

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 11 DECEMBER 2023 AT 2.30PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Present: Lady Wise (Chair)
Simon Stockwell (Scottish Government)
Lynda Brabender KC
Marie Louise Fox (SLAB)
Sheriff Principal Dowdalls KC
Rachael Kelsey
Fiona Campbell

Support: Craig McCorkindale (Director of Strategy)
Jessica Flynn (Secretariat Business Manager)
Graeme Welsh (Secretary to the SCJC)
Laura Tait (Deputy Legal Secretary, LPPO)

Apologies: Sheriff Tait
Chris Fyffe
Alison Reid

Item 1: Welcome, apologies and agreement of private papers

The Chair welcomed those present and introduced Sheriff Principal Dowdalls to her first meeting. Apologies were noted from Sheriff Tait, Chris Fyffe, and Alison Reid.

The Committee agreed not to publish the following papers: Papers 3.2, 3.2 A to E

Item 2.1: Items by Correspondence (Paper 2.1)

Lady Wise provided members with an update on one matter that was considered by correspondence since the last meeting. The minutes from the October meeting received one response and are now published online.

The Committee noted the update.

Item 3: Work Programme

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

Simon Stockwell provided a legislative update and included only matters not covered at the October Family Law Committee (FLC) meeting:

Children's Hearings review

- The Scottish Government plan to provide an initial response to the review later this month.

United Nations Convention for Rights of Children

- The UNCRC Bill passed reconsideration stage in the Scottish Parliament last week. A policy paper requesting civil court rules has now been submitted to the Scottish Civil Justice Council (SCJC) secretariat.

Trusts and Succession (Scotland) Bill

- An amendment has been made to the Trusts and Succession (Scotland) Bill on time limits for making a claim when a cohabitant dies without leaving a will. This relates to the time limit of 6 months for cohabitants making a claim where the person they were living with died intestate: the amendment extends that to 12 months.
- The Scottish Government will aim to publish a wide-ranging consultation by summer 2024, which amongst other topics, will include the extension of simplified divorce and dissolution.

Members noted the update and will consider the Scottish Government's response to the review on Children Hearings in due course.

Item 3.2 – Extension of Simplified Divorce and Dissolution (Papers 3.2, 3.2 A to E)

Members were invited to provide comments on the latest drafts on the draft rules, the consultation document, EQIA and BRIA. Points discussed included:

- The latest drafts are clearer and more concise. Some further amendments were suggested and draft wording will be provided by Lynda Brabender KC and Simon Stockwell.
- Some cross referencing is required between the relevant practice notes and the forms to ensure the correct information was being considered by the court, and that children's views are taken into consideration.
- The Scottish Government intend to share their consultation documents with members at the next FLC meeting. This will allow the FLC consultation documents to be aligned with those of the Scottish Government.

Item 3.3 – Hague 1996 Convention Rules (Paper 3.3)

Simon Stockwell provided members with a summary of paper 3.3. Views and comments from members included:

- Disparity on the rules made for the sheriff court and the Court of Session and the need to address this gap;
- The benefits of the Court of Session having jurisdiction for such matters and the need for centralised communication (as is the case with cross border protocols).
- The potential for amending existing chapters versus creating a new chapter, which could cover aspects of Chapters 70 and 88.

Members agreed that the secretariat will develop a drafting instruction and submit to the Committee for approval before Council consideration.

Item 3.4 – Family therapist (Oral update)

Simon Stockwell updated members on the following:

- The Scottish Government intends to have further discussion with stakeholders before submitting a paper to the committee; and

- Data analysis suggests that the numbers of family therapists instructed are low but concerns exist around regulation, and clarity on what they are being asked to do.

The Committee noted the update.

Item 4: AOB

Members noted that child welfare hearings being conducted by telephone are no longer the issue it was believed to be, and is now only by exception.

Item 5: Date of next meeting

Meetings for 2024 were to be set up in due course. These have now been fixed as:

- Monday 26 February 2024
- Monday 10 June 2024

**Scottish Civil Justice Council Secretariat
December 2023**