

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
FAMILY LAW COMMITTEE (FLC)  
MONDAY 29 SEPTEMBER 2025**

**MINUTES**

**Present:** Lady Wise (*Chair*)  
Lynda Brabender KC  
Fiona Campbell  
Sheriff Principal Dowdalls KC  
Rachael Kelsey  
Alison Reid  
Simon Stockwell (*Scottish Government*)

**Support:** Craig McCorkindale (*SCJC*)  
Jessica Flynn (*SCJC*)  
Paula Preston (*SCJC*)

**Apologies:** Marie-Louise Fox (*SLAB*)  
Chris Fyffe (*SCTS*)  
Graeme Welsh (*SCJC*)

**In attendance:**  
Megan Anderson (*LPPO*)  
Rachel Grant (*LIT*)  
Gillian Stewart (*LIT*)  
Laura Tait (*LPPO*)  
Suzanne Lyle (*Scottish Government*)

**Item 1 - Welcome, apologies and agreement of private papers**

1. The Chair welcomed all those attending and noted the apologies received.
2. The Chair conveyed that to support open justice the SCJC standing orders were recently updated and now state the general position that:  
*"All papers should be published unless there is a good reason not to".*

**Item 2 - Items by correspondence**

**2.1 Items by correspondence (*Paper 2.1*)**

- **Item 2024.18** was issued on 09 October 2024 and invited members to approve the draft minutes of the Committee meeting on 23 September 2024. Responses were invited by close of business on 16 October 2024. Two responses were received. The approved minutes were published on the Council website.

- **Item 2024.21** was issued on 05 November 2024 and invited members to approve consultation papers on the Extension of Simplified Divorce for publishing. Three responses were received. The consultation was published for 12 weeks.
3. The Chair referred to the 2 items considered by correspondence which were the minutes of the last meeting and approval to publish the consultation papers.

### **Item 3 - Work Programme**

#### 3.1 Update from the Scottish Government (Oral update)

4. Simon Stockwell provided a compressive update that covered:

*Bills before the Scottish Parliament:*

Children (Care, Care Experience and Services Planning) (S) Bill  
 Criminal Justice Modernisation & Abusive Domestic Behaviour Reviews (S) Bill  
 Prevention of Domestic Abuse (S) Bill  
 Contract (Formation and Remedies) (S) Bill

*Bills recently passed by the Scottish Parliament:*

Regulation of Legal Services (S) Act  
 Victims, Witnesses and Justice Reform (S) Act

*Scottish Government Consultations*

Legal aid reform - discussion paper  
 Human Rights Bill - discussion paper  
 Extension of Simplified Divorce – latest timings

### **5. Members noted the update provided.**

#### 3.2 Consultation on the Extension of Simplified Divorce (Paper 3.2 & 3.2A)

6. The Scottish Government consultation on the prerequisite law change is imminent and due to be issued in the coming weeks. As it may generate additional feedback it was considered appropriate to await the outcome.
- 7. Members agreed to defer issuing their *drafting instructions* until those consultation responses are lodged and can be viewed online.**
8. Paragraph 21 of the Consultation Analysis (*paper 3.2A*) had questioned whether (or not) the information sought within the new forms for each child would be considered overly intrusive. Under the existing ordinary procedure an affidavit is lodged without having a requirement to actively seek agreement of its contents. This shift to using a simplified procedure is intended to reduce conflict whereas

mandating a requirement for consent may have the potential to increase it.

**9. Members requested a clarification of the practical impacts on practitioners from the recent incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into domestic law.**

10. Paragraph 22 of the Consultation Analysis (*paper 3.2A*) had suggested 3 amendments to the rules. The conclusions reached were:

- *CHILDREN OF THE MARRIAGE* - omit the existing references to “children of the marriage” and substitute the term “children of the family”.
- *MENTAL DISORDER* - omit the existing references to “mental disorder” and substitute the term “mental incapacity”. In addition, the questions on capacity are to cover responses from the applicant and the respondent
- *VOICE OF THE CHILD* - the 4 new forms are to seek a positive affirmation that the parents have sought and taken account of the views of each child.

**11. Members agreed to include the above 3 amendments within the *drafting instructions* when issued.**

**3.3 Proposed removal of OCR 33.8 and 33A.8 and RCS 49.9 (*Paper 3.3*)**

12. The use of *improper association* is an outdated legal concept that predates the introduction of civil partnerships. Regardless of the nature of a relationship any pleadings would in practice be lodged under the current rules for *adultery* or *inappropriate behaviour*. Before removing or amending those rules a key policy gap for the Scottish Government to consider is the pragmatic need to require *intimation* to anyone that may have been named as a paramour within a divorce action (to ensure the person named receives a fair warning). If named in error; that intimation can then trigger a correction being sought within the divorce proceedings and mitigate against unnecessary defamation actions.

**13. The Committee will await an updated rules request being lodged by the Scottish Government**

**3.4 Criminal / Civil Interface**

14. The Committee is aware of the recent publication issued by the Scottish Government headed “[Court rules on domestic abuse information sharing: proposals](#)” which was marked as being a “draft” at this stage.

**15. Once the Scottish Ministers have finalised policy positions the formal Rules Requests should be lodged with both the Council and this Committee.**

#### **Item 4 - A.O.B**

##### Membership

Simon Stockwell was appointed as a founding member in June 2013. As this was his final meeting the Chair acknowledged his outstanding contribution to the wide range of work members have progressed over the last 12 years and wished him well in his retirement.

##### Papers to be marked private

Members agreed there were no private papers. All papers have been marked "public" and can be accessed from the webpage for this meeting.

##### Dates of future meetings

Future meetings will be scheduled as required.