

FAMILY LAW COMMITTEE OF THE SCOTTISH CIVIL JUSTICE COUNCIL INFORMATION PAPER BY THE SCOTTISH GOVERNMENT ON PRIORITIES

1. This is an **open** paper by the Scottish Government.
2. It lists tasks and work streams which the Scottish Government has put forward to the Committee or intends to put forward and gives timings or priorities.
3. Brexit will have an impact on a number of areas of family law. The Scottish Government will give an oral presentation at a forthcoming Committee meeting.
4. The work of other Scottish Civil Justice Council Committees, such as the Access to Justice Committee and the Rules Rewrite Committee, may have an impact on the work of this Committee.
5. As the Committee is aware, the Scottish Government is currently consulting on a review of part 1 of the Children (Scotland) Act 1995¹. Consultees may suggest changes to court rules and/or procedures. The Scottish Government will approach this Committee as required.

No.	Issue	Commentary
<i>Existing policy papers – follow up</i>		
1	Voice of the child.	<p>The Committee has been considering improvements to the F9 form, following a policy paper by the Scottish Government².</p> <p><u>Meeting to take place</u> between Scottish Government and Secretariat on Scottish Government policy paper on voice of the child to see if any proposals there still need to be considered.</p> <p>Scottish Government consultation on the review of part 1 of the Children (Scotland) Act 1995 considers issues on voice of the child in paragraphs 2.01 to 2.70.</p>
2	Case management	<p>Following research commissioned by the Committee and a policy paper by the Scottish Government, the Scottish Civil Justice Council is consulting on the case management of family and civil partnership actions.³ The consultation will run until <u>22 August 2018</u>.</p>
3.	Procedures in civil contempt	<p>This was raised in the Scottish Government's policy paper on case management.</p>

¹ The Scottish Government consultation is at <https://consult.gov.scot/family-law/children-scotland-act/>

² The Scottish Government policy paper on voice of the child in family cases is at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-07-december-2015-meeting-papers/paper-5-1a-hearing-the-voice-of-the-child-in-family-cases---sg-paper.pdf?sfvrsn=2>

³ The Scottish Civil Justice Council consultation on case management of family and civil partnership actions is at <http://www.scottishciviljusticecouncil.gov.uk/news/2018/05/30/consultation-on-the-case-management-of-family-and-civil-partnership-actions-in-the-sheriff-court>

	cases.	<p>Paragraph 3.13 of the Report of the sub-committee on case management said:</p> <p>“The sub-committee noted that SCTS intends to review operational procedures around imprisonment for civil contempt, to address concerns raised by Lord Glennie in the <u>Opinion in the Appeal by SM against CM</u> about the form in which a sentence of three months’ imprisonment was imposed. The sub-committee understands that as part of this review SCTS will consider developing a style interlocutor imposing civil imprisonment for contempt of court for use in all types of proceedings, including family and civil partnership actions.”</p>
4	Extension of simplified divorce/dissolution to cases where there are children under 16 and no dispute over their welfare.	<p>Scottish Government consultation being prepared, to issue at same time as SCJC consultation.</p> <p>Scottish Government consultation will also need to include, in line with usual practice, a Business and Regulatory Impact Assessment (outlining costs/savings of the proposal); an Equality Impact Assessment; and a Child Rights and Wellbeing Impact Assessment.</p> <p>Intention is to <u>issue consultation in Summer 2018</u>.</p> <p>Depending on the outcome of these consultations, changes to rules [and an SSI subject to the affirmative procedure to be made by the Scottish Government] may be required in 2019.</p>
<p><i>Possible policy papers for 8 October 2018 meeting of the Committee</i></p>		
5	Proceedings under the Children’s Hearings (Scotland) Act 2011: personal cross examination.	<p>The Scottish Government and SCRA will consider if a policy paper could be prepared for the <u>8 October 2018</u> meeting on potential changes to Rule 3.47 of the Child Care and Maintenance Rules, as suggested at the Committee meeting on 30 April 2018.</p> <p>The consultation on part 1 of the 1995 Act considers these issues at paragraphs 13.20 to 13.26 of the consultation.</p>
6	Arbitration, ADR and Mediation in family actions	<p>The consultation on the 1995 Act considers ADR in family actions in paragraphs 11.01 to 11.40.</p> <p>Given the terms of Article 48 of the Istanbul Convention⁴, the Scottish Government is considering, as outlined in paragraphs 11.15 and 11.16, whether to bring forward a policy paper to the Committee.</p> <p>This would suggest changes to court rules so that a referral of a family action to mediation or other forms of ADR could</p>

⁴ The Istanbul Convention is at <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

