

**SCOTTISH CIVIL JUSTICE COUNCIL
CRIMINAL/CIVIL INTERFACE
POLICY PAPER BY THE SCOTTISH GOVERNMENT ON COURT RULES SO THE
CIVIL COURTS ARE AWARE OF DOMESTIC ABUSE AND OF ANY PARALLEL
CRIMINAL PROCEEDINGS**

Note

This draft policy paper to go to the Scottish Civil Justice Council¹ has been prepared by the Scottish Government. However, decisions on whether or not to make court rules and, if so, what rules to make are for the courts and not for Ministers.

Introduction

1. This is an **open paper** by the Scottish Government.

Purpose

2. The purpose of this paper is to propose court rules so that the courts, when considering a civil court action, have full information on any relevant:
 - Domestic abuse by one party to the case on another;
 - Any relevant parallel criminal proceedings.

Timings

3. This is an on-going issue. The Scottish Government appreciates that Council will wish to consider the points arising in some detail.

The issue

General

4. Concerns have been raised with the Scottish Government that the courts may not have full information when dealing with civil proceedings about any domestic abuse that may have occurred between the parties and about any parallel criminal proceedings (e.g. for a domestic abuse offence by one party on another) that are taking place or have taken place.
5. The issue is:
 - most likely to be raised in relation to family cases, such as child contact cases, but can arise in other civil areas too;
 - largely relates to the Sheriff Court;
 - could also arise in relation to sexual assault. However, generally the concerns about lack of information are raised in relation to domestic abuse.

¹ Information about the Scottish Justice Council is available from the [Council](#) website.

Research

6. In December 2022, research funded by the Scottish Government on “Domestic Abuse and Child Contact: The Interface between Criminal and Civil Proceedings” was published².
7. In the context of this current policy paper, the Scottish Government would draw particular attention to the following points in the research:
 - Section 4.1 on information about domestic abuse;
 - Section 4.3 on the interface between child contact and criminal proceedings for domestic abuse;
 - Section 5.1.1 on the role of the solicitor in child contact cases in the context of domestic abuse;
 - Section 5.2.1 on pleadings, process and practice;
 - Section 5.3.1 on criminal processes and child contact.
8. The research contains a number of recommendations. Recommendations particularly relevant for this current paper are:

“Recommendation 1: The issue of domestic abuse should be brought to the attention of the family lawyers and the court as soon as possible, and not left to the parties. Consideration should be given to development of robust mechanisms which ensure the early identification of any prior or ongoing action or concerns relating to domestic abuse in child contact cases, and the setting out of the responsibilities of all key professionals in the system to appropriately convey that information.”

And

“Recommendation 4: Information about domestic abuse should be included in pleadings, Child Welfare Hearings (CWHs), and proofs in order to allow the court full information about the abuse and sufficient time to be able to consider the impact of domestic abuse on children.”

9. In the light of the research, the Scottish Government has been considering, using improvement methodology, what steps can be taken to improve the criminal/civil interface in the Scottish courts. This work has included a couple of seminars with justice agencies and voluntary sector bodies. This work is on-going and the Scottish Government has identified a number of areas to take forward. A list is attached at Annex A.

The Scottish Law Commission Discussion Paper

10. The Scottish Law Commission has a project on civil remedies against domestic abuse. The Commission published its Discussion Paper

² The December 2022 research is at [Domestic Abuse and Child Contact research](#)

[consultation] in October 2024³. The Commission is expected to produce its report, with a draft Bill, in 2027.

11. There is specific consideration given in the Discussion Paper to the communication between the civil and criminal justice systems. Please see paragraphs 8.37 to 8.40 and questions 54 and 55.
12. Some responses to the Commission’s Discussion Paper have been published. The Scottish Government would draw particular attention to the responses by Scottish Women’s Aid⁴ and by the Faculty of Advocates⁵.

The proposed court rules

13. Based on the points made above, the Scottish Government would suggest the following proposals for civil court rules.

Initial writs and defences – provision of information

14. Paragraph 8.39 and question 54 of the Scottish Law Commission’s Discussion Paper said:

“8.39 One option for reform would be to create a duty to disclose the existence of certain formal interventions in respect of both parties at the earliest possible instance in civil proceedings between parties who are, or have previously been in an intimate relationship. This could be a requirement to disclose convictions, existing civil protection orders, orders or convictions from other jurisdictions, and the existence of bail conditions. Equally, the requirement of disclosure could be wider, such as general police involvement or disclosure of social work involvement. We envisage that the exact nature of what needs to be disclosed and when it would be disclosed would be matters for rules of court. However, this reform would not place the onus on the court to find and disclose this information; rather it would rely upon information being supplied by perpetrator of the abuse and their representative (as well as the victim/survivor). Consequently, there would be no reliable way to check that the information was being fully disclosed, or was accurate. A disclosure requirement would be an improvement on the current position where there is no means to obtain this information besides relying on the victim/survivor. Due consideration must be given to the types of issues which must be disclosed, and the types of proceedings in which they must be disclosed. Accordingly we ask:

54. Should there be an obligation placed on parties who are (ex-) partners involved in civil proceedings, including those under section 11 of the 1995 Act, to disclose formal responses taken in respect of domestic abuse? If so, what should be disclosed?”

