

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 4 NOVEMBER 2013

Members present: Lord Brailsford, Chair
Sheriff Principal Stephen
Sheriff McCulloch
Stephen Brand, Solicitor
Clair McLachlan, Solicitor
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Frances MacPherson, Sheriff Clerk
Robert Marshall, Head of Care and Justice, Deputy Director
Children & Families, Scottish Government

In attendance: Graham Crombie, Deputy Legal Secretary to the Lord
President
Neil Robertson, Policy Officer
Carmen Murray, Policy Officer

Apologies: Professor Margaret Ross, Head of the College of Arts and
Social Sciences, Aberdeen University
Gillian Prentice, Deputy Principal Clerk of Session
Sarah Wolffe QC
Morag Driscoll, Solicitor, Scottish Child Law Centre

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. The Chair advised the Committee that Gavin MacColl has, in accepting an appointment to the Scottish Civil Justice Council's ICT committee, resigned from the Family Law Committee. The Chair thanked Mr MacColl for his contribution to the Committee and to the Joint Working Group on Family Actions.
3. **The Committee agreed not to publish the following papers: 4.2, 4.2A, 4.3 and 5.1.**

Item 2: Minutes of Meetings [Paper 2.1]

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

Item 3: Proceedings [Papers 3.1 and 3.1A]

5. **The Committee noted the amendments to the Standing Orders and the intention to review them in spring 2014.**

Item 4: Secondary Legislation

Item 4.1 – Secondary Legislation Work Tracker [Paper 4.1]

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

Item 4.2 – Intimation of applications for Child Protection Orders [Papers 4.2 and 4.2A]

7. The Committee considered a paper from the Deputy Legal Secretary [Paper 4.2]. The paper informed the Committee that Renfrewshire Council (one of the local authorities involved in the case of *NJ and EH*) had produced guidance [Paper 4.2A] to address administratively the issues identified in that case.
8. It was noted that the Scottish Government and Renfrewshire Council have now agreed that the guidance should be disseminated more widely.
9. **After discussion, the Committee decided not to proceed with amendments to the Act of Sederunt (Child Care and Maintenance Rules) 1997 at this time.**
10. **The Committee agreed that it would be prepared to reconsider this matter in the future if invited to do so by the Scottish Government, in light of local authorities' experience of operating the Renfrewshire Council guidance and any statistical information gathered by the Scottish Government.**

Item 4.3 – Simplified Divorce – extension of simplified divorce procedure to cases where there are children under the age of 16 [Paper 4.3]

11. The Committee considered a paper from the Deputy Legal Secretary [Paper 4.3]. The paper informed the Committee of the Council's decision not to consult on the drafting of rules to give effect to the Scottish Government's proposals on the extension of simplified divorce.

12. After discussion, the Committee noted that decision and indicated that it wished to proceed to instruct the drafting of rules to give effect to the proposals.
13. The Committee proceeded to discuss a number of matters on which its views were sought in the Deputy Legal Secretary's paper.
14. The Committee confirmed that the proposals to extend simplified divorce should also encompass simplified dissolution of civil partnerships. It instructed the Deputy Legal Secretary to prepare draft provisions for civil partnerships based on the instructions given in respect of divorce, with any necessary modifications.
15. The Committee also confirmed that draft rules should be prepared for the Court of Session as well as for the sheriff court.
16. The Committee agreed that, where the court has concerns in a simplified divorce application over the welfare of any child of the marriage under the age of 16, it would not be appropriate for the application simply to be dismissed. It considered that should be possible to arrange a hearing in those circumstances. However, it also took the view that where one of the spouses withdrew his or her agreement to the arrangements proposed then the application would fall to be dismissed.
17. The Committee agreed that the extension of simplified divorce should apply in all circumstances where simplified divorce is presently available, i.e. in cases which rely on 1 year's non-cohabitation with consent of the defender, 2 years' non-cohabitation or the issue of an interim gender recognition certificate.
18. The Committee agreed that it did not wish to extend the availability of simplified divorce where the non-applicant parent's whereabouts are unknown, on the basis that that parent's silence could not be taken as agreement to the proposed welfare arrangements for the children of the marriage.
19. The Committee agreed that the application forms used in making a simplified divorce application would require to be more comprehensive in cases where children under 16 are involved. It broadly agreed that additional information should be sought as outlined in paragraphs 42 and 43 of the Deputy Legal Secretary's paper. The Committee remarked that the sheriffs principal have issued practice notes on the information

to be included in affidavits in undefended divorces and that the forms should seek to elicit the same information.

20. The Committee considered that the position on intimation to children under 16 should be broadly as at present, i.e. intimation would not happen as a matter of course. It agreed that intimation should occur if the sheriff was considering making an order under section 11 of the Children (Scotland) Act 1995, and that the sheriff should have discretion to order intimation at any time if he or she saw fit.
21. Robert Marshall agreed to consult with Scottish Government colleagues on whether it would be desirable for the application form to ask whether parties had discussed child welfare arrangements with the affected children, with Scottish Government reverting to the Deputy Legal Secretary on that point. The Committee agreed to consider intimation further in light of the draft provisions at its next meeting.
22. In light of the foregoing discussions the Committee instructed the Deputy Legal Secretary to prepare draft rules for consideration at its next meeting.

Item 5: Future Business

Item 5.1 – Report of Sheriff Principal Taylor’s Review of Expenses and Funding of Civil Litigation in Scotland [Papers 5.1 and 5.1A]

23. The Committee considered a paper from the Secretariat [Papers 5.1 and 5.1A] outlining the recommendations of Sheriff Principal Taylor’s Report, and more specifically, the recommendations which touch on family actions.
24. The Committee noted:
 - a. the recommendations of the Taylor Review;
 - b. the planned establishment of the Costs and Funding Committee; and
 - c. that the Secretariat will be presenting proposals as to how specific recommendations can be remitted to Council committees for consideration in the final instance.
25. After discussion, the Committee considered that no immediate action is required in relation to any recommendations in the report

Item 5.2 Bar Reporters Working Group

26. The Deputy Legal Secretary gave an oral update on the Bar Reporters Working Group, advising that it met on 29 October to discuss an options paper prepared by the Scottish Government, that the Scottish Government intends to publish the options paper and revisit its action plan to identify any matters which the Council might be able to progress at present. The Deputy Legal Secretary also noted that the working group has established a sub-committee to consider the form and content of bar reports and to prepare guidance in relation to them.

27. The Committee noted the position regarding the Bar Reporters Working Group.

Item 6: A.O.C.B.

28. The Committee, after discussion, considered that there should be greater co-operation with the Judicial Institute and instructed that arrangements to facilitate this be taken forward by the Secretariat.

Item 7: Date of next meeting

29. The next meeting is scheduled for 10 February 2014 at 10.00 a.m.

SCJC Secretariat
[November 2013]