

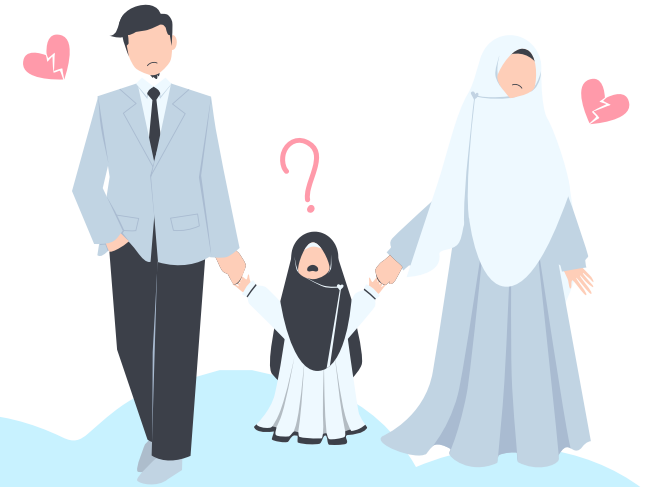
The New Case Management Rules for Family Court Cases



Your guide to navigating the Scottish Family Court system

These new rules only apply to cases that started after the 25th of September 2023. Cases that started before then will follow the old process- [click here](#)

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This guide is useful for parents with solicitors and parents who are self-representing. If you are representing yourself you may be interested in our 'Representing Yourself' guide- [click here](#)

What are the New Rules?

The new rules have changed certain processes within the Family Court system. Each of these changes will be covered individually in this guide.

1. The introduction of Initial and Full Case Management Hearings
2. Changes to the information to be prepared by parents in a pre-hearing meeting.
3. Newly increased emphasis on one Sheriff continuing to hear your entire case.

This guide was prepared by Shared Parenting Scotland with input from numerous solicitors and service users.

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A Family Court Flow Chart

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For Cases Beginning After 25/09/23

The process begins with a dispute between separated parents. One parent decides that Court action may be necessary as other dispute resolution is failing.

This flow chart applies from here if you are the parent raising the Court action: The **Pursuer**. The parent you are raising the case against is the **Defender**.

See a solicitor. Here you can investigate whether you can access legal aid and explore the various dispute resolution options available.



You will only move onto the next stage where other dispute resolution options (communication and mediation) have failed.

Draft an application to the Court. This is known as an 'Initial Writ'.

If you have a solicitor they will do this for you. If not, see our 'Representing Yourself' Guide for help drafting a writ.

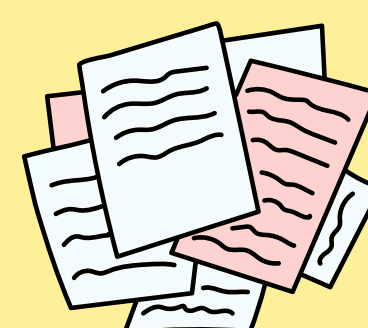
Send your application to the Sheriff Clerk for warranting. An inventory of productions must accompany this. Here, you must submit the birth certificates of the necessary child(ren)

When your writ is 'warranted' by the Court, this gives permission for it to be 'served' on the other parent who you seek action against- the Defender.

An Inventory of Productions is just a list of documents submitted to the court. Each child that the action is raised over must have their birth certificate submitted.

When you get the 'warranted writ' back, serve the service copy upon each defender. Include in this a Notice of Intention to Defend. Make sure you are given confirmation that the defender has received your service.

To 'serve' the service copy means to formally send it to the other parent- via letter or email. The Notice of Intention to Defend sent with this is a document the other parent completes to show that they are going to fight against your action.



If you are the parent who has been served a writ you are the **Defender**. The flow chart applies to you from here. You should see a solicitor at this point.

The other parent (the defender) has 21 days from the date of service to respond to you. In these 21 days you cannot do anything- only check it has been served.

The 'date of service' is the day that you 'served' the service copy upon them. This is why it is important you get confirmation that they have received the service.



If a Notice of Intention to Defend is lodged by the Defender within 21 days, the Court will send you a G5A form. This G5A form gives a list of dates relevant to you- including dates of the Initial Case Management Hearing and Child Welfare Hearing.



Make sure that you put these important dates in your diary/ calendar!

