10am (provisional)
- 8 October 2018 at 10am (provisional)

Scottish Civil Justice Council Secretariat

February 2018