³ The Scottish Law Commission Discussion Paper on civil remedies against domestic abuse is at [Discussion Paper on Civil Remedies for Domestic Abuse \(DP No. 178\)](#)

⁴ The response by Scottish Women’s Aid to the Commission’s Discussion Paper is at [FINAL-SWA-SLC-Discussion-paper-civil-remedies-for-DA.pdf](#)

⁵ The response by the Faculty of Advocates to the Commission’s Discussion Paper is at [faculty-response-to-discussion-paper-on-civil-remedies-for-domestic-abuse.pdf](#)

15. The Scottish Government proposes that this suggestion from the Commission be followed up and that Council consider making rules.
16. In terms of what information should be provided, the Scottish Government considers that this should relate to abuse (or alleged abuse) by one party to the case on another or on a child of one or both of the parties. The areas outlined by the Commission are a good starting point. Therefore, the Scottish Government proposes that there should be an obligation to provide information on:
- Convictions for offences such as domestic abuse or sexual assault by one party on another or on a child of one or both of the parties. (There are lists of sexual offences in section 288C(2) and domestic abuse offences 288(DC)(1) of the Criminal Procedure (Scotland) Act 1995⁶ which could potentially be referred to when preparing court rules);
 - existing civil protection orders such as interdicts and non-harassment orders which protect one party from another;
 - convictions or orders from other jurisdictions;
 - the existence of bail conditions which protect one party from another.
17. There is also a question on who should provide the information. At the moment in a civil action, it is often the party who has been the victim of a crime or alleged crime by another party to the case or who has a civil protection order against another party who provides the information. This may place further trauma on the victim or person at risk.
18. Therefore, the Scottish Government proposes that the obligation to provide the information should be on the person who has been convicted; or is the subject of a civil protection order or of bail conditions. Of course, the party at risk could still provide the information as well but would not be under an obligation to do so.
19. In terms of when this information should be provided, this could be done in the initial documents for the case (e.g. the initial writ and the defences).
20. Council may also wish to consider points made by the Faculty of Advocates in this area when responding to the Commission's Discussion Paper. The Faculty said:

"A legal obligation should be placed on parties engaged in civil proceedings to disclose to the Court that criminal proceedings have commenced. The date of commencement can be identified via the definitions (for solemn and summary proceedings) set down in the Criminal Procedure (Scotland) Act 1995. Consideration should also be given to placing an obligation on parties to make disclosure to the Court where parties are aware that criminal proceedings are "in contemplation". Proceedings being in contemplation can be evidenced by a variety of circumstances, such as (i) the accused being arrested in respect of charges involving domestic

⁶ [Criminal Procedure \(Scotland\) Act 1995](#)

abuse or (ii) a report of allegations involving domestic abuse being sent to the Procurator Fiscal.”

Case management rules for family actions

21. As Council will be aware, court rules were developed by the Family Law Committee of Council for defended Family and Civil Partnership cases in the sheriff court.⁷
22. As part of these, Ordinary Cause Rule 33.36J makes provision on Initial Case Management Hearings. OCR 33.36J(3) provides that each party must address the court on a variety of issues. The Scottish Government suggests that the list here could be expanded to include specific references to:
- Any allegations of domestic abuse between the parties.
 - Any relevant parallel criminal proceedings where one party is the accused and another party the complainer.
23. OCR 33.36P(3) makes similar provision on Full Case Management Hearings and any changes in respect of Initial Case Management Hearings could be reflected here too.
24. The Scottish Government also suggests that Council may wish to carry out a survey on how the case management rules are working in practice and on what information is being provided now. This survey could be directed to members of the judiciary; the Scottish Courts and Tribunals Service; legal practitioners; and voluntary sector bodies supporting parties such as Scottish Women’s Aid and Shared Parenting Scotland.

Disclosure

25. In their response to the Commission’s Discussion Paper, the Faculty commented on ways of ensuring the safety of the child and of the victim/survivor is considered by the court in making orders under section 11 of the Children (Scotland) Act 1995. (See under item 46 of the Faculty’s response).
26. The Faculty suggested that
- “where domestic violence or child abuse is alleged in a Summons or Initial Writ or if the court having read the Summons or Initial Writ considers that safeguarding or welfare issues may arise, disclosure from the relevant authorities directly to the court must be obtained at the earliest opportunity.”

