

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 24 APRIL 2023 AT 2.00PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Present:

Lady Wise (Chair)
Simon Stockwell (Scottish Government)
Lynda Brabender K.C.
Rachael Kelsey
Wendy Dalgleish (SLAB)
Fiona Campbell
Rachael Kelsey
Alison Reid

Attending:

Rachel Grant (SCTS Legislation Implementation Team)
Emma Rae (SCTS Legislation Implementation Team)
Yvonne Anderson (Court of Session)
Sarah Duncan (Scottish Government)

Support:

Jessica Flynn (Secretariat Business Manager)
Graeme Welsh (Secretary to the SCJC)
Kelly Jack (Policy Officer)
Laura Tait (Deputy Legal Secretary, LPPO) (via webex)

Apologies:

Sheriff Principal Pyle
Sheriff Tait
Chris Fyffe

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Tait and Sheriff Principal Pyle.
2. The Chair welcomed Laura Tait to her first meeting in her position as Deputy Legal Secretary.
3. Committee placed its thanks on record to Mariel Kaney, formerly of the Lord President's Private Office, for her work supporting the Committee.
4. **The Committee agreed not to publish the following papers: 4.1 and 4.1A-4.1F.**

2.1: Items by Correspondence (Paper 2.1)

5. Lady Wise provided members with an update on items considered by correspondence since the last committee meeting: One matter has been considered by correspondence since the last meeting:
 - Item 2022/29 was issued in October 2022 and invited members to approve draft minutes of the Committee meeting on 31 October 2022. One response was received noting minor amendments. The draft minutes were approved and published on the Scottish Civil Justice Council website.
6. **The Committee noted the update.**

Item 3: Work Programme

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

7. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government:

Retained EU Law (Revocation and Reform) Bill

- This is a Bill at Westminster, under which all retained EU law in the UK will “sunset” at the end of 2023, unless action is taken to stop that by way of S/SSIs. The Scottish Government is opposed to the Bill and the Scottish Parliament refused legislative consent (as did the Welsh Senedd). As the Bill stands, it appears rules of court will be covered. Powers to make SIs/SSIs under the Bill are for Ministers, as a result Scottish Ministers may need to make SSIs to preserve Acts of Sederunt from the “sunset”, and in instances where underlying substantive law is reserved (e.g. competition law), then UK Ministers may need to do so.

- The UK Ministry of Justice have just issued a targeted consultation for England and Wales on the EU Regulation on Civil Protection Measures. We are considering what the best approach is in relation to Scotland. The SG's general presumption is that they will **preserve** REUL.

Surrogacy

- The Law Commissions have published their report on surrogacy. Surrogacy is reserved, so any Bill will be for the UK Government at Westminster. If there should be a Bill, there would be some implementation implications for Scotland in areas such as the NHS; court procedures for parental orders; and the registration of parental orders.

UNCRC Incorporation Bill

- Scottish Government have been working with the UK Government on amendments to the UNCRC Bill. It is hoped the Bill will begin Parliamentary Reconsideration before the summer recess.

Children (Care and Justice) Bill

- This Bill is currently undergoing Stage 1 scrutiny with the Education, Children and Young People Committee taking lead, however the Criminal Justice Committee are also taking evidence. The Bill proposes raising the maximum referral age to the Children's Reporter to 18, ending under 18 placements in Youth Offender Institutes, court adaptations, victim information changes, secure care and anonymity provisions among other reforms. The stage 1 report is due late June.

Victims, Witnesses and Justice Reform Bill

- This Bill is due to be introduced in the Scottish Parliament shortly. It is mostly criminal but does contain some civil aspects. The Scottish Government consulted on whether the provisions (not yet implemented) in the Children (Scotland) Act 2020 on special measures in some family actions should be extended to civil generally.

Child Abduction Act 1984

- The Scottish Government is reviewing Section 6 of the Child Abduction Act 1984. In broad terms, this makes it a criminal offence in Scots law for a parent to remove a child from the UK if this is contrary to a court order. The equivalent offence in English law relates to a parent removing a child from the UK if another relevant person (e.g. the other parent) has not consented. There is some lobbying to change the Scots law position so it is closer to the position in England and Wales.

Non-legislative work

Statistical bulletin

- Civil justice stats for 2021/22 due to be published Tuesday 25 April 2023.

