

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 8 JULY 2019 AT 10.00AM
+2 JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Members Present: Lady Wise (Chair)

Lynda Brabender QC (Advocate)

Fiona Campbell (solicitor)

Rachael Kelsey (solicitor)

Alison Reid (Clan Childlaw)

Simon Stockwell (SG representative)

Catriona Whyte (SLAB representative)

In attendance: Craig Anderson (Court of Session, SCTS)

David Smith (Legislation and Implementation Team, SCTS)

Support: Kelly Jack (Policy Officer, Scottish Civil Justice Council)

Mariel Kaney (Deputy Legal Secretary to the Lord President)

Emma Laurie (Policy Officer, Scottish Civil Justice Council)

Apologies: Sheriff Principal Pyle (Judicial)

Sheriff Tait (Judicial)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present in particular Craig Anderson who has taken over from Yvonne Anderson as the Court of Session observer for a period of 12 months.
2. The Chair noted apologies from Sheriff Principal Pyle and Sheriff Tait.
3. The Chair noted that Ian Maxwell's tenure as a consumer representative on the Council ended on 27 May 2019 as did his appointment with the Family Law Committee.
4. **The Committee agreed that the following papers will be treated as private and not to be published: 4.1 and 4.1A**

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

5. **Paper 2019/08** was issued on 12 April 2019, inviting members to consider and approve the minutes of the previous meeting on 25 March 2019 (**Paper 2019/08A**) for publication on the SCJC's website.
6. Responses were invited by close of business on 03 May 2019. No response was received, approving the minutes of 25 March 2019. The minutes have subsequently been published on the SCJC website.
7. **The Committee noted Paper 2.1, which approved the minutes of the previous meeting by correspondence on 03 May 2019.**

Item 3: Work Programme

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

8. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government. Simon noted that:
 - The Female Genital Mutilation bill is currently at stage one of the parliamentary process
 - work on the proposed extension of Simplified Divorce is ongoing.
 - The Age of Criminal Responsibility bill received Royal Assent on 11 June 2019. A policy paper should be provided to council by the end of the year.
9. **The committee noted this update.**

Item 4: Rules review and implementation procedures

Item 4.1 – Case Management of Family and Civil Partnership Actions in the Sheriff Court (Papers 4.1 and 4.1A)

10. Kelly Jack spoke to these papers. The Committee considered **Papers 4.1 and 4.1A**, which invited members to consider and provide views on the outline which is proposed for the development of the new case management rules for family and civil partnership actions.

11. **The Committee considered and provided views on the outline of the proposed new rules and agreed the following:**

- **Chapter 33AA will be removed from the Ordinary Cause Rules with new Case Management provisions incorporated in Chapters 33 and 33A;**
- **An Initial Case Management Hearing (ICMH) will replace the Options hearing;**
- **The ICMH will take place no sooner than 7 days and no later than 35 days after the last date for lodging defences;**
- **The timing of hearings will be stipulated in the new provisions, with a Full Case Management Hearing (FCMH) held, where there is a crave for an order under section 11 of the Children (Scotland) Act 1995, no sooner than 16 weeks and no later than 24 weeks after the expiry of the period of notice. There will be a dispensing power to allow for urgent disposal of actions;**
- **The rules will allow for further FCMH where necessary, to be fixed for no more than 6 months later;**
- **The provision for a mandatory pre-hearing conference will remain, however consideration will be given as to whether it should be called a pre-hearing meeting;**
- **Chapter 9 will be disapplied to family and civil partnership actions, with relevant provisions replicated in Chapter 33 and 33A;**
- **A new form will be created to intimate the ICMH date, rather than using form G5;**
- **Provision for an ICMH will be in Chapter 33 and 33A only;**

- **The ICMH can be combined with the first Child Welfare Hearing if the Sheriff deems it appropriate to do so;**
- **All cases will have an ICMH, regardless of whether they contain a crave under Section 11 of the Children (Scotland) Act 1995 or not;**
- **The Sheriff will still have the option to send cases to proof at an early stage**
- **A second new form will be created for after the ICMH which sets the date for the pre-hearing conference, the last date for adjustment and the date of the FMCH;**
- **There will be a checklist of matters to be considered at both the ICMH and the FCMH;**
- **Sists will be for a finite period of time with any interlocutor granting same giving reason as to why the case is being sisted and allocating a hearing to be held after the expiry of the sist;**
- **Witness lists will require a brief outline of matters to which each witness will speak to. The date that the witness list is due to be lodged with Court will be given at the Case Management Hearing;**
- **Provision will be made similar to the FAI judicial continuity rules, however, these will be worded taking into account that it is not always appropriate for the same sheriff to preside over a proof as well as CWHs;**
- **Provision will be included in the rules in relation to the unnecessary use of expert witnesses;**
- **Rules in relation to Minutes of Variation in Family and Civil Partnership Actions will stipulate that an ICMH is fixed upon the lodging of a minute, rather than when the answers are lodged;**
- **One of the points which should be considered at an early stage of proceedings is whether the case may be suitable for alternative dispute resolution;**

- In addition, the Committee considered Ordinary Cause Rule 33.22. This provides that “In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation”. The Committee noted that extending this rule to all family and civil partnership actions would have a number of implications, which would need to be carefully considered. The Committee indicated that it would be helpful to have a Scottish Government policy paper on this issue for its consideration. The Scottish Government agreed to provide such a paper accordingly;
- It was noted that the proposals might require some changes to legal aid regulations, which would need to be considered by the Scottish Government and the Scottish Legal Aid Board, and also might require some changes to the court fees order, which would need to be considered by the Scottish Government and the Scottish Courts and Tribunals Service.

Item 6: Dates of future meetings

12. The Committee noted that the date and time of the next meeting would be circulated by the Secretariat in due course. A provisional date has been set at Monday 07 October 2019.

**Scottish Civil Justice Council Secretariat
July 2019**