

APPROVED MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

Officers' Mess, Highland Regiment HQ, Dunkeld Road, Perth

3 June 2005

PRESENT

Sheriff Principal Sir S S T Young, Bt, QC (Chairman)
Sheriff Principal B A Kerr, QC
Sheriff I Peebles, QC
Sheriff W Holligan
Sheriff M Fletcher
J d'Inverno
S Brand
A Johnson
J Murphy
Richard Young
R Conway
P Cackette
G McKeand (Secretary)
Karen Stewart (Assistant Secretary)

1. **Apologies** : S Di Rollo QC, C Flanagan, J McCormick

The council welcomed Mr Henry Tackey , Parliamentary Counsel from Ghana as an observer at today's meeting. On behalf of the council, the Chairman thanked Mr d'Inverno and the secretariat for making the domestic arrangements for the meeting.

2. **Minutes**

The minutes of the previous meeting on 11 February were approved. There were no matters arising.

3. **SCRC meetings**

It was agreed that future meetings of the Council will be held in Perth. Travel arrangements could be co-ordinated for those coming from Edinburgh area.

4. **SCRC Business Planning**

The draft business plan prepared by the secretariat was discussed and amendments agreed. Timescales were set for objectives. A copy of the agreed plan is attached and will be posted on the Rules Council website by the Secretariat.

5. Miscellaneous Act of Sederunt

The Council considered the draft and agreed the following:

- Form F26 is suitable
- Rule 28.16 to be amended to read

“**[28.16.]**—(1) Without prejudice to any other method of taking evidence, an application by a party for use of a live television link to examine a witness may be made by motion for determination by the sheriff—

- (a) at any stage in the proceedings, or
- (b) in relation to part of the proceedings.

(2) Where such an application is made, the sheriff may make an order allowing the witness to be examined by the use of a live television link or by any other means and subject to such conditions as he considers appropriate in the circumstances of the case.”.

The provisions of this rule should also be reflected in the summary cause and summary application rules. There is no requirement for inclusion in the small claim rules as the sheriff already has power under rule 9.3 to permit this.

Lady Paton will be informed of our proposed rule 28.16 regarding taking of evidence via television link to seek her opinion as a code of practice is currently being developed.

- Draft rule 21.6 – option 1 was agreed
- It was noted that Rule 33.93 of Ordinary Cause Rules requires to be amended to refer to ‘Section 52’ and not as stated therein.

It was agreed that the amended draft be taken forward with the chairman in due course.

6. EU Parental Responsibilities

The draft rules instructed have not yet been received.

The council agreed that when received, this draft may be taken forward by the sub-group of Sheriff Principal Young, Sheriff Holligan and Mr Brand who have worked on this in detail previously.

7. Gender Recognition Act

Following submission of the Councils’ observations regarding evidence in undefended divorces the information received from policy holders was considered. There was discussion on the need for any change to rule 33.28(2) of Ordinary Cause Rules. Consensus was reached that no changes were necessary and that a gender recognition certificate produced in evidence will be self-proving for this purpose.

8. Civil Partnership Act

The council considered the paper produced by the secretariat and the draft act of Sederunt. The following matters were agreed:

- Nullity of partnership in 'civil partnership actions' in the sheriff court would be incompetent
- Draft rule 33A.1 should be amended by deletion of sub-sections f,g,h,i and k
- Draft rule 33A.3(1)(b) should make reference to 'the civil partnership of the parents of that child'
- Draft rule 33A.8 should be amended by deletion in line 1 of the word 'improper' and deletion of sub-section 4
- Draft rule 33A.21-the provision of this section apply
- Sub paragraph 33A.6(3)(c) should be deleted
- All rules should be in normal number sequence
- Part VIII and XII should be deleted as inapplicable
- Separate forms should be drafted for chapter 33A
- A number of other drafting and stylist issues would be raised with the drafts person

A further draft will be instructed

9. Enterprise Act

9a) Rules of court should be instructed for inclusion in the Miscellaneous act of Sederunt currently in preparation which is to be cleared with the Chairman in due course.