The Adjustment Period commences. This is where the parties both adjust what they want from the Court and communicate this between themselves (usually via solicitors). By the end of this, what you are each asking the Court for should change.

It is possible that you may reach an agreement during the adjustment period. If this is so, communicate this to the Court.

The Initial Case Management Hearing/ Child Welfare Hearing will commence. Be prepared for these hearings by preparing responses to each factor within the Case Management Checklist.



The better prepared you are for hearings, the more confident that you will feel when your Court day comes.

The Sheriff will arrange a date for the Full Case Management Hearing at the end of the Initial Case Management Hearing. In the time between these you can adjust your pleadings again and conduct the pre-hearing meeting.

The Sheriff may also make interim orders at the Initial Case Management/ Child Welfare Hearing. These are temporary orders that will be used until a final order is agreed.

They may concern child contact/ living arrangements. E.g., the Sheriff could temporarily grant you contact once a fortnight.



At the Pre-Hearing Meeting yourself and the other party must discuss the possibility of a full settlement. If this can be agreed present this to the Sheriff at the Full Case Management Hearing and what you have requested can be granted.

If full settlement cannot be agreed the Full Case Management Hearing will proceed like the initial- covering each point of the checklist.

If not, the Full Case Management Hearing commences. Here, the Sheriff will again hear from each party on each checklist factor and then set a date for the Proof if necessary. The Pre-proof dates will also be set.

Make sure that you put these important dates in your diary/ calendar!



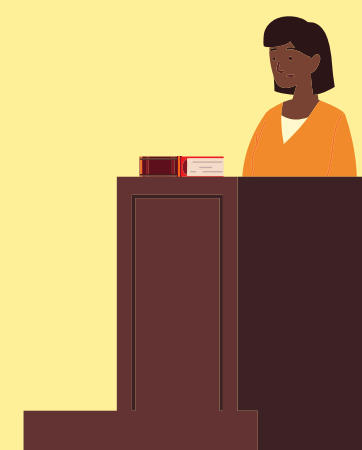
Most cases do not go as far as a Proof. The likely outcome is that a final order will be made before the point where evidence is required. Your Sheriff will tell you whether a Proof is necessary.

The Pre-Proof is a hearing to make sure that both parties are prepared and ready for the final proof. It should determine how many days are needed for the Proof and what the issues in dispute are.

The less issues in dispute the shorter a Proof will usually be. At the Pre-proof the Sheriff may try and reduce the matters in dispute.

The Final Proof Commences. Here, witnesses selected by you and the other party will give evidence under oath at Court about the matters in dispute. Final submissions are also made by either side- a folder given to the Sheriff which will be used to make decisions.

Witnesses are examined by the party relying on their evidence, and cross-examined by the opposite party. This means that they will be asked questions upon their information and the reliability of it.



The Sheriff will make the final order based upon what has been heard at the Proof. The final order is binding upon yourself and the other party. Disobeying it is a criminal offence. Reasons will be given in the judgment as to why this decisions was made.

The Family Court Process begins with your Initial Case Management Hearing (usually joint with a Child Welfare Hearing) followed by a Full Case Management Hearing. View the above flow chart outlining the process before reading the detailed information below .

Initial Case Management Hearings

The Initial Case Management Hearing must occur no sooner than 21 days and no later than 49 days after expiry of the **notice period**

The Initial Case Management hearing will take place in a Sheriff Court. Further information on preparing for your day in Court is available [here](#).

During the Initial Case Management Hearing each party will explain to the Sheriff their position concerning each factor contained within the **Case Management Checklist**. This same checklist will be used at the Full Case Management Hearing where both parties again explain their position on each factor.

At the end of the initial case management hearing the Sheriff will arrange a date and time for the Full Case Management Hearing.

Notice Period

The Notice Period is the last date that the 'notice of intention to defend' can be given to the Court. This is 21 days after the Service Copy of the Writ is given to each Defender.

View the flow chart explaining these different periods [here](#).



Case Management Checklist

In preparation for the Initial Case Management Hearing and the Full Case Management Hearing you must consider various factors. In considering each factor you should decide where you stand on that topic and how you will present this to the Sheriff on the day of each hearing.

This must be done separately for the Initial Case Management Hearing and the Full Case Management Hearing. You and the other party's position on certain factors may change between the two.



Some important factors in this checklist for you to consider are...

