

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE (FLC)
MONDAY 23 SEPTEMBER 2024 AT 2 PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Present: Lady Wise (Chair)
Lynda Brabender KC
Fiona Campbell
Sheriff Principal Dowdalls KC
Rachel Grant (Legislation Implementation Team)
Rachael Kelsey
Alison Reid
Simon Stockwell (Scottish Government)

Support: Jessica Flynn (SCJC)
Sarah Jane McNicol (SCJC)
Paula Preston (SCJC)
Laura Tait (LPPO)
Graeme Welsh (SCJC)

Apologies: Marie-Louise Fox (SLAB)
Chris Fyffe
Sheriff Tait

In attendance: Sheriff David Mackie
Tom McNamara (Scottish Government via Webex)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and introduced Sheriff David Mackie to discuss the work of the Hearings Systems Working Group and the published [Report](#).
2. Members noted that Marie-Louise Fox, Fiona Campbell and Alison Reid have each been reappointed for a period of three years following approval by the SCJC on 4 September.
3. Apologies were noted from, Chris Fyffe, Marie-Louise Fox and Sheriff Tait.

Item 1.1: Hearings Systems Working Group

4. Lady Wise advised members of her other interests in this matter since a response to the Scottish Government's consultation may be provided by the Senators of the College of Justice.
5. Sheriff David Mackie provided members with a summary of the collaborative approach which shaped the Working Group's recommendations. Sheriff Mackie stressed that the recommendations reflect the voices of over 5000 children and multiple agencies who considered how the Children's hearings systems could best support the needs of children and families. Key to this was the structural design reinforcing the need for an inquisitorial approach.
6. Sheriff Mackie welcomed the universally positive response to the report however expressed concerns that the Scottish Government's consultation did not wholly reflect what was proposed by the working group.
7. Members shared a variety of views on matters, with the Committee agreeing that additional detail would be advantageous to understand the Scottish Government's thinking on:
 - how the legal member role would operate in practice (including whether it will be a tribunal role and if so, which Chamber would it be part of);
 - The role of the Chair and rationale for it not being a fee paid role so it may be professionalised like other comparable role;
 - The likelihood of proposals not streamlining the process and the clarity over roles and responsibilities; and
 - The rationale for replacing ground hearings with fact finding hearings since this did not come up in the working group.

The Committee agreed that a further meeting would be arranged between the Scottish Government and FLC members.

Item 1.2 Private Papers

The Committee agreed not to publish only paper 3.3.

Item 2.1: Items by Correspondence (Paper 2.1)

8. Lady Wise provided members with an update on one matter that was considered by correspondence since the last meeting. The minutes from the 18 March 2024 meeting received four responses 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)

9. Simon Stockwell provided a comprehensive update which included:
 - A summary of the Programme for Government
 - Bills currently before the Scottish Parliament including:
 - Judicial Factors (Scotland) Bill at [Stage 2](#)
 - Social Security (Amendment) (Scotland) Bill at [Stage 2](#)
 - Victims, Witnesses and Justice Reform (Scotland) Bill at [Stage 2](#)
 - Recent Acts of the Scottish Parliament including:
 - [Children \(Care and Justice\) \(Scotland\) Act 2024](#)
 - [Trusts and Succession \(Scotland\) Act 2024](#)
 - [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)
 - Live Scottish Government Consultations
 - [Media reporting on child homicide victims](#) which closes on 1 October 2024
 - [Children's hearings redesign](#) which closes on 28 October 2024; and
 - ['Moving on' from care into adulthood](#) consultation which closes on 3 October 2024.

Members noted the update.

Item 3.2 – Extension of Simplified Divorce and Dissolution (Oral update)

10. Preparations are well advanced for both the Scottish Government's and the Family Law Committee's consultations. Over the course of the next month various documents will be finalised for publication. This will include:
 - For the FLC, proposed courts rules, impact assessments and

consultation documentation; and

- For the Scottish Government, impact assessments and consultation documentation. An additional question is being considered regarding the ability for a pursuer or defender to withhold their address should they wish to do so.

11. Members agreed that the FLC should aim to launch on 28th October and run for twelve weeks.

Members noted the update

Item 3.3 – Mental disorder criteria in simplified divorce (Paper 3.3)

12. Members considered paper 3.3 and discussed the requirement that any change to the current criteria would have to apply to court rules and secondary legislation made by Ministers. It was agreed that both the Family Law Committee and the Scottish Government consultations should include an appropriate question.

Members approved the inclusion of a question in the FLC consultation

Item 4: AOB

13. The following item of A.O.B was discussed:

- The need for more sheriff court judgements to be published particularly in relation to cohabitation. It was noted that this matter had previously been considered and additional measures are being assessed to support publication.

Item 5: Date of next meeting

The next meeting of the Committee will be confirmed.

**Scottish Civil Justice Council Secretariat
September 2024**