

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**

**FAMILY LAW COMMITTEE**

**MONDAY 02 NOVEMBER 2020 AT 3 PM**

**BY WEBEX**

**MINUTES**

**Members Present:** Lady Wise (Chair)

Sheriff Tait (Judicial Member)

Lynda Brabender QC (Advocate member)

Fiona Campbell (Solicitor member)

Rachael Kelsey (Solicitor member)

Simon Stockwell (Scottish Government standing member)

Catriona Whyte (SLAB standing member)

**In attendance:** Yvonne Anderson (Court of Session)

Nicola Anderson (SCTS Legislation Implementation Team)

**Support:** Jessica Flynn (Secretariat Business Manager, Scottish Civil Justice Council)

Kelly Jack (Policy Officer, Scottish Civil Justice Council)

Emma Laurie (Policy Officer, Scottish Civil Justice Council)

**Apologies:** Sheriff Principal Pyle (Judicial member)

Alison Tait (Solicitor member)

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

## **Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and noted apologies from Mariel Kaney, Alison Reid and Sheriff Principal Pyle.
2. **The Committee agreed not to publish the following papers: 2.1; 4.1; 4.1A; 4.2.**

## **Item 2: Previous meeting**

### *Item 2.1 – Items by correspondence (Paper 2.1)*

3. **Paper 2020/09** was issued in May 2020, inviting members to consider and approve Papers 2020.09A-E. These papers would ordinarily have been tabled for the meeting scheduled for 11 May 2020, however this meeting was cancelled due to the ongoing impact of the Covid-19 pandemic.
4. Responses were invited by close of business on 05 June 2020. Four responses were received in relation to all the papers.
5. The new rules in relation to Chapter 49 of the Rules of the Court of Session were remitted to the Scottish Civil Justice Council and passed by Council in October 2020.
6. The comments in respect of mediation were passed to the Scottish Government for their consideration.
7. **The Committee noted Paper 2.1.**

## **Item 3: Work Programme**

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

8. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government:
  - The UNCRC Bill is now before Parliament and currently at stage 1.
  - The Domestic Abuse Protection (Scotland) Bill is before Parliament and currently at Stage 1.
  - The Scottish Government are currently implementing the Civil Partnership (Scotland) Act 2020 and will prepare a policy paper on possible changes to court rules for consideration by the Family Law Committee.
  - The Children (Equal Protection from Assault) (Scotland) Act 2020 comes fully into force on 7 November 2020.
  - There will be no Bill to reform gender recognition in this Parliament.
  - A civil and family law Brexit SSI has been laid:  
<https://www.legislation.gov.uk/sdsi/2020/9780111046999/contents>.

#### **Item 4: Rules review and implementation of procedures**

##### *Item 4.1 – Children (Scotland) Act 2020 (Papers 4.1 and 4.1A-B)*

9. The Committee considered Papers 4.1 and 4.1A-B on the Children (Scotland) Act 2020, discussing potential changes to court rules required in order to implement the Act. Particular areas of the Act discussed include sections 4-6, 18 and 20 and whether prescriptive rules may be required to ensure consistency across courts.

10. The committee discussed the establishment of a group which would look into the provisions in relation to vulnerable witnesses and parties. Membership of this group will draw from public and child law practitioners, as well as third sector organisations specialising in witness/victim support.

**11. The Committee agreed that a group should be established to consider implementation of Sections 4-8 of the Act. Membership of this group will be discussed and agreed in due course.**

##### *Item 4.2 – Children’s Advocacy (Papers 4.2 and 4.2A-B)*

12. Members considered an updated paper from Scottish Government in relation to commencement of section 122 of the Children’s Hearings (Scotland) Act 2011.

13. Committee discussed whether changes to the Child Care and Maintenance rules would be required. Consideration may need to be given as to whether rules in relation to who can stay in meetings can be made clearer.

**14. The Committee considered and provided views on Paper 4.2A. The Secretariat will provide these comments to Scottish Government in due course.**

#### **Item 5: Dates of future meetings**

15. It is intended that meetings will proceed by WebEx for the foreseeable future given the ongoing restrictions and measures in regard to the Covid-19 pandemic. A meeting date in February 2021 will be cascaded to members, however an Item by Correspondence on the subject of Case Management will be issued in November or December 2020.

#### **Item 6: A. O. B**

16. Committee noted that with the United Kingdom due to leave the European Union on 31 December 2020, Brexit legislation may require to be considered by committee in relation to cross border issues at short notice.

#### **Scottish Civil Justice Council Secretariat**

**November 2020**