

**SCOTTISH CIVIL JUSTICE COUNCIL  
FAMILY LAW COMMITTEE**

**MINUTES**

**PARLIAMENT HOUSE, MONDAY 2 JUNE 2014**

**Members present:** Lord Brailsford, Chair  
Sheriff Principal Stephen  
Lynda Brabender, Advocate  
Stephen Brand, Solicitor  
Morag Driscoll, Director, Scottish Child Law Centre  
Catriona Whyte, Solicitor, Scottish Legal Aid Board  
Simon Stockwell, Head of Family and Property Law,  
Scottish Government

**In attendance:** Gillian Prentice, Deputy Principal Clerk of Session  
Graham Crombie, Deputy Legal Secretary to the Lord President  
Anne Hampson, Policy Officer  
Nicola Anderson, Policy and Legislation Branch, Scottish Court Service

**Apologies:** Professor Margaret Ross, Head of the College of Arts and Social Sciences, Aberdeen University  
Clair McLachlan, Solicitor  
Sheriff McCulloch

**Item 1: Introduction, welcome, private papers and apologies**

1. The Chair welcomed those present and noted apologies.
2. The Chair noted that the Scottish Civil Justice Council agreed at its 12 May meeting to Sheriff Clerk observers being replaced by the Scottish Court Service Policy and Legislation Branch and that Nicola Anderson, from that Branch, was attending as an observer.
3. **The Committee agreed not to publish the following papers: 3.2, 3.2A, 3.2B, 3.3, 3.3A, 3.4 and 3.4A.**

**Item 2: Minutes of Meetings [Paper 2.1]**

- 4. The Committee approved the minutes of the previous meeting.**

**Item 3: Secondary Legislation**

*Item 3.1 Work Tracker [Paper 3.1]*

- 5. The Committee noted the work tracker.**

*Item 3.2 Hague Convention on the International Recovery of Child Support [Papers 3.2, 3.2A and 3.2B]*

- 6. Members discussed a draft Act of Sederunt [Paper 3.2A] to make provision in the Child Care and Maintenance Rules for the recognition and enforcement of decisions in relation to maintenance obligations to give effect to the Convention on the International Recovery of Child Support and other forms of Family Maintenance which enters into force on 1 August 2014.**
- 7. The Committee indicated that it was content that the draft rules be submitted to the Scottish Civil Justice Council.**

*Item 3.3 – Proceedings under the Children’s Hearings (Scotland) Act 2011: prohibition of parties from personally conducting the examination of witnesses [Papers 3.3 and 3.3A]*

- 8. The Committee considered a paper from the Deputy Legal Secretary [Paper 3.3] alongside the Scottish Government’s update on its proposals for rules of court regarding the prohibition of parties from personally conducting the examination of witnesses in proceedings under the Children’s Hearings (Scotland) Act 2011. [Paper 3.3A].**
- 9. The Committee noted that the Scottish Government proposed to gather further evidence before proceeding with its request for changes to the rules of court. The Committee noted the position and indicated that it had reservations in relation to this matter, but agreed that it was content to await a further update from the Scottish Government.**

*Item 3.4 – Simplified Divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Papers 3.4 and 3.4A]*

10. The Committee considered a paper from the Deputy Legal Secretary [**Paper 3.4**]. The paper invited the Committee to consider further draft rules of court [**Paper 3.4A**] to give effect to the proposal on the extension of the availability of simplified divorce, particularly the new provisions in relation to dissolution of civil partnerships in the sheriff court and the new provisions for the Court of Session, and to give its views on a number of matters. **Papers 3.4 and 3.4A** were produced in response to the Committee's instructions at its 7 April 2014 meeting.
  11. The proposed drafting of the Court of Session provisions was considered by the Committee. **Members indicated that they were content with these provisions and that the use of By Order Hearings in the Court of Session is the correct approach.**
  12. The Committee considered the approach in relation to the dissolution of civil partnership provisions to ensure the wording of the form of intimation to children was as accessible to children as possible (as previously raised and agreed in relation to divorce provisions).
  13. **The Committee indicated that it was content with the approach taken.**
  14. Members also considered recommendations that relevant guidance for the completion of the simplified divorce and simplified dissolution Forms be included within the Forms themselves and that the guidance be provided immediately before the section of the Form to which it relates.
- 15. The Committee agreed to these recommendations.**
16. The Committee also considered that efforts should be made to obtain feedback from court users so that any difficulties arising from the format of the new Forms may be identified.
  17. Members considered whether to recommend to the Scottish Civil Justice Council that it consult on the draft rules on extending simplified divorce.
  18. **The Committee took the view that it would be useful to consult on the draft rules. The Deputy Legal Secretary was instructed to prepare a paper for the 30 June meeting of the Scottish Civil Justice Council setting out the Committee's views and inviting the Council to consult on the draft rules.**

#### **Item 4 – Scottish Government Update**

19. The Scottish Government provided members with an oral update on a new *Making Justice Work* project under the Enabling Access to Justice stream and advised that the initiation document is currently being drafted.

**20. The Committee noted the update and asked that members be kept abreast of progress in this area.**

**Item 5: A.O.C.B.**

21. Members brought the following items of business to the attention of the Committee:

- Practice Note No. 1 of 2014 for the Sheriffdom of Glasgow and Strathkelvin (Children's Referrals under the Children's Hearings (Scotland) Act 2011). The Committee's attention was drawn to its provisions on taking expert evidence, in particular the procedure for the taking of simultaneous expert evidence ("hot-tubbing") set out in the Appendix.
- Variations in practice as to the fees paid to curators *ad litem* and Reporting Officers by local authorities in adoption and permanence cases.
- Issues in connection with Chapter 33AA of the Ordinary Cause Rules which had arisen in the course of a meeting on 19 May between the Scottish Government, the Law Society of Scotland and the Scottish Legal Aid Board. The Deputy Legal Secretary noted that he had attended that meeting for the interests of the Lord President's Private Office and the SCJC, but had nothing to add to the update given by the Scottish Government.

**22. The Committee noted each of these items.**

**Item 6: Date of next meeting**

**23. The next meeting is to be held on 1 September 2014 at 10.00 a.m.**

SCJC Secretariat  
June 2014