

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 24 JUNE 2013

Members present: Lord Brailsford, Chairman
Sheriff Principal Stephen
Sheriff McCulloch
Gavin MacColl, Advocate
Stephen Brand, Solicitor
Morag Driscoll, Solicitor, Scottish Child Law Centre (from
item 2.4 to item 3.5)
Catriona Whyte, Solicitor, Scottish Legal Aid Board (until
item 3.3)

In attendance: Gillian Prentice, Deputy Principal Clerk of Session
Kathryn MacGregor, Secretary to the Scottish Civil Justice
Council
Graham Crombie, Deputy Legal Secretary to the Lord
President
Neil Robertson, Policy Officer

Apologies: Professor Margaret Ross, Head of the College of Arts and
Social Sciences, Aberdeen University
Sarah Wolffe QC, Advocate
Clair McLachlan, Solicitor
Simon Stockwell, Head of Family and Property Law,
Scottish Government
Frances MacPherson, Sheriff Clerk

Item 1: Introduction, welcome and apologies

1. Lord Brailsford welcomed those present and noted apologies.
2. The Committee agreed not to publish the following papers: 3.2, 3.2A, 3.3, 3.3A, 3.3B, 3.4 and 3.5.

Item 2: Proceedings

Item 2.1 Scottish Civil Justice Council (Standing Orders and committee structure)[Papers 2.2 and 2.2A]

3. **The Committee noted the Standing Orders of the Scottish Civil Justice Council (SCJC) and that the SCJC will “determine procedures; including its quorum and which of these standing orders will apply to the conduct of the committee and for reporting back to the SCJC”.** The detail of these procedures will be considered at the SCJC meeting of 23 September 2013 and the Secretariat will report to the Committee on the outcome.
4. Kathryn MacGregor advised the Committee that there had been discussion at the SCJC about the appropriateness of sharing papers provided to the SCJC and its committees with third parties. **The Committee agreed that if a member wished to share a particular paper outwith the Committee then that should be brought to the attention of the Secretariat, who would seek the views of the Chairman on the matter.**

Item 2.2 – Family Law Committee remit and membership [Paper 2.2]

5. **The Committee noted that its remit and membership had been agreed at the SCJC meeting of 10 June 2013.**

Item 2.3 Freedom of Information (Scotland) Act 2002 [Papers 2.3 and 2.3A]

6. **The Committee noted that the SCJC and its committees were subject to the FOISA regime and that the SCJC has adopted a Publication Scheme and Guide to Information.**
7. **The Committee noted that papers submitted to the Committee will be published unless they are confidential or are otherwise exempt from FOISA.** The SCJC secretariat intends to produce guidance for Council and committee members in respect of FOISA in due course.

Item 2.4 Making Justice Work Programm/ SCJC forward work programme

8. Kathryn MacGregor gave an oral update, providing an overview of the Making Justice Work programme and how the work of the SCJC and its committees fits in to the programme.

Item 3: Secondary Legislation

Item 3.1 - Secondary Legislation Work Tracker [Paper 3.1]

9. The Committee noted the Secondary Legislation Work Tracker.

Item 3.2 – Proceedings under the Children’s Hearings (Scotland) Act 2011 – prohibition of parties from personally examining witnesses [Papers 3.2 and 3.2A]

10. The Scottish Government submitted a policy paper (paper 3.2A) recommending that rules be made to enable the prohibition of parties from personally examining witnesses in proceedings under the Children’s Hearings (Scotland) Act 2011. The Committee considered a paper (paper 3.2) from the Deputy Legal Secretary in respect of the Scottish Government’s proposals.

11. After discussion, the Committee agreed that it was not in a position to express a view on the Scottish Government’s proposed policy at this time.

12. The Committee agreed that clarification of the Scottish Government’s policy should be sought as recommended in paper 3.2, with a further paper to be provided at the next Committee meeting.

