

Approved

Minutes of Meeting of Sheriff Court Rules Council

Ordinary Cause Committee

Held at Perth Sheriff Court on 13 April 2007

Present

Sheriff Principal Sir S S T Young Bt QC (Chairman)
S Brand
J d'Inverno
P Cackette
R Conway
G Way
A Johnston
S McCourt (SCRC Secretary)

1 Apologies

Sheriff W Holligan, K Stewart (Committee Secretary)

2 Minutes of previous meeting

The minutes of the previous meeting held on 4 May 2006 were approved.

3 Personal Injury –Draft Rules

The Committee considered the draft rules as set out in the consultation document. After discussion it was agreed in principle that the procedure in the proposed new Chapter XX should replicate as far as possible the procedure in Chapter 43 of the Rules of the Court of Session ("RCS") with the result that no attempt should be made at this stage to take account of those refinements to the procedure which had been proposed in the responses to the consultation document. Rather it was agreed that these responses should be drawn to the attention of the Personal Injuries User Group at the Court of Session so that consideration could be given to any amendments which might need to be made to Chapter 43 in light of these responses. Any such amendments could then be reflected in Chapter XX. Thereafter members approved the instruction of a draft Act of Sederunt based on the draft rules in the consultation document but incorporating the following amendments to Chapter XX and the Ordinary Cause Rules 1993 ("the 1993 Rules"):

Application and interpretation of this Chapter

Rule XX.1

- In Rule XX.1(1) there should be a similar insertion to that proposed in paragraph 2(5) of the draft Act of Sederunt (Rules of the Court of Session Amendment No. []) (Personal Injuries Actions etc) 2007 ("the draft 2007 Rules").
- There should be a specific provision excluding Chapter 28A of the Ordinary Cause Rules 1993 – Pre-Proof Hearing – in actions to which Chapter XX applies.
- G Way to identify what other provisions contained in the 1993 Rules should be excluded and advise the secretariat and the draftsman instructed accordingly.

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Form of initial writ

Rule XX.2

- Draft Form P1 based as far as possible on Form 43.2-A in the RCS.
- With reference to paragraph (2) a new provision should be added to Chapter 36 of the 1993 Rules to the effect that Parts I,II, III, and IVA should apply only in those personal injuries actions which have been appointed to proceed as ordinary actions (either at the outset in the case of an action based on alleged clinical negligence or thereafter in terms of Rule XX.5).
- With reference to paragraph (4), draft Form P2 based as far as possible on Form 43.2-B in the RCS and incorporating the amendment thereto proposed in paragraph 2(10)(b) of the draft 2007 Rules.
- Add new rule XX.2(6) in similar terms to that in paragraph 2(2) of the draft 2007 Rules in relation to actions based on clinical negligence.

Citation, service and intimation of initial writ

Rule XX.3

- G Way to consider the need to use a form based on Form 43.3 in the RCS (citation of defender) and advise secretariat if the form is necessary. The secretariat to instruct draftsman to delete the rule unless there is good reason to the contrary

Allocation of diets and timetables

Rule XX.6

- Amend paragraph (1)(b) by inserting the words "in a Practice Note" before the word "by" in the 2nd line
- With reference to paragraph (2), draft Form P4 based as far as possible on Form 43.6 in the RCS
- Amend paragraph (5) by deleting the words "make a" in the 2nd line and inserting instead the words "apply by"
- Amend paragraph (7) by deleting the word "shall" in the 2nd line and inserting instead the word "may" (see paragraph 2(7) in the draft 2007 Rules).

Applications for sist or for variation of timetable

Rule XX.8

- Rule 43.8 (3) of Chapter 43 of the RCS should be inserted into the rule unless there is good reason to the contrary for it being excluded

Statement of valuation of claim

Rule XX.9

- With reference to paragraph (1), draft Form P5 based as far as possible on Form 43.9 in the RCS and incorporating the amendment thereto proposed in paragraph 2(10)(d) of the draft 2007 rules
- Amend so as to reflect the amendments proposed to rule 43.9 of the RCS in paragraph 2(8) of the draft 2007 rules

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Pre-proof Meetings Rule XX.10

The committee agreed in principle that it should not be a requirement of the procedure in the sheriff court that the parties should actually meet and that a pre-proof discussion between them might be conducted by telephone or video link. It was thought, subject to the advice of the draftsman, that to give effect to this it would be sufficient (with the single qualification noted below) to substitute the word "conference" for the word "meeting" wherever it appeared in the rule.

- Amend heading to "Pre-proof conferences"
- Amend paragraph (1) by deleting the word "meeting" where it occurs twice in the 1st line and inserting instead the words "conference" and "discussion" respectively
- Amend paragraph (2) by deleting the word "meeting" in the 1st line and inserting instead the word "conference"
- Amend paragraph (4) by deleting the word "meeting" in the 1st line and inserting instead the word "conference"
- Draft Form P6 based as far as possible on Form 43.10 in the RCS and (a) incorporating the amendments thereto proposed in paragraph 2(10)(c) of the draft 2007 rules and (b) substituting where appropriate "conference" for "meeting".

