

SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE

MINUTES

PARLIAMENT HOUSE, MONDAY 10 FEBRUARY 2014

Members present: Lord Brailsford, Chair
Sheriff Principal Stephen
Lynda Brabender, Advocate
Stephen Brand, Solicitor
Clair McLachlan, Solicitor
Professor Margaret Ross, Head of the College of Arts and
Social Sciences, Aberdeen University
Morag Driscoll, Solicitor, Scottish Child Law Centre
Simon Stockwell, Head of Family and Property Law,
Scottish Government

In attendance: Gillian Prentice, Deputy Principal Clerk of Session
Graham Crombie, Deputy Legal Secretary to the Lord
President
Neil Robertson, Policy Officer
Carmen Murray, Policy Officer

Apologies: Sheriff McCulloch
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Frances MacPherson, Sheriff Clerk

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. The Chair advised the Committee that Sarah Wolffe QC is no longer a member of the Committee, having been appointed as a Senator of the College of Justice. The Chair congratulated Mrs Wolffe on her appointment and expressed thanks for her contribution to the Committee. **The Committee noted that the Scottish Civil Justice Council had agreed that it would not be necessary to appoint a replacement advocate member to the Family Law Committee.**

3. Lynda Brabender was introduced and welcomed to the Committee. Ms Brabender joins the Committee as a replacement for Gavin MacColl.

4. **The Committee agreed not to publish the following papers: 3.2, 3.2A and 3.2B**

Item 2: Minutes of Meetings [Paper 2.1]

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

Item 3: Secondary Legislation

Item 3.1 – Secondary Legislation Work Tracker [Paper 3.1]

6. **The Committee noted the Secondary Legislation Work Tracker.**

Item 3.1 – Simplified Divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Papers 3.2, 3.2A and 3.2B]

7. The Committee considered a paper from the Deputy Legal Secretary [Paper 3.2]. The paper invited the Committee to consider initial draft rules of court [Paper 3.2A] 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.

8. The Committee considered whether the draft rules should refer to arrangements for the upbringing of a child or arrangements for the welfare of a child.

9. **After discussion, it was agreed that the wording of the draft Act of Sederunt should refer to arrangements for the upbringing of a child on the basis that this reflected the wording in section 12(1) of the Children (Scotland) Act 1995.**

10. The Committee discussed the procedures to be followed should a Child Welfare Hearing be fixed where the court has concerns over the upbringing of a child.

11. **It was agreed that a new style of form of intimation to a child in these circumstances would be required and that the timetable narrated in rule 33.22A(1) of the Ordinary Cause Rules 1993 should be adhered to.**

12. Members discussed the procedure to be followed in a simplified divorce application if the sheriff is contemplating exercising the power conferred by section 62 of the Children's Hearings (Scotland) Act 2011.
13. **The Committee agreed that in such circumstances the sheriff should postpone further consideration of the simplified divorce application until such time as the section 62 referral is determined. It was further agreed that, in accordance with usual practice, such a referral ought not to be intimated by the court to the child concerned as the Principal Reporter would inform the child anyway.**
14. Thereafter, the Committee discussed the content of the draft form detailing the arrangements for the upbringing of a child of the marriage under 16 years of age. **The Committee agreed that a separate form should be lodged in respect of each child of the marriage under 16 years of age detailing the arrangements for the upbringing of that child. A number of amendments to the content of the draft form were also agreed.**
15. **In light of the foregoing discussion the Committee instructed the Deputy Legal Secretary to prepare revised draft rules for consideration at its next meeting.**
16. Simon Stockwell advised the Committee that the Scottish Government plans to consult on making an order to disapply section 8 of the Civil Evidence (Scotland) Act 1988 in simplified divorce applications where there are children under 16. **The Committee agreed that the question of consultation on the proposals for extension of simplified divorce should be considered further at its next meeting.**

Item 5: A.O.C.B.

17. Simon Stockwell noted that the Scottish Government proposes to bring forward policy papers in a number of areas within the Committee's remit. These include:
 - Adoption and permanence
 - The Children and Young People (Scotland) Bill
 - The Marriage and Civil Partnership (Scotland) Bill
 - The voice of the child
 - An EU Regulation on mutual recognition of protection measures in civil matters
 - Arbitration, ADR and mediation in family cases

- Bar reporters

Item 7: Date of next meeting

18. The next meeting is scheduled for 7 April 2014 at 10.00 a.m.

SCJC Secretariat
February 2014