9b) The council considered the paper produced by the Secretariat. It was agreed that a watching brief should be maintained meantime pending the outcome of current ongoing court cases testing the issues under discussion. There is no need to amend the Summary Application Rules, the opinion of the council being that Rule 1.4 will be applied and that as a consequence, applications for order will be by way of Summary Application.

10. Mental Health (Care & Treatment) (Scotland) Act 2003

The council considered the paper produced by the secretariat. The council members collectively expressed serious concerns on the prospect that policy holders are considering not making regulations on categories of persons to whom intimations must be made.

The following matters were agreed:

- Secretariat to advise policy holders of council opinion on making of regulations
- Section 35 warrants
 - No requirement for rules of court
- Section 293
 - Application form required to be included in regulations by policy holders

Regulations will be required regarding persons who may be heard / intimated
Specific procedure to be provided for in rules of court with method of intimation and time-scales to be at the discretion of the sheriff

▪ **Section 295**

The council agree that the current draft rule 3.28.2 is inappropriate

Application form required to be included in regulations by policy holders

Regulations will be required regarding persons who may be heard / intimated

A rule providing for a hearing should be drafted

Specific procedure to be provided for in rules of court with method of intimation and time-scales to be at the discretion of the sheriff

The secretariat to instruct amended draft in time for the next meeting.

11. Protective Diligence – item removed from agenda

12. Paper from Scotland's Commissioner for Children – item removed from agenda

13. Legal aid implications re appointment of Curators, Reporters and Safeguarders

The council noted the paper produced with interest and whilst unclear what, if anything, the council in isolation can do to rectify the problem if there is one, would invite the author in the first instance to write further to the secretariat who will prepare a further paper to the council if required.

14. Business update

The council noted with interest recent progress on the various issues.

15. Proposals from Ordinary Cause Committee

The chairman advised that the Sheriffs Principal have considered the matter of appeals following decree by default and have decided that there is no requirement for a practice note on the matter and no further action is required.

The council noted the position on 'single issue cases' and the fixing of civil 'intermediate diets'.

There was general discussions on all of the matters raised in the committee paper and a summary of the last meeting was given by the committee chairman. Mr Cackette indicated that the Scottish Executive (SE) are very interested in many of the issues raised and would welcome the council writing to offer support for change.

The council considered the draft commercial court report and observed that it was comprehensive and valuable. The content and the issues mentioned above were all matters which the council deemed should be taken in the context of the need for a wider review of civil procedure.

Council members discussed:

- Should there be one composite court for dealing with civil processes rather than current court of Session and Sheriff Court?
- Is there a need for 2 rules councils?
- Is there a need for further specialisation within court procedures?
- Criminal procedure would require to be looked at as it would be difficult to see how the court structure for civil could be dealt with in isolation.

Pending any SE review of civil justice, the council agreed that the committee should look at any potential measures capable of making improvements to the ordinary cause rules such as the 'Coulsfield Rules' and extension of the commercial court.

Members of the committee agreed to write to the committee secretary with agenda proposals and submissions on the commercial court report by 24 July.

The next committee meeting was scheduled for 18 August 2005 at 10.30 am in Perth.

The council agreed that it is appropriate for the chairman to write on behalf of the council to the Scottish Executive on the issue of wider civil justice reform.

The following additional proposals submitted for consideration were approved by the council:

Caveats

- A composite S.I for caveats should be instructed – similar to C of S Rule
- Chapter 4 of OCR 93 should be repealed.
- Rule 2.8 and 2.9 of Summary Application Rules should be repealed.
- Interpretation of the content will require to be clarified in explanatory notes to avoid further ambiguity.

Commission & Diligence – expenses of havers

- Form G11 and equivalent forms for small claims and summary cause should contain a similar note to that set out in form G13 regarding expenses.

16. Any other business

The secretariat advised the council of discussions they have had with OSSE on timescales required for instruction and review of draft acts of Sederunt. The Council agreed that a minimum period of 4 weeks notice for users was appropriate.