Actions based on Clinical Negligence

- Replicate as far as possible new Rule 43.1A and Form 43.1A as provided for in paragraphs 2(6) and (10)(a) of the draft 2007 rules into the new Chapter XX.

Mesothelioma actions

- Replicate as far as possible new Rule 43.20 as proposed in paragraph 2(9) of the draft 2007 rules into the new Chapter XX taking into account any consequential amendments

Supplementary

- Amend rule 28.10 of the 1993 rules in line with paragraph 2(4) of the draft 2007 rules
- G Way to consider and advise secretariat whether in light of Chapter 25 of the 1993 rules a new rule is required based on the proposed new rule 31.3 in the RCS referred to in paragraph 2(3) of the draft 2007 rules, and the draftsman to be instructed accordingly

Mr Cackette undertook to advise the next meeting of the Personal Injuries User Group (PIUG) of the availability of the consultation responses on the SCS website and also discuss with them the possibility of 2 members of the Ordinary Cause Committee being invited to join the Group in order to share experience across both the Court of Session and the sheriff courts, in light of the roll out of personal injury rules. The Chairman undertook to advise the Director of the Judicial Studies Committee of the proposed changes to personal injury rules. The secretariat to advise SLAB likewise. The secretariat to also discuss with

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Mr Cockburn, SCS the likely timetable involved for rolling out of the rules.

4 ADR – Draft Rules

The Committee considered the draft rules as set out in the consultation document. After discussion members approved the instruction of a draft Act of Sederunt based on the draft rules but incorporating the under-noted amendments to Chapter 9A. As agreed at the meeting of the Council on 6th February 2007, it should be provided that the new Chapter 9A should apply to all ordinary actions with the exception of those governed by Chapters 40 (commercial actions) and XX (personal injuries actions) of the 1993 rules.

Chapter 9A Ordinary Causes Rules 1993

Rule 9A.3(1)

- Form 011 to be amended by deleting the words “for the reasons given below” as well as the “Reasons” box.

Rule 9A.3(2)

- Delete

Rule 9A.4 (1)

- Amend to “Where all parties have indicated their consent, the court may continue the cause for the purpose of such referral for such period as may be specified”

Rule 9A.4(2)

- Delete - Superseded by amendment to Rule 9A.4(1)

Rule 9A.5

- Delete

Summary Applications Rules 1999

- A new chapter should be inserted in the same terms as the proposed new Chapter 9A.

Summary Cause Rules 2002/Small Claim Rules 2002

- A new chapter should be inserted in each of the Summary Cause Rules 2002 and the Small Claim Rules 2002 in the same terms as Chapter 9A subject to the substitution in Rule 9A.2(1) of the words “incidental application” for the word “motion”
- Add new paragraphs 8.3(2A) to the Summary Cause Rules 2002 and 9.2(2A) to the Small Claim Rules 2002 and amend by including the words “if parties consent” after the word “sheriff” in each case

5 Heritable Actions/Summary Cause & Small Claim Guidance

The Committee considered amending Form 1a of Appendix 1 to the Summary Cause Rules 2002 (the "2002" Rules) as well as the relevant guidance to make clear to a defender in an action for recovery of possession of heritable property and payment of money who completes an application for a time to pay direction or a time order the difference between admitting the claim for payment of money and the claim for recovery of possession of heritable property.

Mr McCourt informed the Committee that the Scottish Court Service had advised it would cost in the region of £20,000 to amend the printed forms and booklets alone. It was agreed that the cost was too prohibitive to justify amendment of these for the sole purpose of clarifying this particular point.

The Committee suggested instead that a new Rule 30.9 be inserted into the 2002 Rules along the following lines:

"Where a defender in response to a summons for recovery of heritable property completes an application in writing for a time to pay direction under the Debtors (Scotland) Act 1987 or a time order under the Consumer Credit Act 1974, he shall not thereby be taken to be admitting the claim for recovery of possession of the heritable property which is the subject of the claim". The secretariat undertook to advise Ms O'Neill of its decision.

The secretariat was requested to instruct the draftsman accordingly.

6 Consumer Credit Act 2006

The Committee considered the drafting of a form for completion by the debtor in an application for an order under section 140B of the Consumer Credit Act 1974. It was agreed that this would be both too complex and too difficult to achieve in light of the provisions of sections 140A, 140B and 140C of the 1974 Act. The secretariat undertook to discuss with HM Courts Service in England how they proposed to deal with such applications. The Committee meantime continued consideration of the issue until the next meeting of the Sheriff Court Rules Council in June.

7 AOCB

None

8 Date of next Meeting

To be confirmed