- Any **matters capable of agreement**
- The **matters** that are **in dispute** between you and the other party.
- Any **expert or skilled evidence** that you require to be presented.
- Whether more must be done to discover the **views of your child** on the matter.
- The number of **witnesses** you will present and their availability.
- The progression of your **Legal Aid** application (if applicable)

The full list of 16 factors can be found [here](#).

Although this seems long some factors may not require much comment where your case does not concern them extensively. It is however still important that you are prepared to address the Sheriff on EVERY factor.

This same checklist is used for both the Initial Case Management Hearings and Full Case Management Hearings. Refer back here when the 'Case Management Checklist' is mentioned in the Full Case Management section.

Matters capable of agreement= issues that both parents agree upon.

Matters in dispute= issues that both parents disagree over.

Expert or skilled evidence= evidence given by a professional

Every child is presumed capable of expressing their view unless shown they cannot

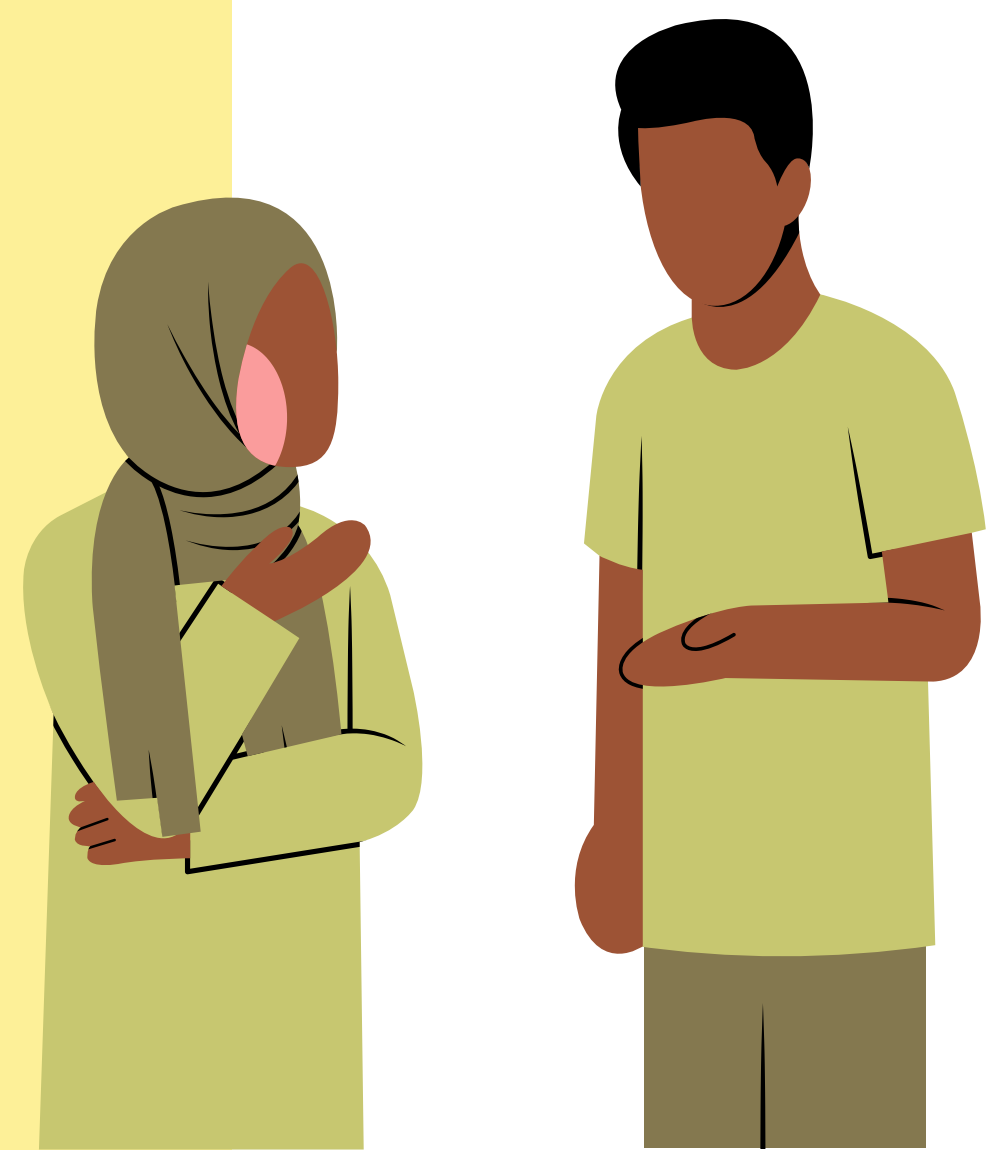
Witness= people who you choose to give evidence to the Court under oath at your final proof.

