

**SCOTTISH CIVIL JUSTICE COUNCIL  
FAMILY LAW COMMITTEE**

**MINUTES**

**PARLIAMENT HOUSE, MONDAY 7 APRIL 2014**

**Members present:** Lord Brailsford, Chair  
Sheriff Principal Stephen  
Sheriff McCulloch  
Lynda Brabender, Advocate [From Item 5.3]  
Stephen Brand, Solicitor  
Catriona Whyte, Solicitor, Scottish Legal Aid Board [Until Item 5.4]  
Professor Margaret Ross, Head of the College of Arts and Social Sciences, Aberdeen University  
Robert Marshall, Head of Care and Justice, Deputy Director Children & Families, Scottish Government [Until Item 5.4]

**In attendance:** Sheriff Welsh QC, Director, Judicial Institute of Scotland [Until Item 5.2]  
Graham Crombie, Deputy Legal Secretary to the Lord President  
Neil Robertson, Policy Officer  
Nicola Anderson, Policy and Legislation Branch, Scottish Court Service

**Apologies:** Morag Driscoll, Director, Scottish Child Law Centre  
Gillian Prentice, Deputy Principal Clerk of Session

**Item 3: Presentation by Sheriff Welsh**

[Item 3 was brought forward]

1. The Chair introduced Sheriff Thomas Welsh QC, Director of the Judicial Institute of Scotland. Sheriff Welsh delivered a presentation on the Judicial Institute's approach to training on case management and how this relates to family cases.
2. The Chair expressed the Committee's thanks to Sheriff Welsh for delivering the presentation and requested that an update be provided later in the year on the development of training for summary sheriffs.

### **Item 1: Introduction, welcome, private papers and apologies**

3. The Chair welcomed those present and noted apologies.
4. The Chair welcomed Nicola Anderson of the Scottish Court Service Policy and Legislation Branch who was attending as an observer.
5. **The Committee agreed not to publish the following papers: 5.2, 5.3, 5.3A, 5.4, 5.4A, 5.4B and 5.5 and 5.5B.**

### **Item 2: Minutes of Meetings [Paper 2.1]**

6. **The Committee approved the minutes of the previous meeting.**

### **Item 4: Proceedings**

#### *Item 4.1 – Records Management Plan [Paper 4.1 and 4.1A]*

7. **Members noted the Records Management Plan [Paper 4.1A] and in particular the responsibilities of committee members outlined in paragraphs 29 and 30.**

### **Item 5: Secondary Legislation**

#### *Item 5.1 Work Tracker [Paper 5.1]*

8. **The Committee noted the work tracker.**

#### *Item 5.2 Marriage and Civil Partnership (Scotland) Act [Papers 5.2 and 5.2A]*

9. Members discussed a Scottish Government paper [Paper 5.2A] on the potential implications for rules of the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”). It also considered a covering paper [Paper 5.2] from the Deputy Legal Secretary discussing the matters raised by the Scottish Government.
10. **The Committee considered its general approach to the implementation arrangements for the 2014 Act and agreed that:**
  - a. **the Deputy Legal Secretary and the Secretariat should liaise with the Scottish Government to ensure that draft rules are coordinated with the wider implementation plan for the 2014 Act; and**

**b. in principle, any draft rules to give effect to Paper 5.2A should be combined in a single set of draft rules with the simplified divorce draft rules before submission to the Council.**

11. Thereafter the Committee considered **paper 5.2A** in detail.
12. The Committee noted that certain terms in the rules of court (particularly in Forms) will require specific amendment in light of the 2014 Act. **It instructed the Deputy Legal Secretary to identify non gender-neutral references and prepare amendments to replace them.**
13. The Committee also noted that, in light of the 2014 Act, an issue with the terminology of Ordinary Cause Rule 33.8 (intimation where alleged association) has been identified. **The Committee instructed the Deputy Legal Secretary to bring a separate paper to the Committee at its next meeting in connection with this issue.**
14. **Paper 5.2A** outlines the Scottish Government's intention to extend the jurisdiction of the sheriff, through subordinate legislation, to grant declarators of recognition or non-recognition of a judgement from another EU member state.
15. **The Committee agreed that to consider this matter fully it would be helpful to examine what was done in relation to civil partnerships in this regard and to have more information about the likely content of the proposed subordinate legislation. The Committee instructed the Deputy Legal Secretary to bring a paper to the Committee for consideration at its next meeting.**
16. **Paper 5.2A** notes that the 2014 Act inserts a new section 4E into the Gender Recognition Act 2004 making provision for the sheriff to issue a full gender recognition certificate in certain circumstances.
17. **The Committee agreed that, in general, the default provisions in Chapter 2 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 were sufficient to deal with an application under the new section 4E. However, the Committee noted that it would be necessary to make provision requiring the sheriff clerk to send an extract decree or certified copy interlocutor to the defender, even if the action is undefended.**
18. Thereafter the Committee considered a proposed change to the requirement in the Ordinary Cause Rules 1993 to lodge an interim gender

recognition certificate or a certified copy when seeking divorce on that ground. **After discussion, the Committee was not persuaded that this requirement was unduly onerous and it agreed not to amend the Ordinary Cause Rules.**

