

# MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

McDiarmid Park, Perth

2 December 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  
R Conway  
J d'Inverno  
S Brand  
J Murphy  
J McCormick  
S O'Neill  
P Cackette  
G McKeand (Secretary)  
Ann Oxley (Assistant Secretary)  
Karen Stewart (Assistant Secretary)

1. **Apologies:** C Flanagan, R Young, A Johnson, S Di Rollo

On behalf of the Council, the chairman welcomed Sarah O'Neill from the Scottish Consumer Council to her first meeting. Thanks were conveyed to the secretariat for all the preparatory work and making the domestic arrangements for the meeting.

2. **Minutes**

The minutes of the previous meeting on 2 September were approved.

Matters arising:

### **Taking of evidence by video link**

The secretary advised that there has been no decision from the Court of Session Rules Council on this council's proposals for rules regarding the taking of evidence via video link. Should information be received prior to the next council meeting it will be circulated to members for clearance via e-mail.

### **3. Caveats**

The council considered the paper and the draft statutory instrument produced. Members approved the content of the draft and agreed that it be cleared with the chairman.

### **4. Lord President's letter to the Justice Minister re mediation.**

Mr Cackette advised members that the Minister has replied to the letter advising that the Scottish Executive is supportive of alternative dispute resolution (ADR) principles and welcomes the interest of the judiciary.

### **5. Mediation Report**

On behalf of the council, the chairman thanked the Mediation committee for all the work undertaken thus far and for the report prepared.

There was general discussion looking in particular at recommendation 5 of the report. Members agreed that the committee recommendations should go out to consultation and that the council would reserve their position on the content of the report meantime, to await consultation responses. Members agreed that the content of the consultation document should be framed by the mediation committee and thereafter placed before the full council for consideration prior to issue. It was also agreed that as well as the Sheriff's Association, all Sheriff's will be consulted individually during the consultation process.

The Council considered a letter to the chairman from Lord Clarke regarding a working party on mediation which has been set up in the Court of Session. During discussions, there was concern voiced that the working group was made up only of the judiciary. Both Sheriffs Principal agreed to enter into exploratory discussions with Lord Clarke's working group and to report back to members at the next meeting.

It was further agreed that the mediation committee's report should be treated as confidential meantime, however, the Council instructed the secretariat to forward copies to Lord Clarke for use by his working group and to R Macniven of Lord President's Private Office on this basis.

### **6. Family Law Bill**

The council considered the paper produced along with the current draft bill and policy paper.

Sheriff Fletcher and Mr Brand agreed to work with the secretariat to review the draft act when passed and to assist the secretariat on focussing what rules are required.

**Authority was given to the sub group to instruct any necessary rules of court prior to the next meeting.**

## 7. Vulnerable Witnesses (S) Act - Phase II

**The council considered the papers produced and approved the draft Act of Sederunt when finalised may be cleared in due course jointly by Sheriff Peebles and the chairman.**

Sheriff Peebles requested sight of the commencement order when this becomes available.

## 8. Police, Public Order & Criminal Justice (s) Bill

The council considered the paper produced. The following matters were agreed:

- Draft Section 48 – no need for changes to rules, summary application rules will apply
- Draft sections 49 to 52 – no need for rules flowing from these sections
- Draft sections 53(2)&(3), 54 – court rules should specify that variation will be by minutes in the original process (chapter 14 of Ordinary Cause Rules (OCR))
- Draft Section 56(2) to (6), – no need for changes to rules
- Remainder of draft sections in chapter 1 of part 2 – no need for any court rules.

**The council approved the instruction of a draft Act of Sederunt for consideration at the next meeting.**

## 9. Competition Modernisation

The council considered the paper produced. Following general discussion, it was agreed that an issue under Article 81 or 82 of the council regulation could arise in an action in the sheriff court and accordingly **approved the instruction of a draft Act of Sederunt.**

## 10. Business update

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

### Ordinary Cause Committee

**The council authorised the Ordinary Cause Committee to prepare a consultation paper on proposals for a new chapter 43 – ‘personal injury actions’ which the committee is currently reviewing – with a view to such a paper being presented to the SCRC at its meeting in March.**

## 11. School Education (S) Act

The council considered the paper produced. Following general discussion, it was agreed that the council do not have the power to provide the scope and grounds of the various type of appeal created (substantive law would be required here). Accordingly, there is no requirement for special rules of court on procedures as the summary application rules will apply.

## **12. Correspondence from Dr and Mrs Wright regarding small claims rules**

Sheriff Principal Young passed the 'chair' to Sheriff Principal Kerr and withdrew from the meeting.

The secretariat sought direction from the council on how to respond. Members considered the content of the letter and concluded that the majority of the matters raised cannot be addressed by them as they are out with the Council's remit. The Council noted all comments made which will be taken on board in so far as the Council is able. It was noted that the correspondence has been copied to Scottish Executive Justice Department staff and to the chief executive of the Scottish Court Service which are the appropriate points of contact for the majority of the concerns raised.

**The secretariat were instructed to draft a response in these terms.**

Sheriff Principal Young returned to the meeting and resumed the chair.

## **13. Scottish Consumer Council Report**

Council members received the report which was commented on favourably by those present.

## **14. Any other business**

### **Chairman's draft letter to Justice Minister**

**The content of the chairman's letter to the Justice Department on behalf of the council was agreed, now revised to include reference to the Scottish Consumer Council report.**

### **Bankruptcy & Diligence Bill**

The secretariat

Sheriff Holligan, Ms O'Neill and Mr McCormick agreed to work with the secretariat to review the Bill. **This and the explanatory memorandum will be sent to working group.**

### **Adoption and Children Act 2002**

The secretariat informed members that an e-mail has been received from Ms Plumtree, BAAF advising that S16 of the 1978 Act will be amended on 30 Dec 05 and suggesting that changes to the Child care and Maintenance Rules will be required.

**The council authorised the secretariat and chairman to take this forward due to the urgency of implementation.**

**Date of next meeting**

3<sup>rd</sup> March 2006 at 10.30am in Perth – venue to be confirmed