Research

Remote hearings

- The Scottish Government's research on lessons learned from remote hearings in the pandemic is being finalised, with a draft report provided to the Research Advisory Group. It is hoped the report will be published in summer. This research looked specifically at commercial cases; family; mental health tribunal and the Health & Education Chamber.

Domestic abuse

- In February, the Scottish Centre for Crime and Justice Research published research, funded by the Scottish Government, on "Domestic Abuse and Child Contact: The Interface between Criminal and Civil Proceedings". A workshop is due to take place later this year on the recommendations.

Children's Hearings System redesign

- Promise-led group, chaired by Sheriff David Mackie, due to report in May on proposals for a redesigned children's hearings system. Ministers will need time to consider, and will consult on the proposals later in year. Acceptance and implementation of proposals would need legislative change later in Parliamentary term.

8. **Members noted the update.**

*Item 3.2 – Extension of Simplified Divorce and Dissolution (**Paper 3.2**)*

9. Simon Stockwell introduced **Paper 3.2** which provides an update on the Scottish Government's work on the extension of simplified divorce and dissolution procedures.
10. The Scottish Government are currently updating their consultation and Impact Assessments. It is still the intention that the Scottish Government's consultation will run in tandem with the Scottish Civil Justice Council's consultation.
11. The paper notes the estimated one off costs for implementation of any extension for both the Scottish Courts and Tribunals Service and the Scottish Legal Aid Board, as well as the benefits to both organisations as well as individuals.

12. It is suggested in the paper that the consultation process should include a question on the development of an online submission process for simplified divorce and dissolution.
13. Lynda Brabender K.C suggested that any question on online submission should be contained in a Scottish Civil Justice Council consultation due to it being a procedural question. Lynda further noted that there would be substantial differences in any system developed for the extension of simplified divorce and dissolution in comparison to the system used for Civil Online. The rules as currently drafted would likely not flow well for an online system, so there would be further consideration required. Lynda also noted it would be quite time consuming, so it would be of preference to roll out the extension in the first instance, to be followed by any online system if desired.
14. Rachael Kelsey agreed with Lynda's suggestions in respect of any proposed roll out in that the priority should be on getting the legislation commenced, to be followed by the online system development.
15. Wendy Dalgleish noted that there could potentially be an increase in case numbers due to people who cannot currently afford to litigate, but are not eligible for civil legal aid, being in a position to apply under the proposed legislation.
16. Graeme Welsh noted the timeframes currently involved in respect of implementing Case Management in Sheriff Court Family and Civil Partnership Actions as well as the core Simple Procedure rule changes, suggesting that it would be desirable to consider any online submission separately.
17. Alison Reid and Fiona Campbell agreed with the comments previously made, with Fiona commenting that she is of the opinion that the legislation will make a huge difference in respect of cost and speed.
18. **Members noted the paper.**

Item 4: Rules review and implementation of procedures

Item 4.1 – Age of Criminal Responsibility (Scotland) Act 2020 (Papers 4.1 and 4.1A-F)

19. Kelly Jack introduced **Papers 4.1 and 4.1(A-F)** which discuss the work undertaken by the ACRA working group. The policy objective of the working group was to develop correspondence between the Courts and the child which is easy to understand, and enables the child to understand their participation in the court process. The group provided the forms they have drafted for this purpose.
20. The working group submitted their reasoning as to the numbers of forms required, the benefits and risks of [insert here/delete as appropriate] provisions, information on children's rights potentially being included in any forms and the risks involved.

21. The reasoning behind the use of specific language, signposting to certain agencies, contact details, designations and issues around order validity periods were also noted.
22. It was agreed that the forms are as compliant and informative as they can be, but questions remained on certain aspects of the legislation and the practicability of its implementation.
23. The Committee wished to put on record its thanks to the working group for their consideration of the matter.
24. **Members agreed:**
 - **That the forms provided at Paper 4.1A-F, as well as the relevant policy issues proposed by Committee, be submitted to the Scottish Civil Justice Council for their consideration.**

Item 5: AOB

25. No other items of business were raised.

Item 6: Date of next meeting

26. The next meeting will be fixed for **Monday 25 September at 2pm**, within Parliament House.

**Scottish Civil Justice Council Secretariat
April 2023**