Legal Aid= free legal support for those most in need. More information [here](#)

Full Case Management Hearings

The procedure you should follow before a Full Case Management Hearing is similar to the process that existed before the new rules.

The parties must conduct a '**pre-hearing meeting**'. The 'pre-hearing meeting' will be discussed in the section directly below this one.





Joint Minute

A joint minute is simply a document that you and the other party to your case will put together, discussing non-controversial points of the case. It should include all you have discussed in the meeting (particularly each checklist topic) so that the Court are on the same page as you for the Full Case Management Hearing.

After this meeting the parties must lodge a **joint minute** of the meeting with the court. This joint minute is lodged two days before the Full Case Management Hearing.

The parties must also lodge a list of witnesses seven days before the Full Case Management Hearing. This must include a brief summary of each witness's evidence. The aim is to familiarise the Court with which witness is giving which evidence, avoid duplication of evidence, and raise a chance for experts with competing evidence to confer.

Attending the Full Case Management Hearing is similar to the Initial Case Management Hearing. You will present to the Sheriff your position on each factor in the Case Management Checklist- as will the other parent.

At the end of the Full Case Management Hearing the Sheriff will set a date for the proof and the pre-proof meetings. The Sheriff may also make other orders at the Full Case Management Hearing such as:

- Excluding certain issues from the proof
- Instructing a meeting between two skilled expert witnesses
- Removing witnesses from the proof
- Ordering other hearings
- Awarding expenses
- Allowing the Full Case Management Hearing to continue in no more than 28 days time.

Brief Summary of Witness Evidence

Witness names, occupations and addresses must be included. The summary should be under 50 words covering what the witness is expected to speak about in Court. Special Rules also apply for witnesses who may be vulnerable.

Changes to the Information to be Prepared by Parents: Pre-Hearing Meetings

The new rules have also changed the type of information that you and the other party must collect and prepare in advance of your hearing.

Pre-Hearing Meetings

You and the other party (and any solicitors involved) must hold a Pre-Hearing Meeting before the beginning of a Full Case Management Hearing. In this meeting you must discuss numerous things set out by the Court...

1. The Possibility of Settlement

Most importantly you should consider the option of settling your case with the other party before the Full Case Management Hearing. If you can reach a compromise that ensures the best interests of your child(ren) and that both parties are happy with then settlement is a great option. It means you will not have to face the struggles (and costs) of a Full Case Management Hearing or a Proof.

2. The Matters Agreed Upon (Not in Dispute)

If it is not possible to fully settle your case then you should both consider any individual matters which you might settle. Agreeing on some matters and presenting this to the Court means that there is less to cover at a Full Case Management Hearing.

3. Each Point on the Case Management Checklist

Again, you should both go over each factor in the Case Management Checklist together. This will help each of you to understand where the other is coming from and promote the chance of a compromise being reached



You may not find it easy to communicate with the other party. This is natural where the other party is an ex-partner and there is an ongoing disagreement.

Remember that your child(ren) should remain the priority in all matters. Your ex-partner should share this view. Consult our ['Communicating with an Ex-Partner' Guide](#) if necessary.





'Where Possible'

As the same Sheriff will only be given 'where possible' it is not certain that this will happen in your case. As the rules are new we do not yet know how often the same Sheriff carries entire cases. You may get multiple Sheriffs for different hearings. There is no harm in asking for the same Sheriff to continue dealing with your case when you are in Court for a hearing if this is what you would like.

The new rules also make changes to the role of Sheriffs in Family Law cases. The presumption is that the same Sheriff will hear all hearings within your cases '**where possible**'.

This aims to create a smooth transition between hearing types. It will allow you to know the Sheriff you are dealing with and them to know your case.

The goal is for the same Sheriff to be present at the...

- Initial Case Management Hearing
- Full Case Management Hearing
- Child Welfare Hearing(s)
- Pre-proof Hearing(s)
- Proof

Details on each of these types of hearing are available in our flow chart [click here](#)



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