13. The Committee also agreed that enquiries should be made with the Scottish Children’s Reporter Association to ascertain how frequently the personal examination of witnesses in child welfare proceedings gives rise to difficulties at present. Morag Driscoll agreed to make similar enquiries with ASSIST.

Item 3.3 – Simplified Procedure for Parental Rights and Responsibilities in the Ordinary Cause Rules [Papers 3.3, 3.3A and 3.3B]

14. The Committee considered a paper (paper 3.3A) from the Scottish Child Law Centre on a simplified procedure for Parental Rights and Responsibilities in the Ordinary Cause Rules. It also considered a paper (paper 3.3) from the Deputy Legal Secretary in respect of the Scottish Child Law Centre’s proposals.

15. After discussion, the Committee agreed that it required further information before expressing a view on these proposals and agreed that investigations should be carried out as recommended in paper 3.3, with a further paper to be provided at the next Committee meeting.

Item 3.4 – Intimation of applications for Child Protection Orders [Paper 3.4]

16. The Committee considered whether the provisions of rule 3.31 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 (determination of applications for a child protection order) should be amended in light of the Opinion of Lord Brailsford in *NJ and EH v The Lord Advocate* [2013] CSOH 27.
17. **After discussion, the Committee agreed to continue consideration of this item to allow for consideration of the matter in light of the coming into force of the Children's Hearings (Scotland) Act 2011.**

Item 3.5 Inner House case management – appeals relating to orders under section 11 of the Children (Scotland) Act 1995

18. The Committee considered whether changes should be made to the procedural arrangements which apply when an appeal to the Inner House is taken in relation to an order made under section 11 of the Children (Scotland) Act 1995.
19. **The Committee agreed that the Rules of the Court of Session should be amended so as to make it mandatory to enrol a motion for urgent disposal when an appeal to the Inner House is taken in such a case.**
20. **The Committee agreed that the amendments should cover reclaiming motions as well as appeals from inferior courts.**
21. **The Committee asked the Deputy Legal Secretary to consider whether similar provision might be needed in respect of appeals to the sheriff principal, and to provide a paper for the next Committee meeting.**
22. **The Committee instructed the Deputy Legal Secretary to prepare a draft instrument for consideration by the Committee at its next meeting.**

Item 4: Future Business

Item 4.1 – Expert Evidence

23. The Deputy Legal Secretary gave an oral update, indicating that the Taylor Review was aware that this might be an area which the Committee would wish to consider in the future.
24. **The Committee agreed that it would consider expert evidence in family law cases after the Taylor Review reports in the autumn.**

Item 4.2 – Bar Reporters Working Group

25. The Deputy Legal Secretary gave an oral update, indicating that enquiries had been made with the Scottish Government and that it was understood that arrangements were being made for the Working Group to meet in the near future. Sheriff McCulloch advised that he had previously been a member of the Working Group as a representative of the Sheriff Court Rules Council.
26. **The Committee agreed that it would be appropriate for Sheriff McCulloch to represent the Committee on the Working Group.**

Item 4.3 – Dates of future meetings

27. Lord Brailsford advised that the 26 August was not a suitable date for the FLC's next meeting. **An alternative date of 2 September 2013 at 2.00 pm is proposed.**

Item 5 –A.O.C.B

28. Lord Brailsford informed the Committee that he had received invitations to address stakeholders at the Family Law Association, the Law Society of Scotland and the Faculty of Advocates Family Law Group on Family Law reform which he was inclined to accept in his capacity as the designated Family Law Judge in the Court of Session.
29. Lord Brailsford advised that he had been approached by Lindsay Montgomery (Chief Executive of the Scottish Legal Aid Board) who was seeking to pilot an EU led IT system for simplified, form led, court procedures. The Secretary of the SCJC advised that any such system could only be considered in the context of the IT and legislative reforms envisaged as part of the Making Justice Work programme.

**Scottish Civil Justice Council Secretariat
June 2013**