19. The Committee went on to consider an apparent inconsistency between the Ordinary Cause Rules 1993 and the Rules of the Court of Session on this point. **After discussion, the Committee concluded that the different procedural requirements were appropriate in the context of differing procedures between the Court of Session and the sheriff court, and that amendment to the Ordinary Cause Rules 1993 and Rules of the Court of Session was not required.**
20. Members considered a number of issues in relation to appeals under the Gender Recognition Act 2004.
21. **The Committee agreed to instruct the Deputy Legal Secretary to prepare draft rules:**
  - a. **to extend Chapter 91 of the Rules of the Court of Session; and**
  - b. **to insert provision in the Summary Application Rules to provide for applications under section 6 of the Gender Recognition Act 2004 to be made by minute in process.**

[The Committee adjourned at 11 am and reconvened at 11.15 am]

*Item 5.3 Act of Sederunt (Sheriff Court Rules Amendment)(Adoption and Children (Scotland) Act 2007) 2009 [Papers 5.3 and 5.3A]*

22. The Committee considered a policy paper from the Scottish Government [**Paper 5.3A**] which discussed the operation of sections 95 and 96 of the Adoption and Children (Scotland) Act 2007 and the interaction of those provisions with the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (“the Sheriff Court Adoption Rules”). It also considered a covering paper [**Paper 5.3**] from the Deputy Legal Secretary providing advice on the matters raised by the Scottish Government.
23. **Paper 5.3A** suggested the amendment of the Sheriff Court Adoption Rules:
  - a. to provide for an overall time limit for the sheriff to make a decision on a section 95 report;
  - b. to insert timescales for intimation in rules 51(1) and (10);

- c. to provide that the sheriff give reasons in Form 25 for a decision not to refer a child's case to the principal reporter;
- d. to renumber rule 50 to bring it together with other intimation provisions; and
- e. to insert a timescale for intimation in terms of rule 50.

24. The Committee discussed these proposals in detail.

**25. The Committee agreed that, while it recognised the need for expeditious disposal of section 95 reports, it was not persuaded that additional time limits would assist in achieving this. In consequence, it agreed not to pursue further the changes to the Sheriff Court Adoption Rules outlined at paragraph 23(a), (b) and (e).**

**26. The Committee was of the view that it would be inexpedient to amend the Sheriff Court Adoption Rules to require the sheriff to give reasons in Form 25 for a decision not to refer a child's case to the Principal Reporter. It considered that additional time would be required within the section 95 process if reasons were to be given, and noted that this ran counter to the overall policy of expediting the process. As a result, it was not minded to pursue the change to the Sheriff Court Adoption Rules outlined at paragraph 23(c).**

**27. The Committee agreed that it had no objection to rule 50 being renumbered to bring it together with other intimation provisions.**

**28. During discussion, Robert Marshall advised that two pilots seeking to improve processes around the disposal of section 95 reports were taking place in the council areas of Aberdeen City and Renfrewshire. He agreed to provide the Committee with an update on these pilots at a later meeting.**

*Item 5.4 – Simplified Divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Papers 5.4, 5.4A and 5.4B]*

29. The Committee considered a paper from the Deputy Legal Secretary [Paper 5.4]. The paper invited the Committee to consider further draft rules of court [Paper 5.4A] to give effect to the proposal on the extension of the availability of simplified divorce, and to give its views on a number of matters.

30. The new Form F9A and the revised draft of new Form F33B were both considered by the Committee. **A number of amendments to the draft Forms were agreed.**
31. The Committee considered revised provisions on the disapplication of the requirement to complete Form 33B or obtain spousal consent where a permanence order has been granted in respect of any child of the marriage. **The Committee was content with the revised provisions.**
32. Members discussed the procedure to be followed in appeal against a decree of divorce under the proposed new rules.
33. **It was agreed that an appeal against a decree of divorce granted under the proposed rule 33.22B(2) be by letter, as for other simplified divorce applications.**
34. Thereafter Members discussed the provisions to be followed where the sheriff directs that the action proceed as a family action and orders a Child Welfare Hearing.
35. **The Committee agreed that Part XI should not apply of new to applications where a section 11 order is made, and that it was content with the detailed provisions of the rule.**
36. The Committee considered an amendment to rule 33.80 of the Ordinary Cause Rules to include reference to EU Regulation 1393/2007 which deals with service of documents involving two EU member states.
37. **The Committee was content with the revised rule 33.80.**
38. Members considered draft revised Forms F33 (two years' non-cohabitation) and F33A (issue of interim gender recognition certificate).
39. **The Committee was content with the draft revised Forms.**
40. **It was agreed that the provisions for sheriff court simplified divorce applications were now in reasonably settled form. That being so, the Committee invited the Deputy Legal Secretary to draft equivalent provisions for the Court of Session and for the dissolution of civil partnerships with a view to considering a further draft of the entire rules at the next meeting.**

*Item 5.5 Simplified divorce – Scottish Government Draft Consultation [Papers 5.5 and 5.5A]*

41. The Committee considered a draft consultation paper [Paper 5.5A] by the Scottish Government on the making of an order under section 8 of the Civil Evidence (Scotland) Act 1988.
42. **After discussion the Committee agreed that it did not wish to make any comment on the terms of the Scottish Government's draft consultation.**
43. **The Committee also decided that, once the draft rules were in final form, it would consider further whether to recommend to the Scottish Civil Justice Council that it consult on the draft simplified divorce rules.**

**Item 5: A.O.C.B.**

44. Members indicated that there was no other business they wished to discuss.

**Item 7: Date of next meeting**

45. **The next meeting is scheduled for 2 June 2014 at 10.00 a.m. Further meetings were agreed for 1 September 2014 and 27 October 2014.**

SCJC Secretariat  
April 2014