

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 27 JANUARY 2020 AT 2.30 PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Lady Wise (Chair)

Sheriff Principal Pyle (Judicial member)

Sheriff Tait (Judicial member)

Lynda Brabender QC (Advocate member)

Fiona Campbell (Solicitor member)

Rachael Kelsey (Solicitor member)

Alison Reid (Clan Childlaw)

Simon Stockwell (Scottish Government standing member)

Catriona Whyte (SLAB standing member)

In attendance: Craig Anderson (Court of Session: Clerking services Manager)

Nicola Anderson (SCTS Legislation Implementation Team)

Dawn Swords (SCTS Legislation Implementation Team)

Tracy Kell (Observer)

Julia McCombie (Secretary, Scottish Civil Justice Council)

Support:

Emma Laurie (Policy Officer, Scottish Civil Justice Council)

Kelly Jack (Policy Officer, Scottish Civil Justice Council)

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

Apologies: No apologies

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted that no apologies had been received.
2. The Chair welcomed Julia McCombie who has recently taken up post as secretary to the Scottish Civil Justice Council.
3. **The Committee agreed not to publish the following papers: 2.1; 4.1; 4.1A-B;**

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

4. **Paper 2019/29** was issued on 21 November 2019, inviting members to consider and approve the minutes of the previous meeting on 11 November 2019 (**Paper 2019/29A**) for publication on the SCJC's website.
5. Responses were invited by close of business on 06 December 2019. One response was received and the minutes have been updated to reflect the agreed revisals/comments provided. The minutes of the 11 November 2019 have subsequently been published on the SCJC website.
6. **The Committee noted Paper 2.1, which approved the minutes of the previous meeting by correspondence on 11 November 2019.**

Item 3: Work Programme

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

7. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government. There was particular discussion in respect of Brexit legislation.
8. Lynda Brabender raised a concern in respect of S118 of the Adoption and Children's Act 2007 in terms of jurisdiction as it currently flows from Brussels. Section 17A of the Family Law Act 1986 may also pose an issue.
9. Brexit and Family Law will likely be considered by the Family Law Committee. As at the time of meeting the Withdrawal legislation had not been passed at Westminster, these discussions will require to take place once the situation is clearer.

Item 3.2 – Update from the Scottish Government on Child Welfare Reporters

10. Simon gave an update on the provision on Child Welfare Reporters in the Children (Scotland) Bill currently before Parliament. The Bill inserts Section 101A into the Children (Scotland) Act 1995 which provides that the court may only appoint as a child welfare reporter a person who is included in a register established by the Scottish Ministers.

11. Some members of the Committee raised concerns in respect of expertise and how a central register will work in terms of Scotland's geography. There was also a query raised in terms of creating a system which could be perceived as too general when different expertise in a reporter is required.

12. The issue of feeing for a Child Welfare Report was discussed; it was unclear to some members why a litigant wouldn't pay for a report if they were liable for fees, with the cost being footed by the state. It was explained that the thought behind this was that there had been access to justice concerns in respect of litigants who hadn't requested a report being made to pay for one when they can cost in excess of £3,000.

Item 3.3 – Update from the Scottish Government on the use of Children's Advocacy in the Children's Hearings System (Paper 3.3)

13. It was agreed that due to time restraints, item 3.3 would be issued by way of correspondence

Item 4: Rules review and implementation of procedures

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

14. The Committee considered changes to Chapter 33 of the Ordinary Cause Rules. There was discussion of the benefits of disapplying Chapter 14 and replicating certain provisions in Chapter 33 as per recommendation 11 of the sub-committee. It was acknowledged that Chapter 14 currently provides flexibility for Sheriffs, and disapplying Family and Civil Partnership actions from this rule may cause issues in terms of guardianship and contempt of court orders.

15. Consideration needs to be given to whether proposals will make the minute and answers procedure too complex. This would be counterintuitive to the purpose of the rules review and also poses access to justice concerns.

16. The committee considered amendments to the draft which had been proposed at the meeting of 11 November 2019, providing feedback on the draft

forms GG5 and GG6 which are to be used on the lodging of a Notice of Intention to Defend and at the Initial Case Management Hearing.

17. The committee thereafter considered the proposed new amendments which covered matters such as a Full Case Management Hearing, Exchange of lists of witnesses and Child Welfare Hearings.

18. A draft reflecting the feedback provided on Chapter 14 and the proposed new amendments will be available for consideration at the next meeting.

19. The Committee provided feedback on the proposed replication of Chapter 14 in Chapter 33, and also provided comments on the proposed draft rules set out in Paper 4.1B. A revised draft reflecting the comments in respect of these matters will be considered at its next meeting.

Item 5:

Item 5.1 Proposal for Rules: Extension of Simplified Divorce and Dissolution

20. It was agreed that Item 5.1 would be issued by way of correspondence due to time restraints.

Item 6: Dates of future meetings

21. Members noted that the date of the next meeting will be circulated in due course.

Scottish Civil Justice Council Secretariat

January 2020