

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
FAMILY LAW COMMITTEE  
MONDAY 18 MARCH 2024 AT 2 PM  
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

**MINUTES**

**Present:**

Lady Wise (Chair)

Lynda Brabender KC

Marie Louise Fox (SLAB)

Alison Reid

Simon Stockwell (Scottish Government)

Sheriff Tait

**Support:**

Craig McCorkindale (Director of Strategy)

Jessica Flynn (Secretariat Business Manager)

Edward McHugh (Senior Deputy Legal Secretary, LPPO)

Graeme Welsh (Secretary to the SCJC)

**Apologies:**

Fiona Campbell

Sheriff Principal Dowdalls KC

Chris Fyffe

Rachael Kelsey

## **Item 1: Welcome, apologies and agreement of private papers**

The Chair welcomed those present to the rescheduled meeting (postponed from 26 February). Apologies were noted from Fiona Campbell, Sheriff Principal Dowdalls, Chris Fyfe and Rachel Kelsey.

## **The Committee agreed not to publish the following papers: Papers 3.2 and 3.2A**

### **Item 2.1: Items by Correspondence (Paper 2.1)**

Lady Wise provided members with an update on one matter that was considered by correspondence since the last meeting. The minutes from the December meeting received two responses and are now published online.

### **The Committee noted the update.**

## **Item 3: Work Programme**

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

Simon Stockwell provided an update which included:

#### Ending Conversion Practices

The public consultation published on 9 January 2024 closes on 2 April 2024.

#### Human Rights

A Bill is anticipated to be introduced before the end of 2023/24 parliamentary year.

#### Family Law

Consultation will be launched in the summer which will include the extension of simplified divorce and dissolution, amongst other matters.

#### Learning Disability, Autism and Neurodiversity Bill

Consultation launched in December 2022 and is due to close on 21 April 2024

#### Misogyny

The Bill will implement recommendations of the working group chaired by Baroness Helena Kennedy to create new offences related to misogynistic conduct.

### Children (Care and Justice) (Scotland) Bill

The Bill is at stage 3 and is anticipated to require court rules for applications regarding identification of child victim and witnesses in court proceedings.

### Judicial Factors Bill

The Bill is at stage 1 and originates from the Scottish Law Commission report on Judicial factors.

### Victims, Witnesses and Justice Reform (Scotland) Bill

Stage 1 deadline is 26 April 2024. The Bill is likely to have a number of implications for civil matters, in particular provision for vulnerable witnesses.

### Age of Criminal Responsibility (Scotland) Act 2019

The Act is in its final year of the statutory review period with a report anticipated to be published by December 2025.

### Trusts and Succession (Scotland) Act 2024

The Act received Royal Assent on 30 January 2024. Implications of the Act are being considered.

### Children (Scotland) Act 2020

The working group for Child Welfare Reporters will be reconvened later this year. Commencement of other parts of the Act are being considered.

### Family therapists

The matter of family therapists is being explored further due to various concerns raised about competency, professional body affiliation and certification for carrying out such work to professional standards. Views from the Sheriffs Principal and family therapy bodies will be sought in due course.

### Children Hearings Redesign

The Scottish government have issued a response and offered to provide an overview at a later FLC meeting. This will be scheduled for later in 2024.

**Members noted the update.**

Simon Stockwell canvassed views from members on:

Recognition of divorces in other jurisdictions

Members noted two instances where a divorce granted in Scotland has not been recognised in another country. It was noted that this was not just an issue that arose after the withdrawal from the European Union.

Members discussed and concluded that;

- The responsibility for providing the relevant documentation to the foreign court lies with the applicant; and
- A standard template letter could be developed by SCTS to confirm the divorce was granted in a Scottish court.

*Item 3.2 – Extension of Simplified Divorce and Dissolution (Papers 3.2 and 3.2A)*

Members were invited to comment on the draft consultation papers from the Scottish government. This included:

- Proposed new wording for the next version of the rules; and
- Option 4 in Paper 3.2 was agreed as being the most appropriate subject to slight amended wording as suggested by members.

Members discussed the need for the the new procedure to be available via an online portal but acknowledged this was a decision for SCTS in the wider programme of digitisation.

**Item 4: AOB**

The following items of A.O.B were discussed:

Simon Stockwell asked members for their views on the number of cohabitation cases raised under sections 28 and 29 of the Family Law (Scotland) Act 2006. The Civil Justice Statistics suggested that there were 70 cases per year. Members considered this number to be inaccurate but acknowledged that such cases may not be raised solely under sections 28 and 29 and may be part of other proceedings.

Simon Stockwell shared views received from practitioners and academics that there appears to be very few judgments of family cases issue by the sheriff courts. The Chair reiterated the importance of open justice and members noted the upcoming conference on open justice in April to which the secretariat will make sure the Scottish Government are invited.

The Chair shared her experience after recently attending a conference where the differences in legal aid availability for private law family cases in England and Scotland had been highlighted. Scotland is in the advantageous position of providing legal aid and having solicitors to do this work on a legal aid basis, but the situation in England is very different. Consequently, the English courts deal with far more party litigants, which is more time consuming and is creating issues for the courts. However, Scottish practitioners did raise the issues of: whether the thresholds for financial eligibility for legal aid were sufficient and a diminution in legal aid practitioners in some areas due to perceived low rates of remuneration.

**Item 5: Date of next meeting**

The next meeting of the Committee will be on Monday 10 June 2024.

**Scottish Civil Justice Council Secretariat  
March 2024**