

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
WEDNESDAY 25 OCTOBER 2023 AT 4.00PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

- Present:** Lady Wise (Chair)
Simon Stockwell (Scottish Government)
Lynda Brabender K.C.
Marie Louise Fox (SLAB)
- Attending:** Rachel Grant (SCTS Legislation Implementation Team)
- Support:** Craig McCorkindale (Director of Strategy)
Jessica Flynn (Secretariat Business Manager)
Graeme Welsh (Secretary to the SCJC)
Paula Preston (Policy Officer)
Laura Tait (Deputy Legal Secretary, LPPO)
- Apologies:** Sheriff Principal Dowdalls
Sheriff Tait
Chris Fyffe
Yvonne Anderson
Rachael Kelsey
Fiona Campbell
Alison Reid

Item 1: Welcome, apologies and agreement of private papers

The Chair welcomed those present and noted apologies from Sheriff Principal Dowdalls, Sheriff Tait, Chris Fyffe, Yvonne Anderson, Rachael Kelsey, Fiona Campbell and Alison Reid. Members noted that the meeting was not quorate therefore any decisions would be carried forward to the next meeting on 11 December 2023.

The Committee agreed not to publish the following papers: Papers 3.3, 3.3 A to E

Item 2.1: Items by Correspondence (Paper 2.1)

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.

The Committee noted the update.

Item 3: Work Programme

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

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

- General point
The Scottish Government are considering how to best provide the SCJC; the Criminal Court Rules Council; and justice agencies more of a forward look on legislative and other major developments coming down the track.
- Hague 1996 Hague Convention Rules
Consideration is being given to ensure the gap in rules is addressed in both the Court of Session and sheriff courts. Although rules were introduced in 2011 for Article and 8 and 9 of the Convention these rules do not provide comprehensive coverage for the all relevant Articles. The Scottish Government will prepare a policy paper for the next meeting for members to consider.
- Hague Convention 2019 on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.
Should the UK sign the 2019 convention then court rules will be required and a policy paper will be submitted to the SCJC.
- Child Support Collection (Domestic Abuse) Act 2023

The Act received royal assent on 29 June 2023. Subsequent regulations will be considered as UK Parliamentary time allows. No court rules are required.

- Child Support Enforcement Act 2023
The Act received royal assent in July 2023. The UK Government proposes to bring into force existing powers that allow the Child Maintenance Service (CMS) to make an administrative liability order against a person who has failed to pay child maintenance and is in arrears, rather than the CMS having to apply to the courts. Although court rules may be required for appeals.
- Illegal Migration Act 2023
The purpose of the Act is to create a scheme whereby anyone arriving illegally in the UK will be promptly removed to their home country or to a safe third country to have any asylum or human rights claim processed. Appeals against a suspensive claim can be initially to the Upper Tribunal and then to the Court of Session. Court rules are not likely to be required.
- Retained EU Law (Revocation and Reform) Act 2023
This Act is not specifically about family law but has wide ranging implications, including in relation to the interpretation of EU law generally. There may be a requirement for court rules as the implications of this Act become clearer over time.
- Abortion Services (Safe Access Zones) (Scotland) Bill
This is a Member's Bill, with Scottish Government support, which aims to create safe access zones around all premises which provide abortion services in Scotland. There is no expected need for any civil court rules.
- Victims, Witnesses, and Justice Reform (Scotland) Bill
This wide ranging Bill covers both criminal and civil matters and is progressing through Parliament (stage 1 deadline is 29 March 2024) there is likely to be a requirement for civil court rules.
- Children (Care and Justice) (Scotland) Bill
This Bill is at stage 2, which is due to be completed by 15 December 2023. Civil court rules are unlikely to be required.
- Trusts and Succession (Scotland) Bill
The Bill will begin stage 2 on 14 November and aims to change the law in relation to how they are administered and managed, and who has the right to inherit and in what order. Civil court rules may be required
- United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

The Bill is now with Committee which is planning evidence sessions on 31 October and 7 November. It is expected that the Bill will move to a Reconsideration debate on final amendments before the end of the year. Both civil and criminal rules will be required.

Simon Stockwell updated members on **Paper 3.1** which set out the Scottish Government's intention to establish a short life working group on the arrangements for Child Welfare Reporters as set out in the Children Scotland Act 2020. The group will be tasked with working out how implementation can be achieved. Members welcomed this idea but advised that the group should take cognisance of the previous working group's work and avoid starting again.

Members discussed the need to address wide ranging issues arising from the appointment of family therapists which is mainly happening in the sheriff courts. Particular issues surround non-regulated family therapy sessions and concerns surrounding the appointment of those involved.

Separately, mention was made of the recently published report of the Working Group on proposed reform of the Children's Hearing System Lady Wise confirmed that she had met with Sheriff David Mackie recently to discuss the Report.

Members noted the update.

Item 3.2 - Response to the Pandemic Research (Paper 3.2)

Simon Stockwell discussed the key points of the research findings and then lessons learned should such a response be required in the future. Members noted:

- Views from a family law perspective were limited in that only 1 family law solicitor was interviewed as part of the research, and
- The research highlighted instances of child welfare hearings being conducted by telephone. Members felt strongly that this was unacceptable and consider that child welfare hearings should invariably be held in person.

Item 3.3 – Extension of Simplified Divorce and Dissolution (Papers 3.3, 3.3 A to E)

Members discussed and provided feedback on the initial drafts that had been circulated. Updated versions of the consultation document, BRIA and EQIA will be tabled for further discussion at the next meeting on the FLC on 11December 2023.

Members noted the following points from discussion:

- The target date for issuing the consultations is February 2024 and the forms and rules will continue to be updated in advance of that date;
- SIZE OF THE DRAFT RULES - Whilst the rules instrument runs to 150+ pages, the majority of that content is within the forms and only the first 40 pages are needed to convey what is being changed within the rules;
- CONCURRENT JURISDICTIONS – The option of running just the one joint

consultation with the Scottish Government is now effectively off the table, as the Scottish Ministers may want to cover other topics within their consultation document; and

- JURISDICTION - The Court of Session has an exclusive jurisdiction for applications where one or more of the parties may be based outside of Scotland and matters of international jurisdiction might arise.

Item 4: AOB

Simon Stockwell raised the language used in Rule 33.8 of the Ordinary Cause Rules (intimation where alleged association) and the need for the language to be modernised. It was suggested that this change be included at the same time as changes to the simplified divorce rules.

Item 5: Date of next meeting

The next meeting will be fixed for **Monday 11 December at 2:30pm** in Parliament House.

**Scottish Civil Justice Council Secretariat
October 2023**