

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**

**FAMILY LAW COMMITTEE**

**MONDAY 27 SEPTEMBER 2021 at 2PM**

**BY WEBEX**

**MINUTES**

**Members Present:** Lady Wise (Chair)

Sheriff Principal Pyle (Judicial member)

Lynda Brabender QC (Advocate member)

Fiona Campbell (Solicitor member)

Rachael Kelsey (Solicitor member)

Simon Stockwell (Scottish Government standing member)

Marie-Louise Fox (SLAB standing member)

Alison Reid (Consumer member)

**In attendance:** Yvonne Anderson (Court of Session)

Nicola Anderson (SCTS Legislation Implementation Team)

**Support:** Jessica Flynn (Secretariat Business Manager, Scottish Civil Justice Council)

Kelly Jack (Policy Officer, Scottish Civil Justice Council)

Emma Laurie (Policy Officer, Scottish Civil Justice Council)

Mariel Kaney (Deputy Legal Secretary, Lord President's Private Office)

**Apologies:** Sheriff Tait (Judicial Member)

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

1. The Chair welcomed those present and noted apologies from Sheriff Tait.
2. **The Committee agreed not to publish the following papers: 4.1; 4.1A-B; 4.2; 4.2A.**

## **Item 2: Previous meeting**

### *Item 2.1 – Items by correspondence (oral)*

3. **Paper 2021.18** was issued in August 2021, inviting members to consider and provide views on **Papers 2021.18/1A-1F** in respect of the Age of Criminal Responsibility (Scotland) Act 2019.
4. Responses were invited by close of business on 27 August 2021. Four responses were received in relation to the papers. The draft rules have been updated in light of these responses and work will continue to be undertaken in liaison with stakeholders.
5. **The Committee noted the update.**

## **Item 3: Work Programme**

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

6. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government:

Gender recognition bill – at Bill stage, if passed it is likely to have only a small impact on rules.

Extension of simplified divorce – Scottish Government are to finalise plans for a consultation and impact assessments.

A Cohabitation Report is being prepared by the Scottish Law Commission and is due in the first half of 2022. This may lead to a Bill, but this would be some way off

### *Item 3.2 – Update on the Domestic Abuse (Protection)(Scotland) Act 2021 (Oral)*

7. Emma Laurie provided a short update on the status of the work to implement the Domestic Abuse (Protection)(Scotland) Act 2021. Emma advised Committee that there are five aspects of the Act which will require court rules and it is anticipated to be a large-scale project, however until some policy questions have been resolved with stakeholders this work is unlikely to start in 2021.

8. **Members noted both updates.**

#### **Item 4: Rules review and implementation of procedures**

##### *Item 4.1 – Case Management in Family and Civil Partnership Actions in the Sheriff Court (Papers 4.1 and 4.1A-B)*

9. The Committee considered Papers 4.1 and 4.1A-B on Case Management in Family and Civil Partnership Actions in the Sheriff Court.

10. The committee agreed on drafting and policy recommendations in relation to calculation of the Initial Case Management Hearing (“ICMH”), the sisting of actions, time-frames in which to hold a pre-hearing meeting and alterations of the case management hearing date.

11. Committee discussed the sub-committee recommendation concerning minutes of variation and noted the concerns of the Secretariat and LPPO that trying to implement the recommendation was unwieldy and could result in access to justice issues.

12. **The Committee agreed:**

- **The fixing of the ICMH should be from the lodging of the notice of intention to defend;**
- **The provision in relation to the alteration of case management hearing dates should include “the first available date thereafter”;**
- **A review from sist hearing should take place as soon as possible from the sist expiring;**
- **A date in which to hold the pre-hearing meeting should not be prescribed; and**
- **That recommendation 11 of the Sub-committee in respect of minutes of variation should not be taken forward at this time.**

##### *Item 4.2 – Children (Scotland) Act 2020 (Papers 4.2 and 4.2A-B)*

13. Members considered **Papers 4.2 and 4.2A-B** which provided details on a proposed sub-committee to take forward the vulnerable witness and parties aspects of the Children (Scotland) Act 2020.

14. Committee discussed the organisations of which membership could be drawn from and provided further suggestions. Given it is estimated 95% of family and civil partnership actions originate in the Sheriff Court, Committee discussed the benefits

of having a sitting Sheriff as chair of the sub-committee due to the knowledge of Sheriff Court practices.

**15. The Committee considered and provided views on membership of the proposed committee, agreeing:**

- **The chair of the sub-committee should be a sitting Sheriff**
- **That Secretariat approach a chair with the agreement of Lady Wise.**
- **That membership should be determined by the Chair of the sub-committee.**

*Item 4.3 – SCJC consultation on mode of attendance at Court hearings*

16. Committee discussed the Scottish Civil Justice Councils consultation of mode of attendance at court hearings, and the content of a proposed committee response.

17. Committee welcomed the inclusion of family actions in the presumption for in-person hearings, in particular the inclusion of Child Welfare Hearings.

**18. Committee agreed on the content of a response to the consultation solely from the perspective of affecting family law cases.**

**Item 5: Dates of future meetings**

19. **Monday 13 December 2021 tbc**

**Item 6: A. O. B**

20. There were no additional items of business raised by members,

**Scottish Civil Justice Council Secretariat**

**October 2021**