

Minutes of Sheriff Court Rules Council Meeting
Mc Diarmid Park, Perth
03 February 2012 10.30 am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal CAL Scott
Sheriff R Dickson
Sheriff W Holligan
Sheriff A G McCulloch
Mr S Brand
Mr R McDonald
Mr F Simpson
Mr M Speirs
Ms C McLachlan
Ms R Smith
Mr R McMillan
Ms O McShane
Mr A McIntosh
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Mr A McLean QC; Mr R Sandeman

The Chairman welcomed Mr Alan McIntosh to the meeting as the replacement for Ms Sarah O'Neill.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Admiralty Rules

The latest draft had been forwarded to Mr McLean, Solicitor, Brodies for further consideration and comment. The final draft would then be cleared by the Chairman in consultation with Sheriff Holligan.

The Council was advised that it did not appear Mr Sandeman had been in contact with the Lord President's Private Office over the proposed amendment to the Small Claims (Scotland) Order 1988. Mr McCourt undertook to remind him to do so.

Action: Mr McCourt to contact Mr Sandeman to remind him to contact the Lord President's Private Office over the proposed amendment to the Small Claims (Scotland) Order 1988.

Repossessions Advice Group

Mr McCourt advised that draft rules were currently being worked on.

3. Adults with Incapacity (Scotland) Act 2000 – subsequent applications

The Council considered the letter from Mr Simpson of the Law Society's Mental Health and Disability Sub-Committee. The Council whilst noting his concerns was of the view that, given it had a number of experienced solicitor members who were well able to comment on the proposed changes to rules, there was no need to consult more widely on these changes.

The Council further considered Sheriff Baird's comments and agreed that the following changes be made to the adults with incapacity rules:

- Rule 3.16.4(1) be amended by inserting the words "and subsequent applications including proceedings in guardianship orders"
- Insert into rule 3.16.4 provision for criminal proceedings
- Delete rule 3.16.8(5) as this rule was no longer necessary

It was agreed that the provisions be cleared by the Chairman for inclusion in the next miscellaneous instrument.

**Action: The Chairman to clear for inclusion in the next miscellaneous instrument;
Secretariat to advise Mr Simpson of the Law Society;**

4. Summary Cause Personal Injury Rules

The Ordinary Cause Committee considered the latest draft along with further points raised by the drafter and subject to certain amendments it was cleared.

5. Civil Courts Review Working Group

The Council considered the draft provisions along with the accompanying Note by the drafter and agreed some further amendments. It was agreed that the revised provisions be cleared by the Chairman in consultation with Sheriff Principal Scott for inclusion in a future miscellaneous instrument.

Action: The Chairman to clear the revised provisions in consultation with Sheriff Principal Scott for inclusion in a future miscellaneous instrument;

6. Taylor Review of Expenses

Having discussed the Consultation Paper and in particular the specific questions upon which the Lord President had asked for comment, it was agreed that the Chairman write to the Lord President informing him of the Council's views and comments.

Action: The Chairman to write to the Lord President informing him of the Council's views and comments.

7. SCRC Child Welfare Working Group

Sheriff Principal Scott provided the meeting with a verbal update of progress made to date by the working group.

He advised that progress on proposals for innovative change had been somewhat hindered because the group had been asked to consider implications for rules as a consequence of the Children's Hearings (S) Act 2011 which the Scottish Government intended to commence in September. This was of concern to the Council given the group's original remit.

The Council agreed that the secretariat write to the Scottish Government advising them of its concerns both in regard to the impact it was having on the original remit of the working group as well as the proposed timescales for commencement of the provisions of the Children's Hearings (S) Act 2011.

Sheriff Principal Scott undertook to write to the Lord President informing him of the working group's progress to date.

Action: The secretariat to write to the Scottish Government;

Sheriff Principal Scott to write to the Lord President;

8. Lay representation

Sheriff Dickson provided the meeting with a verbal update on the recommendations made by the joint working group.

The Council discussed the recommendations and the draft provisions proposed in regard to the Court of Session. The Council agreed in principle that:

- a lay representative should not receive directly or indirectly from the litigant any remuneration or other reward for their assistance
- for the purposes of the sheriff court it was sufficient for a request to be made by a party litigant for a lay representative to make an oral submission to the court on their behalf

The Council agreed to remit the matter back to the working group to consider the various matters discussed and then provide the secretariat with drafting instructions for the preparation of draft rules for consideration by the Council at the next meeting.

Action: The working group to provide the secretariat with drafting instructions for the preparation of draft rules for consideration at the next meeting

9. Family Law (Scotland) Act 2006 – section 28 and 29 applications

The Council considered the draft provisions and accompanying Note by the drafter and proposed certain amendments. It was agreed that once revised the Chairman clear the draft provisions in consultation with Mr Brand and Ms McLachlan for inclusion in the next miscellaneous instrument.

Action: The Chairman to clear the draft provisions in consultation with Mr Brand and Ms McLachlan for inclusion in the next miscellaneous instrument.

10. Visual Recordings of children lodged in court

Sheriff Dickson provided the meeting with a verbal update on the progress made to date by the working group.

The Council considered the draft provisions and accompanying Note by the drafter and after discussion agreed that the working group consider the points raised and provide the secretariat with further drafting instructions. The Council agreed also that the Chairman clear the draft provisions in consultation with Sheriff Dickson for inclusion in a future miscellaneous instrument.

Action: The working group to provide the secretariat with further drafting instructions;

The Chairman to clear the draft provisions in consultation with Sheriff Dickson for inclusion in a future miscellaneous instrument.

11. Bankruptcy & Diligence (S) Act 2007 – removing provisions

Sheriff Holligan provided the meeting with some background to the draft before the Council.

The Council considered the draft and discussed the drafter's view that the proposal by the removing sub-group for provision to be made for post ejection procedure was *ultra vires*. The Council agreed to clear the draft in its current form but requested that the secretariat write to the Office of the Accountant in Bankruptcy expressing their concerns over what was to happen with property once it had been removed from premises, who would have title to intromit with such property and what arrangements would be made in regard to any proceeds arising from their sale.

Action: The secretariat to write to the Office of the Accountant in Bankruptcy;

12. Protection of Freedoms Bill

The Council considered the policy paper produced and agreed that a prescribed form be devised for an application for judicial approval. The form to be modelled on the forms

provided for in Chapter 39 of the Summary Application Rules 1999. The Council also agreed that any such application was to be made by a solicitor to ensure that all the required information was present and correct. The Council continued the matter until the next meeting for preparation of the prescribed form.

Action: The secretariat to instruct the preparation of a prescribed form for consideration at the next meeting;

13. Business Update

The Lord President's Advisory Group on Diligence

Sheriff Holligan advised that, given he was stepping down as a member of the Council, in the event the Lord President's Advisory Group on Diligence decided to re-convene to consider the draft removing provisions a replacement for him may have to be found.

14. AOCB

Freedom of Information (S) Act 2002

The secretary advised that the Judicial Office had been notified by the Scottish Government that Scottish Ministers intended to extend the provisions of the 2002 Act to add the Rules Councils to the list of public authorities covered by the Freedom of Information (S) Act 2002. After meeting with their officials it was agreed they would consider delaying doing so until such time as the proposed Scottish Civil Justice Council body had been set up. The Council noted the position.

Council Membership

The Council expressed their thanks to Sheriff Holligan for all his work and wished him well in the future.

The secretariat advised that arrangements would now be made to secure his replacement on the Council.

Date of subsequent meetings

04 May 2012

03 August 2012

02 November 2012