

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
TUESDAY 05 APRIL 2022 at 4.00PM
VIA WEBEX

MINUTES

Present:

Lady Wise (Chair)
Sheriff Tait
Simon Stockwell (Scottish Government)
Lynda Brabender Q.C.
Marie-Louise Fox (SLAB)
Fiona Campbell
Rachael Kelsey
Alison Reid

Attending:

Craig Anderson (Offices of Court of Session)
David Smith (SCTS Legislation Implementation Team)

Support:

Jessica Flynn (Secretariat Business Manager)
Kelly Jack (Policy Officer)
Paula Preston (Policy Officer)

Karen Stewart (Policy Manager)

Mariel Kaney (Deputy Legal Secretary, LPPO)

Apologies: Sheriff Principal Pyle

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Principal Pyle.
2. **The Committee agreed not to publish the following papers: 4.1, 4.1A, and 4.1B.**

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

3. Lady Wise provided members with an update on items considered by correspondence since the last committee meeting: One matter has been considered by correspondence since the last meeting:
 - Item 2021/20 was issued in October 2021 and invited members to to approve draft minutes of the Committee meeting on 27 September 2021. Responses were invited by close of business on 26 October 2021 with a nil response indicating consent. One response was received noting minor amendments. The draft minutes were approved and published on the Council website.
4. **The Committee noted the update.**

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments (Oral)

5. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government, which due to technical issues was delivered to Committee by Kelly Jack:

- Noted that work was ongoing to implement the Children (Scotland) Act 2020. The Scottish Government has published analyses of responses to last year's consultations on Child Contact Centres and registers of Child Welfare Reporters, Curators ad litem and Solicitors under section 7 of that Act.
- Discussions are ongoing with the Care Inspectorate in regards to them taking on the regulation of Child Contact Centres.
- The Scottish Government are discussing with ADR providers on how a pilot can be delivered in support of Section 24 of the Act.
- There is a consultation live in respect of the Children's Care and Justice Bill.
- Noted that the Scottish Law Commission will publish a report on financial provision when cohabitants separate. Any changes to the law on financial provision when cohabitants separate would require a Bill in the Scottish Parliament.
- Indicated in response to a question that the UK Government have decided not to publish the report which they commissioned from Iain Christie on intra-UK Private International Law.

6. **Members noted the update.**

Item 3.2 – Age of Criminal Responsibility (Scotland) Act 2019 (Oral)

7. Kelly Jack provided an update on the membership and remit of the working group set up to consider implementation of the 2019 Act.
8. Members noted that the working group has met twice and is developing the content of draft forms. When the content of the forms is finalised, input will be sought from children's groups and thereafter consideration by a speech and language expert.
9. Additional correspondence has been received by Secretariat and LPPO which requires further consideration. The matter will be tabled for consideration in due course.
10. **Members noted the update.**

Item 3.3 – Children (Scotland) Act 2020 working group update (Oral)

11. Kelly Jack provided an update on the membership and remit of the working group set up to consider implementation of the 2020 Act.

12. Members noted that the working group has been split into 2 cohorts: one of practitioners and one of stakeholders to enable their different perspectives to be considered separately. A meeting of the practitioner cohort took place in March 2022, with the stakeholder cohort due to take place on 19 April 2022.
13. It is intended that both cohorts will meet to consider what potential recommendations will be made to the Family Law Committee on the changes required in order to implement Sections 4 to 8 of the Act.
14. **Members noted the update.**

Item 4: Rules review and implementation of procedures

Item 4.1 – Case Management of Sheriff Court Family and Civil Partnership actions (Papers 4.1, 4.1A and 4.1B)

15. Lady Wise invited members to consider and discuss **Paper 4.1** and **Papers 4.1A-B** in relation to the Case Management of Sheriff Court Family and Civil Partnership Actions.
16. **Paper 4.1** discussed the amendments which had been made to the draft rules since the last Committee meeting. A draft rules instrument was provided at **Paper 4.1A** and a 'keeling schedule' of the rules was provided at **Paper 4.1B**.
17. Members noted that due to the timing of the initial case management hearing, any potential response to a Form F9 served upon a child, may not be available for consideration at that hearing.
18. Members were satisfied that the proposed new rules and OCR 33.19A-D will operate effectively. Members noted that there may be occasions when timings overlap (i.e. if practitioners took a full 14 days to issue an F9) but this would not impact the progress of the case. Where an F9 has been issued and no response is received, this fact will be brought to the Sheriff's attention at the initial case management hearing.
19. Members agreed that the timescale in draft rule 33.36O(7) should read 28 days, rather than 28 weeks as currently drafted. LPPO was instructed to draft an amendment to this effect.
20. **The Committee:**
 - **approved the draft rules instrument at Paper 4.1A for submission to the Scottish Civil Justice Council for consideration and approval, subject to the instructed amendment in paragraph 19 and to any further typographical or stylistic amendments;**

- agreed that the sub-committee recommendation relating to abbreviated pleadings should be considered under any post – commencement review; and
- agreed that the rules will apply to cases lodged on or after the commencement date only.

Item 5: AOB

21. Lynda Brabender Q.C. advised members that the matter of Extension of Simplified Divorce had been discussed at the Scottish Civil Justice Council strategy meeting on 14 March 2022. At that time, Council agreed to retain the topic on their list of business priorities for the forthcoming Annual Programme.
22. Members noted that a consultation document and draft rules were prepared by the Committee in anticipation of a Scottish Government consultation on the required legislative changes to give effect to the policy change.
23. Simon Stockwell advised that Scottish Government have prepared a draft consultation and impact assessments and that legal aid implications are under consideration. Mr Stockwell advised that he is liaising with senior colleagues with a view to progressing this matter.

Item 6: Date of next meeting

24. A meeting will be scheduled in due course to consider the development of new forms to support the implementation of the Age of Criminal Responsibility (Scotland) Act 2019.

Scottish Civil Justice Council Secretariat

April 2022