

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 31 OCTOBER 2022 AT 2.00PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Present:

Lady Wise (Chair)

Sheriff Principal Pyle

Sheriff Tait

Simon Stockwell (Scottish Government)

Lynda Brabender K.C.

Marie-Louise Fox (SLAB) (from 2.20pm)

Fiona Campbell

Rachael Kelsey

Alison Reid

Attending:

David Smith (SCTS Legislation Implementation Team)

Rachel Grant (SCTS Legislation Implementation Team)

Sheriff Sheehan (for Item 4.1)

Support:

Jessica Flynn (Secretariat Business Manager)

Kelly Jack (Policy Officer)

Mariel Kaney (Deputy Legal Secretary, LPPO)

Apologies: Yvonne Anderson (Court of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Yvonne Anderson.
2. **The Committee agreed not to publish the following papers: 4.1, 4.2, 4.2A-4.2C(3).**

Item 4.1: Children (Scotland) Act 2020 (Paper 4.1)

3. Sheriff Sheehan and Kelly Jack introduced Paper 4.1 which gave members an update on the progress made so far by the Children (Scotland) Act 2020 working group. The remit of this working group is to look into provisions in relation to vulnerable witnesses and parties contained in Sections 4, 6, 7 and 8 of the Act, and make recommendations on what the group consider as necessary changes to the court rules or, more widely, to implement the Act.
4. Recommendations made to the FLC by the group will focus on the protection of vulnerable witnesses and parties, enabling their effective participation in court proceedings which ensuring the best interests of the child are central to the conduct of cases.
5. The group had been split into two cohorts, one of practitioners and one of third sector organisations in order to fully encompass both perspectives and utilise the members' respective expertise.
6. Sheriff Sheehan explained to members that the working group's view was that rules of court should require the issue of vulnerability to be considered at the outset of proceedings, and that the working group were considering draft forms for witnesses to inform the court at the earliest opportunity.
7. Furthermore, the working group considered that a broader definition for the rules of court which include circumstances where averments are made/are likely to be made in support of protective remedies sought by a vulnerable party may be of merit. This would involve consideration of the Modes of Attendance rules currently being considered by the Scottish Civil Justice Council.
8. Members noted the provisions in the Children (Scotland) Act 2020 on special measures extend to vulnerable parties whereas at the moment the provisions in the Vulnerable Witness (Scotland) Act 2004 on civil proceedings only extends to witnesses. It would be helpful if special measures were available to all vulnerable parties and witnesses. Members agreed that creating a framework for obtaining information about potential

vulnerable witnesses and parties from the outset, in the manner suggested by the group, would be of benefit, as this would outline the procedures to be followed at an early stage of an action.

9. The Committee agreed:

- **That the working group will develop a form for parties to inform the court of vulnerability at the outset of proceedings, and thereafter seek informal feedback from relevant groups;**
- **That the working group should develop a child friendly version of that form, and thereafter seek feedback from relevant child orientated groups.**
- **That the working group proceed to consider the modes of attendance rules to evaluate whether there is potential for inclusion of the extra measures.**

2.1: Items by Correspondence (Paper 2.1)

10. 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 2022/08 was issued in April 2022 and invited members to approve draft minutes of the Committee meeting on 05 April 2022. Responses were invited by close of business on 09 May 2022 with a nil response indicating consent. Two responses were received noting minor amendments. The draft minutes were approved and published on the Council website.

11. The Committee noted the update.

Item 3: Work Programme

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

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

- Noted that the Programme for Government was published on 06 September 2022. This included the following Bills: Children’s Care and Justice Bill; and the Trusts and Succession Bill
- The Gender Recognition Reform (Scotland) Bill had its stage 1 debate

on 27 October 2022.

