

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 2 SEPTEMBER 2013

Members present: Lord Brailsford, Chairman
Sheriff Principal Stephen
Gavin MacColl, Advocate
Sarah Wolffe QC, Advocate
Stephen Brand, Solicitor
Clair McLachlan, Solicitor
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Professor Margaret Ross, Head of the College of Arts and
Social Sciences, Aberdeen University
Simon Stockwell, Head of Family and Property Law,
Scottish Government
Frances MacPherson, Sheriff Clerk

In attendance: Roddy Flinn, Secretary to the Scottish Civil Justice Council
Graham Crombie, Deputy Legal Secretary to the Lord
President
Neil Robertson, Policy Officer

Apologies: Sheriff McCulloch
Gillian Prentice, Deputy Principal Clerk of Session

Item 1: Introduction, welcome, private papers and apologies

1. Lord Brailsford welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers: 4.2, 4.3, 4.4, 4.5, 4.5A and 4.6**

Item 2: Minutes of Meetings [Paper 2.1]

3. **The Committee approved the minutes of the previous meeting.**

Item 3: Proceedings [Paper 3.1]

- 4. The Committee noted the planned establishment of the Rules Rewrite Working Group and the implications of the Group's work on the future work plan of the Committee.**

Item 4 Secondary Legislation

Item 4.1 – Secondary Legislation Work Tracker [Paper 4.1]

- 5. The Committee noted the Secondary Legislation Work Tracker.**

Item 4.2 – Proceedings under the Children's Hearings (Scotland) Act 2011 – prohibition of parties from personally examining witnesses [Papers 4.2]

6. The Committee considered a paper [paper 4.2] from the Deputy Legal Secretary outlining discussions with Scottish Government officials over the policy paper considered by the Committee at its previous meeting [Paper 3.2A of the Committee meeting of 24 June 2013].
- 7. After discussion, the Committee noted the outcome of the discussion between its officials and Scottish Government officials on 29 July 2013, and noted that a further policy paper will be provided by the Scottish Government for consideration in due course.**

Item 4.3 Simplified procedure for parental rights and responsibilities in the Ordinary Cause Rules [Paper 4.3]

8. The Committee considered a paper [paper 4.3] from the Deputy legal Secretary providing further information on the proposals brought forward by the Scottish Child Law Centre.
- 9. After discussion, the Committee decided that it was not satisfied in principle that a new simplified procedure, on the lines proposed by the Scottish Child Law Centre, should be introduced in relation to orders seeking parental rights and responsibilities in certain cases.**
- 10. In consequence, the Committee agreed that, having considered the paper from the Scottish Child Law Centre [Paper 3.3A of the Committee meeting of 24 June 2013], it does not propose to take any further action in respect of it at this time.**

Item 4.4 – Intimation of applications for Child Protection Orders [Paper 4.4]

11. The Committee considered a paper [paper 4.4] from the Deputy Legal Secretary which provided an update on the proposed amendment of rule 3.31 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 resulting from the case of *NJ and EH v The Lord Advocate* [2013] CSOH 27.
12. **After discussion, the Committee noted the on-going work which has been undertaken to prepare for a potential change to the rules, in particular the issues which have been identified for further discussion.**
13. **Thereafter the Committee postponed further consideration of this proposal until its next meeting, in order that its officials may explore with the Scottish Government whether guidance will be issued on this matter and the likely content of any guidance.**

Item 4.5 Inner House case management – appeals relating to orders under section 11 of the Children (Scotland) Act 1995 [Paper 4.5]

14. The Committee considered a paper [paper 4.5] from the Deputy Legal Secretary discussing the need to introduce a procedure for urgent disposal in appeals to the sheriff principal against interlocutors containing orders under section 11(1) of the Children (Scotland) Act 1995.
15. **After discussion, the Committee agreed that it was unnecessary to introduce such a procedure.**
16. Thereafter the Committee considered the draft rules produced by the Deputy Legal Secretary [paper 4.5A] which would amend the Rules of the Court of Session to make it mandatory to enrol a motion for urgent disposal when an interlocutor containing orders under section 11(1) of the Children (Scotland) Act 1995 is reclaimed or appealed against to the Inner House.
17. **After discussion, the Committee indicated that it was content that the draft rules be submitted to the Scottish Civil Justice Council with a recommendation that the Council submit the draft rules to the Court of Session for inclusion in the next miscellaneous instrument.**

Item 4.6 Simplified divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Papers 4.6, 4.6A and 4.6B]

18. The Committee considered Scottish Government papers [Papers 4.6A and 4.6B] proposing that simplified divorce be extended to cases where there are children under the age of 16, but there is no dispute as to the arrangements for their welfare. The Committee also considered a paper [Paper 4.6] from the Deputy Legal Secretary in respect of the Scottish Government's proposals.
19. **After discussion, the Committee was satisfied in principle that that simplified divorce should be extended to cases where there are children under the age of 16, but there is no dispute as to the arrangements for their welfare.**
20. **The Committee noted that the Scottish Government intends to consult on the making of an order under section 8(4) of the Civil Evidence (Scotland) Act 1988, and to bring a further policy paper to the Committee in light of that consultation.**
21. **The Committee recommended to the Scottish Civil Justice Council that the Council carry out its own consultation on the proposal.**

Item 5: Future Business

Item 5.1 – Expert Evidence

22. The Secretariat gave an oral update advising that the Taylor Review report will be published on 11 September and thereafter the SCJC will receive an oral update at its next meeting on 23 September. A further update on the Council's approach to the report will be provided in due course.
23. **The Committee noted the position regarding the Taylor Review.**

Item 5.2 – Bar Reporters Working Group

24. The Secretariat gave an oral update, indicating that enquiries had been made with the Scottish Government and that the Working Group would meet again on 29 October 2013 to consider a "Solutions Paper". In the interim, officials from the Scottish Government, the Scottish Court Service, the Secretariat and the Lord President's Private Office would meet to discuss issues around bar reporters. It is considered likely that a policy paper suggesting rules changes will be presented to the SCJC after the meeting of 29 October.

25. The Committee noted the position regarding the Bar Reporters Working Group.

Item 5.3 Marriage and Civil Partnership (Scotland) Bill

26. Simon Stockwell gave an oral update on the progress of the Bill which is presently at Stage 1 in the Scottish Parliament. He noted that the date for submission of written evidence had passed and that oral evidence was to be taken from 5 September 2013. The Bill, when passed, is likely to result in amendments to the rules of court, and discussions regarding this will be arranged between officials.

27. The Committee noted the position regarding the Marriage and Civil Partnership (Scotland) Bill.

Item 6: A.O.C.B.

28. The Committee members indicated that there was no other business they wished considered.

Item 7: Date of next meeting

29. The next meeting is scheduled for 4 November 2013 at 10.00 a.m.

SCJC Secretariat
[3 September 2013]