

ITEM 2.3A: FAMILY LAW COMMITTEE: ACTIVITY REPORT

Purpose

1. To update the Council on activities undertaken by the Family Law Committee since the Council's last meeting and to give an indication of potential future business.

Background

2. The Family Law Committee was established by the Council on 10 June 2013 and has met twice (24 June and 2 September).

Discussion

3. The following items of business have been considered by the Family Law Committee:

3.1 Proceedings under the Children's Hearings (Scotland) Act 2011 – prohibition of parties from personally examining witnesses

The Scottish Government submitted a policy paper requesting that rules be made to enable the prohibition of parties from personally examining witnesses in proceedings under the Children's Hearings (Scotland) Act 2011.

After discussion by the Committee, a meeting took place between its officials and Scottish Government officials. A further policy paper is to be provided by the Scottish Government for consideration in due course.

3.2 Simplified Procedure for Parental Rights and Responsibilities in the Ordinary Cause Rules

The Committee has considered a paper from the Scottish Child Law Centre on a simplified procedure for Parental Rights and Responsibilities in the Ordinary Cause Rules.

After further enquiry and discussion the Committee decided that it was not satisfied in principle that a new simplified procedure, on the lines proposed by the Scottish Child Law Centre, should be introduced. Accordingly, it does not propose to take any further action in respect of the paper at this time.

3.3 Intimation of applications for Child Protection Orders

The Committee has 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.

After further enquiry and discussion the Committee postponed further consideration of this proposal until its meeting on 4 November 2013, so that its officials may explore with the Scottish Government whether guidance will be issued on this matter and the likely content of any guidance.

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

The Committee considers that 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 to make it mandatory to enrol a motion for urgent disposal. The Committee also took the view that it was unnecessary to introduce a procedure for seeking urgent disposal in respect of appeals to the sheriff principal.

The Committee has accordingly submitted draft rules to the Scottish Civil Justice Council. It recommends that the Council submit the draft rules to the Court of Session for inclusion in the next miscellaneous instrument [**Papers 7.5, 7.5A and 7.5B**].

3.5 Simplified divorce – extension of simplified divorce procedure to cases where there are children under the age of 16

The Committee has considered a paper from the Scottish Government proposing that simplified divorce be extended to cases where there are children under the age of 16, but there is no dispute as to the arrangements for their welfare.

The Committee is satisfied in principle that simplified divorce should be extended to cases where there are children under the age of 16, but there is no dispute as to the arrangements for their welfare.

The Committee noted that the Scottish Government intends to consult on the making of an order under section 8(4) of the Civil Evidence (Scotland) Act 1988, and to bring a further policy paper to the Committee in light of that consultation. The Committee recommends

that the Council carry out its own consultation on the proposal [Papers 7.2, 7.2A and 7.2B].

4. The Family Law Committee has noted the following future business:

4.1 Expert Evidence

The Committee has noted that the Taylor Review report will be published on 11 September and that its recommendations may result in future business for the Committee.

4.2 Bar Reporters Working Group

The Working Group will meet again on 29 October 2013 to consider a "Solutions Paper". It is considered likely that a policy paper suggesting rules changes will be presented to the SCJC after the meeting of 29 October. Sheriff McCulloch, a member of the Committee, formerly represented the Sheriff Court Rules Council on the Working Group. He continues to be a member of it.

4.3 Marriage and Civil Partnership (Scotland) Bill

The date for submission of written evidence on this Bill has passed and oral evidence is to be taken from 5 September 2013. The Bill, when passed, is likely to result in amendments to the rules of court, and discussions regarding this will be arranged between officials.

**Scottish Civil Justice Council – Secretariat
September 2013**