There was discussion on the volume of working being undertaken by the council and the current working methods. It was suggested that policy decisions should be dealt

with by the whole council but that it may be appropriate to have smaller sub-groups look at drafting details for different acts of sederunt. The proposal met with approval. The practicalities will be considered by the chairman and secretariat for discussion at the next meeting.

The secretariat were asked to write to W. Green, Scots Law Publishers to alert them to the need to update Parliament House Book One. Form G13 requires to be corrected and Rule 16.3 of Ordinary Cause Rules 1993 is omitted.

17. Dates of meetings were scheduled for

2nd September 2005 at 10.30 am in Perth

2nd December 2005 at 10.30 am in Perth

**SHERIFF COURT RULES COUNCIL & COMMITTEES
BUSINESS PLAN 2005 – 2006**

Aims Of Council:

- ♦ To review civil practice and procedure within Sheriff Court
- ♦ To consider the need for rules of court flowing from new and amended legislation and to instruct subordinate legislation as required.
- ♦ To support Council IT Committee established to consider wider use of information technology in dispute resolution
- ♦ To support Council Ordinary Cause Committee in the development of Ordinary Cause procedure
- ♦ To support Council Mediation Committee established to examine the use of mediation in court procedures and to re-consider the current requirement for the sheriff to 'seek to negotiate settlement' in both small claims and summary cause procedures

Objectives	Progress to date
<p>IT Committee</p> <ul style="list-style-type: none"> ▪ To agree a revised project timetable with SCS before 30 September 2005 ▪ To report this Committee's findings and recommendations to the Sheriff Court rules Council by latter part of 2005 	<p>Interim report of consultation responses considered by SCRC in Feb 05.</p>
<p>Ordinary Cause Committee</p> <ul style="list-style-type: none"> ▪ To Consider the commercial court research and make recommendations to the Council by June 2005 ▪ Pending consideration by the Scottish Executive of the SCRC's recommendations for a full civil justice review, to make further recommendations to the Council on further reform of ordinary cause rules by January 2006 	<p>Committee met 22 April 05. Report of interim proposals to SCRC on 3 June 05.</p>

<p>Mediation Committee</p> <ul style="list-style-type: none"> ▪ To obtain information on the legal systems of other countries which may assist the committee; to consider and evaluate the evidence and to consider options ▪ To report to the SCRC with recommendations by latter part of 2005 	<p>Committee met on 20/4/05 and considered various permutations for draft rules. Legal advice sought from OSSE on the <i>vires</i> of its proposals.</p> <p>Next meeting 19/8/05</p>
<p>Full Council</p> <p>To provide the necessary subordinate legislation for the current legislation under consideration.</p>	
<p>Enterprise Act 2002.</p>	<p>Rules being considered for Competition Modernisation</p>
<p>Mental Health (Care & Treatment) (S) Act 2003</p>	<p>Draft S.I prepared awaiting further policy instruction. Considered by SCRC on 3-6-05</p>
<p>The Family Law Act</p>	<p>Secretariat shadowing Bill process</p>
<p>Civil Partnership Act 2004</p>	<p>Draft rules considered on 3-6-05</p>
<p>Constitutional Reform Act 2005</p>	
<p>Adoption Policy Review</p>	<p>Bill expected</p>
<p>Civil Justice (S) Bill Nuffield Foundation Research - Advisory Group chaired by Lord Coulsfield</p>	<p>Bill expected</p>
<p>Review of Domestic Abuse (DA) Legislation</p>	<p>Proposal for Act to combine civil & criminal legislation</p>
<p>Bankruptcy and Diligence (S) Bill</p>	<p>Bill expected 2005</p>
<p>Licensing (S) Bill</p>	<p>Bill introduced Feb-05</p>
<p>European Enforcement Order</p>	<p>Act of Sederunt to be instructed</p>
<p>EU regulation on parental responsibility (inter-country child custody disputes)</p>	<p>C of S rules published, Act of Sederunt instructed</p>
<p>European Order for Payment and European small claims proposals</p>	<p>Secretariat to attend regulation working groups and update SCRC</p>
<p>Increase in sheriff court jurisdiction limits</p>	<p>Thresholds not yet known</p>