		<p>only take place when there has been no domestic abuse.</p> <p>Any policy paper could be for the 8 October 2018 meeting.</p>
<p><i>Scottish Government considering further</i></p>		
7	<p>Protection of domestic abuse victims and other vulnerable parties at Child Welfare Hearings.</p>	<p>The consultation on the 1995 Act considers this issue in paragraphs 9.16 to 9.24 of the consultation.</p> <p><u>The Scottish Government will consider next steps following the consultation.</u></p>
8.	<p>Change of name of those under 16.</p>	<p>The Scottish Government and National Records of Scotland (NRS) are considering if any action is required so that requests to NRS to change a name of a person under 16 in the birth register following a court order reflect the need for both parents to consent where both parents have Parental Responsibilities and Rights.</p> <p><u>The precise nature of any such action is being considered.</u></p> <p>Part 12 of the consultation on the 1995 Act discusses potential changes, in the longer term, to aspects of birth registration, including changes of name for those under 16.</p>
9	<p>Divorce/ dissolution registers.</p>	<p>The Scottish Government and National Records of Scotland are considering if any action is required so that information held in the divorce and dissolution registers maintained by NRS only covers the decree of divorce and dissolution and not other matters (such as any orders on children or on financial provision). [At the moment, NRS redact material as required].</p> <p><u>The precise nature of any such action is being considered.</u></p>
10	<p>Divorce – postponing decree of divorce when religious impediment to remarriage exists.</p>	<p>Section 3A of the Divorce (Scotland) Act 1976 provides the court with the discretion to postpone decree of divorce where a religious impediment to remarry exists.</p> <p>A power is given to Scottish Ministers to make regulations to prescribe the religious faiths which can rely on this provision.</p> <p>The Scottish Government has prescribed "Any Hebrew Congregation" under SSI 2006/253⁵.</p> <p>The Scottish Government intends to update the reference to "Any Hebrew Congregation" as the Jewish community regard it as archaic.</p>

⁵ SSI 2006/253 is at <http://www.legislation.gov.uk/ssi/2006/253/contents/made>

		<p>The Scottish Government is discussing with the Scottish Council of Jewish Communities what the new reference should be.</p> <p>A change here would have consequential implications for court rules and forms.</p> <p><u>The timings of any policy paper depend on when the discussions with the Scottish Council of Jewish Communities are completed.</u></p>
<p><i>Work to implement Bill, if enacted by Parliament</i></p>		
<p>11</p>	<p>Age of Criminal Responsibility</p>	<p>The Bill to raise the minimum age of criminal responsibility from 8 to 12 was introduced into Parliament on 13 March 2018⁶.</p> <p><u>Actual commencement is unlikely before autumn 2019.</u></p> <p>The Bill creates powers for the police in the form of court orders as follows :-</p> <ul style="list-style-type: none"> • An order authorising the search of a child under the age of 12; • A child interview order; and • An order authorising the taking of relevant physical data or relevant samples from a child under the age of 12. <p>It is of course for the Council to decide where any new rules will sit, but the powers referred to above were drafted on the assumption they would be dealt with under summary application procedure as that would seem to be a more natural fit than the Child Care and Maintenance Rules 1997.</p> <p>The Bill also:-</p> <ul style="list-style-type: none"> • Establishes a new office of an independent reviewer to review information provided by the police and requiring the police to pass any Other Relevant Information to the independent reviewer for review before disclosure to potential employers; and • Provides an individual and the police with a right to appeal the independent reviewer's decision to a sheriff on a point of law only. <p>The appeal process will be similar to that used by section 116ZB of the 1997 Act as inserted by Article 3(4) of the Police Act 1997 and the Protection of Vulnerable Groups</p>

⁶ The Age of Criminal Responsibility (Scotland) Bill is at <http://www.parlamaid.scot/parliamentarybusiness/Bills/107986.aspx>

(Previously circulated to members by email on 22 June 2018)

		(Scotland) Act 2007 Remedial (No. 2) Order 2015 and which is dealt with under Chapter 2 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999. In the circumstances any change to the 1999 Rules is considered unlikely.
<i>Not urgent - undated</i>		
12.	Sheriff Court Ordinary Cause Rule 33.8(4). [Intimation where alleged association].	<p>This Rule relates to “a family action where the pursuer founds upon an association between the defender and another named person”.</p> <p>Some of the language here may need to be updated to reflect appropriate language for same sex relationships.</p> <p>In addition, greater clarity may be needed on what the Rule is intended to provide.</p> <p>However, this is not a priority matter. <u>The Scottish Government does not intend to submit a policy paper in 2018.</u></p>
13.	Declarator of parentage/non-parentage	<p>A policy paper so that in an action for declarator of parentage or non-parentage, there should be intimation on the husband of the mother.</p> <p>However, this is not a priority matter. <u>The Scottish Government does not intend to submit a policy paper in 2018.</u></p>

**Scottish Government
June 2018**