

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 1 SEPTEMBER 2014

Members present: Lord Brailsford, Chair
Sheriff Principal Stephen
Sheriff McCulloch
Lynda Brabender, Advocate
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Clair McLachlan, Solicitor
Simon Stockwell, Head of Family and Property Law,
Scottish Government

In attendance:
Gillian Prentice, Deputy Principal Clerk of Session
Mandy Williams, Policy and Legislation Branch,
Scottish Court Service
Kenny Htet Khin (Rules Rewrite Drafting Team)
John Thomson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Stephen Brand, Solicitor
Morag Driscoll, Director, Scottish Child Law Centre
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. The Chair introduced:
 - John Thomson and noted that John had taken on the role as Deputy Legal Secretary who will provide legal support to the Committee; and

- Kenny Htet Khin and noted that Kenny leads the Rules Rewrite Team and would provide the Committee with an oral update for the Agenda Item on Rules Rewrite.
3. **The Committee agreed not to publish the following papers: 3.1A, 3.1B, 3.1C, 4.3 4.4 4.4A and 4.4B.**

Item 2: Minutes of Meetings [Paper 2.1]

4. **The Committee approved the minutes of the previous meeting with the addition of a missing apology.**

Item 3: Rules Re-write

Item 3.1: Rules Rewrite – Style Guide and instructing process [Papers 3.1A-D]

5. Kenny Htet-Khin spoke to the content of **Papers 3.1A-D** and provided the Committee with an update on the progress of the Rules Rewrite Project, covering the priorities for the year ahead, which include the drafting of rules to implement the Courts Reform (Sc) Bill, and where family law procedures sat within this. In the longer term attention would be given to making improvements to the existing rules of court.
6. **Paper 3.1A** was a draft style guide for rules, mainly for use by the drafting team who would also make reference to the Scottish Government Statutory Instrument Drafting Manual, **Paper 3.1B** provided an outline process for instructing rules, **Paper 3.1C** provided a template for covering papers to accompany proposals for rules and **Paper 3.1D** detailed the responsibilities of each committee under the project.

The Committee noted the priorities for the Rules Rewrite Team the role of the FLC in this and that a proposed timescale was still under discussion. The Committee also noted the importance of family cases in the Rules Rewrite Project, given the number of family cases in the courts.

7.

Item 4: Secondary Legislation

Item 4.1 Work Tracker [Paper 3.1]

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

Item 4.2 – Simplified Divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Oral]

9. The Chair noted that a draft Extension to Simplified Divorce/Dissolution of Civil Partnership Consultation on Draft Rules of Court had issued to members on 15 August 2014. Members were invited to ensure that comments were submitted by 6 September to enable a revised paper to be put to the Scottish Civil Justice Council (SCJC) meeting of 29 September for discussion.

10. Members noted the deadline for comments.

Item 4.3 – Child Welfare Reporters [Papers 4.3 and 4.3A]

11. The Committee considered a policy paper from Secretariat [Paper 4.3] alongside the Scottish Government's proposals for rules of court regarding [Paper 4.3A].

12. Following discussion around what proposals may require further thought, the need for reporters to have a clear remit and the role training might play, the Committee indicated that it is content that additional advice and draft rules be prepared for consideration at a future FLC meeting. This additional advice would include more information on the policy rationale for the suggested changes to rules of court.

Item 4.4 – Marriage and Civil Partnership Act [Papers 4.4, 4.4A and 4.4B]

13. The Committee considered a paper from the Deputy Legal Secretary [Paper 4.4]. The paper was produced in response to the Committee's instructions at its 7 April 2014 meeting. Members also considered additional papers on this issue [Papers 4.4A and 4.4B].

14. John Thomson spoke to the content of Papers 4.4, 4.4A and 4.4B and invited the Committee to discuss the points raised in Paper 4.4 and 4.4A along with commenting on the draft Act of Sederunt at Paper 4.4B and to indicate whether it is content with the proposals in relation to:

- non-gender-neutral references;
- intimation where allegation of adultery or other relevant association;
- actions for declarator of recognition, or non-recognition, of decrees of foreign courts dissolving or annulling same-sex marriages; and proceedings under the Gender Recognition Act 2004

15. Following discussion, the Committee indicated that the proposals were acceptable and that it was content that a revised draft Act of Sederunt be circulated to members for comment with a view to it being considered by the SCJC at its meeting on 29 September.

Item 5: A.O.C.B.

16. The Chair suggested that, after being in existence for just over a year, it may be a good time to consider the role of the Committee and its future direction.

17. Following discussion, members agreed that a strategic overview of the functions of the Committee would be helpful and that a brief paper detailing such an approach should be brought to the next FLC meeting.

Item 6: Date of next meeting

18. The next meeting is to be held on 27 October 2014 at 10.00 a.m. [now to be held 27 October at 2.30pm]

SCJC Secretariat
September 2014