- The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill will be amended and brought back to the Scottish Parliament for reconsideration stage. The revised Bill could receive Royal Assent in early 2023.
- There is a consultation live in respect of the Children's Care and Justice Bill.
- The consultation on improving victims' experiences of the justice system included a chapter on enhancing special measures in civil cases generally – building on the model in the Children (Scotland) Act 2020.
- The Scottish Government continue to work on implementation of the Children (Scotland) Act 202. Current focus is on the introduction of regulation of child contact centres.
- Scottish Government are intending to consider if amendments are necessary to the Child Abduction Act 1984.
- Parliament have made and laid a Brexit SSI on the EU Regulation on the mutual recognition of protection measures in civil matters.
- The Scottish Government has commissioned a research project on remote hearings and lessons learnt. This is looking at family cases; commercial cases and some tribunals. It's due to report around spring 2023.

13. **Members noted the update.**

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

14. 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. The paper notes that the Scottish Government has re-started work on the proposal to bring forward an Order under section 8(4) of the Civil Evidence (Scotland) Act 1988¹ ("the 1988 Act") to disapply the need for third party evidence in divorce and dissolution cases where there are children under 16 and no dispute about their welfare. This would in turn permit changes to court rules and forms to extend the simplified divorce and dissolution procedures to such cases;
15. The Scottish Government intend to consult on the proposals. A consultation document would include:

¹ [Civil Evidence \(Scotland\) Act 1988 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1988/1)

- a draft Business and Regulatory Impact Assessment (“BRIA” - to consider costs and savings);
 - a draft Equality Impact Assessment (“EQIA” - to consider impact on the protected characteristics in the Equality Act 2010); and
 - a draft Child Rights and Wellbeing Impact Assessment (“CRWIA” - to consider the impact on children and young people).
16. Simon Stockwell advised that previous cost estimates in relation to the Scottish Legal Aid Board and the Scottish Courts and Tribunals Service will require to be checked.
17. The Scottish Government are working closely with the Scottish Council of Jewish Communities (“ScoJeC”) and intend to make an SSI to update how the Jewish community is described for the purposes of section 3A of the 1976 Act and to prescribe the Jewish community body for the purposes of section 121A of the 2004 Act. This will have minor implications for court rules and forms. Again working closely with SCoJeC, the Scottish Government will submit a policy paper to this Committee on proposed consequential changes to court rules and forms.
18. **Members noted the paper.**

Item 4 (cont;)

Item 4.2 – Age of Criminal Responsibility (Scotland) Act 2020 (Papers 4.2 and 4.2A-C(3))

19. Kelly Jack introduced **Papers 4.2 and 4.2(A-C(3))** which discuss the work undertaken by the ACRA working group to date and raises questions in relation to issues and policy considerations encountered by the group. The Committee noted that despite being advised when the Act was first presented to SCJC that there would be a minimum of 50 applications per year, 10 months after commencement there have been no applications received by the Scottish Courts and Tribunals Service.
20. **Paper 4.2B** raises potential issues with the issue of forms to a child in relation to a hearing fixed under the Act. The paper noted that any form issued in relation to a hearing would require to be served by Sheriff Officers. This could be difficult in respect of the time limits set in the primary legislation if a hearing is fixed around a weekend or public holiday. The paper also noted proportionality issues in relation to case numbers.
21. **Paper 4.2C** raises potential issues with the issue of forms to a child in relation to an order granted under the Act. Police Scotland have developed forms for issuing to children when an order is granted, therefore it was queried whether an additional form provided by SCTS would be in the best interests of the child.
22. It was further noted that the Legislation provides that the requirement on Police Scotland is to serve and explain the order. It does not appear that Police Scotland can serve a form ancillary to the order itself, therefore any FLC developed form would require to be served by Sheriff Officers, potentially

arriving at a different time to when the Police have served their forms which could prove to be confusing for a young child.

23. These issues were discussed by the Committee, and agreed that there are problems with the primary legislation which make implementation difficult. It was agreed that it would be preferable for work on the forms and supporting rules of court to be continued for submission and a final decision by the Scottish Civil Justice Council.

24. **Members agreed that:**

- **Work on forms and rules for the purpose of advising of both a hearing and notification of an order being granted should continue.**

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 24 April 2023** in Parliament House, Edinburgh. This does not exclude holding a meeting by webex in the months prior to discuss the ACRA working group.

**Scottish Civil Justice Council Secretariat
October 2022**