

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 11 NOVEMBER 2019 AT 10 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Lady Wise (Chair)

Lynda Brabender QC (Advocate member)

Fiona Campbell (Solicitor member)

Sheriff Principal Pyle (Judicial member)

Alison Reid (Clan Childlaw)

Simon Stockwell (Scottish Government standing member)

Catriona Whyte (SLAB standing member)

In attendance: Craig Anderson (Court of Session: Clerking services Manager)

Nicola Anderson (SCTS Legislation Implementation Team)

Dawn Swords (SCTS Legislation Implementation Team)

Tracy Kell (Observer)

Support: Andrea Campbell (Secretariat Business Manager, Scottish Civil Justice Council)

Kelly Jack (Policy Office, Scottish Civil Justice Council)

Mariel Kaney (Deputy Legal Secretary, Lord President's Private Office)

Apologies: Sheriff Tait (Judicial member)

Rachael Kelsey (Solicitor member)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Principal Pyle for the first half of the meeting, Sheriff Tait and Rachael Kelsey.
2. The Chair noted that Rachael Kelsey has been reappointed to the Family Law Committee.
3. **The Committee agreed not to publish the following papers: 4.1; 4.1A-C; 4.2; 4.2A-C.**

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

4. **Paper 2019/16** was issued on 11 July 2019, inviting members to consider and approve the minutes of the previous meeting on 08 July 2019 (**Paper 2019/16A**) for publication on the SCJC's website.
5. Responses were invited by close of business on 25 July 2019. Four responses were received with the minutes updated to reflect the agreed revisions/comments provided. The minutes of the 08 July 2019 have subsequently been published on the SCJC website.
6. **The Committee noted Paper 2.1, which approved the minutes of the previous meeting by correspondence on 25 July 2019.**

Item 3: Work Programme

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

7. Simon Stockwell provided the Committee with an update on legislative developments in the Scottish Government provided at **Paper 3.1**. Simon outlined that the Children's (Scotland) Bill is currently at stage one of the parliamentary process. Oral evidence will be given by Scottish Government officials at the end of this month. The Committee indicated it would be helpful to have a discussion about the Child Welfare Reporter provisions in the Bill at the Committee's next meeting.
8. Simon also outlines some other legislative developments, including:
 - The Civil Partnership (Scotland) Bill, which would extend civil partnership to mixed sex civil partnership, is currently at Stage 1 in the Scottish Parliament.
 - The Scottish Government intends to consult in December 2019 on a draft Bill to reform the Gender Recognition Act 2004.

- The Children (Equal Protection from Assault) (Scotland) Bill has completed its Parliamentary passage. The substantive provisions come into force a year after Royal Assent.
- The Scottish Government has announced it will bring forward a Bill in this Parliament to establish a new form of protective order, which could be used to exclude a domestic abuser from the family home. This order could be applied for by a third party, such as the Police, rather than having to be applied for by the party affected by the abuse.
- The Scottish Law Commission continue work on a project to reform section 28 of the Family Law (Scotland) Act 2006, on financial provision for cohabitants when they split up.
- The UK Government have laid a human rights remedial order, which extends to Scotland, at Westminster to create a power under the Human Rights Act 1998 for the courts to make an award of damages in respect of a judicial act done in good faith.
- Following the *SM v CM* case in the Court of Session, the Scottish Government is considering with the Scottish Courts and Tribunals Service, whether Rules of Court may be required to ensure all sentences resulting from a finding of civil contempt are dealt with by an interlocutor.
- Work continues on extending simplified divorce and dissolution procedures to cases where there are children under 16 and no dispute over their welfare. The Scottish Government asked the SCJC Secretariat whether there could be a joint SG/SCJC consultation on the proposals, to make it more streamlined for respondents. The Secretariat advised they did not consider a joint consultation appropriate, given the SCJC is an independent statutory body.

Item 4: Rules review and implementation of procedures

Item 4.1 – Case Management of Family and Civil Partnership Actions in the Sheriff Court (Papers 4.1 and 4.1A-C)

9. The Committee considered changes to Chapter 33 of the Sheriff Court rules by disapplying chapter 9 and replicating the provisions into Chapter 33 to make them specific to family actions only. This is an ongoing process, members will be asked to consider changes in revoking Chapter 33AA and replicating those provisions into Chapter 33 at the next meeting.

10. **The Committee provided comments on the proposed draft rules set out in Paper 4.1B and instructed a revised draft setting out the proposed changes. The Committee agreed to resume consideration of the revised and remaining draft rules at its next meeting.**

Item 4.2 – Request for Court Rules: Court of Session Family Actions User Group – Rules of the Court of Session: Chapter 49 (Papers 4.2 and 4.2A-C)

11. Mariel Kaney spoke to these papers. Members considered changes to Chapter 49 of the Rules of the Court of Session by amending the last date for adjustment, last date for lodging witnesses and productions to 56 days before the diet of proof. This also introduces a staggered lodging process for productions.

12. **The Committee considered and provided views on the draft rules at Paper 4.2A. The Committee were content to approve the proposed new rules, subject to styling and minor technical changes, thereafter**

- **To submit to the Court of Session Family Actions User Group Council for consideration;**
- **The revised draft rules to be sent to Family Law Committee by correspondence then;**
- **Submitting to the Council for consideration and approval, subject to any stylistic or typographical amendment.**

Item 5: Dates of future meetings

13. Members noted the dates of future meetings:

- **Monday 27 January 2020 at 2.30 pm**

Scottish Civil Justice Council Secretariat

November 2019