

HEARING THE VOICE OF THE CHILD IN FAMILY ACTIONS – FORM F9

Purpose

1. To present to the Family Law Committee (Committee) a paper prepared by the Form F9 sub-group (**Paper 4.2A**) and to invite members' comments on the proposed Form F9.1 and Form F9.2 at **Annex A** and **Annex B** respectively of **Paper 4.2A**.
2. Members are also invited to discuss and agree the next steps in taking this work forward and to consider whether an amendment to Rules 33.20 and 33A.20 of the Ordinary Cause Rules (OCR) is required.

Background

3. At its meeting on 22 February 2016, the Committee considered a paper which provided an overview of the responses received to its request for comments on the existing Form F9 along with suggestions for its improvement. All of those who responded agreed that the existing Form F9 was far from child friendly and there was overwhelming support for a significantly revised Form F9 to be introduced.
4. The Committee agreed that a sub-group should be set up to take forward work in relation to the revision of Form F9. Fiona Jones, Stephen Brand and Sheriff McCulloch were appointed as members of the sub-group.
5. The sub-group met on 21 April and 01 June 2016. In line with discussion at February's Committee meeting, the sub-group developed two separate documents: (i) a letter informing the child of the proceedings and the matter that the judge has been asked to decide; and (ii) a letter inviting the child to give his or her views. The subgroup's approach to the format and content of both documents took account of comments that were received in response to the Committee's consultation exercise.

The way forward

6. We suggest that the sub-group should be invited to continue its work in relation to the development of the revised Form F9 in line with discussion and suggestions provided at the 20 June meeting.

7. One of the main views provided in the consultation responses was that it is important that children and young people are involved in the development of a revised form and several offers to assist with such an exercise have been made.
8. The Committee has previously agreed that it would be crucial to involve children in the development of the revised Form F9. Members' views would be welcome on whether, following further development of the revised forms by the sub-group, possibly after seeking views on the drafts from those who responded to the consultation, arrangements should be made to consult children. This exercise could test the proposed drafts with groups of children and gather their views on how easy it is to understand and what they think about it.

Rule revision

9. Rules 33.20 and 33A.20 OCR set out how the views of the child are to be recorded, and enable the sheriff to direct how these views are to be treated. For ease of reference, the text of OCR 33.20 is set out at **Annex A**. The text of rule 33A.20 is in identical terms.
10. Rule 33.20 was discussed by the subgroup at its second meeting, in the context of considering what the replacement forms should say about confidentiality. It is understood that the Form F9 is never given a process number because (under rule 33.20(2)(e)) it does not form a borrowable part of the process. This can cause practical difficulties in that it is not always obvious to the sheriff that a completed Form F9 has been received – particularly in cases involving a large volume of documents. The subgroup agreed that this issue should be discussed by the Committee.
11. Members are therefore asked to consider whether it would be preferable for the Form F9 to be recorded in the inventory of process and given a number, even if it does not form a borrowable part of the process. This might remove the risk of sheriffs overlooking the fact that a completed Form F9 has been submitted by a child. It is noted that Chapter 49 of the Rules of the Court of Session does not appear to include provisions similar to rule 33.20. However, similar provisions do appear in Chapter 67 (applications under the Adoption and Children (Scotland) Act 2007) and in Chapter 97 (applications for parental orders under the Human Fertilisation and Embryology Act 2008). It would therefore be interesting to discuss how the Form 49.8-N is dealt with in Court of Session cases.

Recommendation

12. The Committee is invited to consider Paper 4.2A and offer views on:

- **the draft letters Form F9.1 and Form F9.2;**
- **the observations made by the sub-group in relation to the draft letters.**

13. The Committee is invited to indicate whether it agrees that the sub-group should continue to progress this work with a view to Secretariat:

- **seeking views on the proposed replacement forms from those who responded to the initial request for comments on Form F9; and**
- **making arrangements for groups of children to be consulted on the new Form F9.1 and Form F9.2 with consultees who have offered to facilitate this.**

14. The Committee is also invited to offer views on the issues raised in relation to rules 33.20 and 33A.20 and indicate whether it wishes to instruct the Lord President's Private Office to prepare a draft instrument amending these rules.

Scottish Civil Justice Council Secretariat

June 2016

ANNEX A

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Rule 33.20 OCR

Recording of views of the child

33.20. (1) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

(2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall-

- (a) be sealed in an envelope marked "Views of the child-confidential";
- (b) be kept in the court process without being recorded in the inventory of process;
- (c) be available to a sheriff only;
- (d) not be opened by any person other than a sheriff; and
- (e) not form a borrowable part of the process