⁷ A News Release on the case management rules is at [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#) and the rules at [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#)

27. Following on from this, the Faculty suggested that provision could be made so relevant documents are intimated on relevant bodies where safeguarding concerns are raised in proceedings under section 11 of the 1995 Act. The bodies could be invited in these intimations to make appropriate representations to the court.
28. The Scottish Government invites Council to consider making rules so that when a safeguarding concern is raised in an action under section 11 of the 1995 Act, relevant papers are intimated to Police Scotland and the local social work department. Police Scotland and the local social work department could be invited to make representations to the court.
29. Council may wish to consult the organisations which might be intimated upon to obtain their views before any rules are made.
30. Where concerns of this nature are raised about the safety of a child, the court may appoint a curator *ad litem* to represent a child's interests. The curator *ad litem* would have a duty to provide the court with any information they feel is relevant and to consider the best interests of the child.

Consultation

[Note. When the paper is finalised, the following wording in paragraph 31 will be included].

31. In preparing this policy paper, the Scottish Government has consulted:

- The Criminal Justice Committee of the Scottish Parliament
- Children 1st
- Faculty of Advocates
- Family Law Association
- Law Society of Scotland.
- Police Scotland
- Rape Crisis Scotland
- Scottish Legal Aid Board
- Scottish Women's Aid
- Scottish Women's Rights Centre
- Shared Parenting Scotland
- Social Work Scotland
- Victim Support Scotland

Vires

32. Powers to make court rules are available in sections 103 and 104 of the Courts Reform (Scotland) Act 2014.

Conclusion

33. The Scottish Government invites Council to consider making rules in the following areas:

Paragraph number	Proposal
Paragraphs 15 to 20	<p>An obligation in court rules on the party causing the risk to provide information on:</p> <ul style="list-style-type: none">• convictions for sexual assault or domestic abuse on another party to the case; and• any civil protection order or bail conditions which protect another party to the case from them.
Paragraphs 21 to 23	<p>An amendment to existing court rules on case management of family and civil partnership actions so at case management hearings parties are specifically asked to address:</p> <ul style="list-style-type: none">• Any allegations of domestic abuse between the parties.• Any relevant parallel criminal proceedings.
Paragraphs 25 to 30	<p>Amendments to court rules so that in proceedings under section 11 of the Children (Scotland) Act 1995, any cases where safeguarding concerns about the child are raised are intimated to Police Scotland and the local social work department to enable them to make representations.</p>

34. Council is also invited to consider carrying out a survey on how the case management rules on family and civil partnership actions are working in practice. This survey could be directed to members of the judiciary; the SCTS; legal practitioners and voluntary sector bodies such as Scottish Women's Aid and Shared Parenting Scotland. (Paragraph 24).

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ANNEX A: AREAS TO BE CONSIDERED FURTHER IN RELATION TO THE ON-GOING IMPROVEMENT WORK ON THE INTERFACE BETWEEN THE CRIMINAL AND CIVIL COURTS

1. Training.
2. Data Sharing.
3. Court process and structures.

On this, there are suggestions that Integrated Domestic Abuse Courts (IDACs or “one family; one sheriff”) should be established in Scotland. (Another option would be to pilot them in, for example, a sheriffdom). IDACs operate in other jurisdictions and can consider both civil and criminal aspects of domestic abuse. South of the border, pathfinder courts are being piloted⁸. The Scottish Government has carried out research on IDACs previously⁹ and is carrying out further research, to be published early in 2026.

4. Case management by the courts.
5. Consideration of cases by the courts.
6. Support and guidance for parties.
7. Child Welfare Reporters.

On this, the Scottish Government remains committed to implementing the register of child welfare reporters to be established by virtue of the Children (Scotland) Act 2020. To assist with this, the Scottish Government has established a Working Group.¹⁰

8. Child Contact Centres.

The Scottish Government is preparing SSIs to introduce the regulation of child contact centres.

9. The Implementation of the Children (Scotland) Act 2020.

The Scottish Government remains committed to implementing the 2020 Act in full and is providing updates to the Scottish Parliament on progress¹¹.

10. Research, data and improvement work.

⁸ Information about Pathfinder courts in England and Wales is available at [Pathfinder Courts](#)

⁹ The previous research carried out by the Scottish Government on IDACs is at [Domestic abuse courts: report - gov.scot](#)

¹⁰ More information on the Child Welfare Reporter Working Group is at <https://www.gov.scot/groups/child-welfare-reporter-working-group/>

¹¹ The meeting of the Equalities, Human Rights and Civil Justice Committee of the Parliament on 24 June 2025 focused on post-legislative scrutiny, including the 2020 Act. Please see the [Official Report](#) of this meeting.

In addition, the Scottish Government is considering making an SSI under section 102 of the [Courts Reform \(Scotland\) Act 2014](#). This would give the civil courts the power to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings. This is, however, about civil proceedings rather than the criminal/civil interface.

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