

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

05 November 2010 10.30 am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal J A Taylor
Sheriff M J Fletcher
Sheriff W Holligan
Mr J d'Inverno
Mr F Simpson
Mr G Murray
Ms C McLachlan
Mr A Johnston
Ms S O'Neill
Ms R Smith
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1 Apologies

Sheriff C Scott
Mr S Di Rollo QC
Stephen Brand
Mr R McMillan
Mr C McKay
Miss M O'Neill (Assistant Secretary)

The Chairman welcomed Stephen Coulter, Director of Planning and Performance Management, Policy and Strategy Directorate, SCS who gave a short presentation to members of the key changes brought in by the Equality Act 2010, which requires all public bodies to be proactive in promoting equality, and the six steps of The Equality Impact Assessment Process. The Council discussed to what extent it might affect the Council's approach when for instance coming to consider rules and forms given that a public body has to ensure that it does not do anything to discriminate, harass or victimise.

The secretariat, in conjunction with the drafter, undertook to provide a short paper on the issues raised including what the Council might reasonably be expected to do in the performance of their function under section 34 of the Sheriff Courts (Scotland) Act 1971, for the next meeting.

Action: Secretariat in conjunction with the drafter to provide a short paper for consideration at the next meeting

2 Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters Arising

Bankruptcy & Diligence (S) Act 2007 - Admiralty actions

Sheriff Holligan advised the meeting that matters were still progressing and that discussions would take place soon with Mr Mclean of Brodies, Solicitors, Edinburgh.

Equality Act 2010

The Chairman advised that he will write to the Advocate General for Scotland in due course.

Action: Chairman to write to the Advocate General

3. Protective Costs Orders: European Commission Reasoned Opinion – Infringement No 2006/4033

At the meeting of the Council on 6 August 2010, the Council agreed in principle that similar provisions be made in rules as those proposed for the Court of Session. Subsequently, the European Commission queried the scope of the draft rules (which deal with environmental cases only) in relation to the definition of "public authority", and as a consequence the draft rules will need to be amended.

After discussion, members agreed that the drafter should be instructed to provide draft rules in the sheriff court similar to those proposed for the Court of Session (as amended). These would only apply to ordinary cause and summary application proceedings and it was agreed this can be made by motion with any Notice of Opposition:

- a) setting out the grounds of opposition to any order
- b) giving an estimate of that party's expenses

Action: Instructions to be issued, thereafter, the Chairman, whom failing Sheriff Principal Taylor, to clear provisions

The Council is content for a Joint Consultation by both Rules Councils to be undertaken on the rules more generally, at which stage some provision for recall can be considered. The secretariat and the drafter to provide a consultation list, and report back to the Council on progress at the next meeting.

Action: Secretariat in conjunction with drafter to provide

Consultation List for next meeting

4 Scottish Civil Courts Review

McKenzie Friend (Chapter 11; Recommendation 149)

The Council at their previous meeting agreed that paragraph (7) of the draft provisions should be deleted as, 1) it may be ultra vires, and 2) the question of whether expenses incurred by a party litigant as a result of the support of a McKenzie friend should be recoverable ought to be determined by the Auditor rather than by a rule of court. Instructions were submitted to the drafter in those terms. The drafter subsequently was of the view is that it would not be ultra vires to have such a draft provision.

After further discussion, the Council agreed that paragraph (7) should be reinstated into the four main sets of rules. The Chairman asked the secretariat to flag this as a point to be reconsidered in two years time by which time it will be known whether the provisions are working in practice.

Action: Instructions to be issued for provisions to include paragraph(7). Thereafter, the Chairman, whom failing Sheriff Principal Taylor, to clear provisions for inclusion in the November Miscellaneous Instrument

Secretariat to add item to the Agenda of the SCRC meeting in November 2012, for reconsideration

Judicial Expenses (Chapter 14; Recommendation 186)

After discussion, members agreed to continue consideration of this matter to the next meeting to enable the proposed amendment of the general regulation to be discussed by the Lord President's Advisory Committee in January.

In the absence of Sheriff Scott and Colin McKay, the secretary gave a general update on the Civil Courts Review Report. He advised that Lord Reed's "Contact Group" had not met again since early September and that an SCS colleague had advised that the Scottish Government had further revised their draft response to the report and was generally supportive of the recommendations of the Civil Courts Review.

5 Recognition/ Non-Recognition of Foreign Decrees

Having considered the draft provisions, the Council, subject to some minor amendments, agreed that the provisions be included in the November Miscellaneous Instrument.

Action: Instructions to be issued. Thereafter, the Chairman, whom failing Sheriff Principal Taylor, to clear provisions for inclusion in the November Miscellaneous Instrument

6 Miscellaneous SI 2 of 2010:

Service of Sequestration Petitions

After consideration of the draft instrument and the Note from the drafter, the Council requested the drafter should separate the provisions for service on a) individuals, and b) partners, and remitted the matter to the Ordinary Cause Committee for further consideration of the draft provisions and clearance.

Action: Draft Instrument to be considered and cleared by the Ordinary Cause Committee

Rule 24.1 SCR 2002

The Council considered the draft instrument and the Note from the drafter and agreed to remit the matter to the Ordinary Cause Committee for further consideration and clearance. Any comments on the changes to be relayed to the secretariat.

Action: Draft Instrument to be considered and cleared by the Ordinary Cause Committee

Change of Name of Party

The Council considered the draft instrument and the Note from the drafter along with correspondence from SCS Policy and Legislation Branch, expressing their concerns at the implications of the change.

After discussion, the Council agreed that a sub-committee of the Council be set up to take a look at the practicalities of making the procedure workable. The sub-committee to comprise of Sheriff Holligan, Ms C McLachlan, Mr A Johnston and Mr R McMillan, should meet before the next meeting and report back with their proposals at the next meeting.

Action: Meeting of sub-committee to be set up.

Regulated Agreements

After consideration of the draft instrument and the Note by the drafter, the Council agreed to refer the matter back to the sub-committee previously set up for further consideration and left it to their discretion whether or not to consult further on the draft provisions.

Action: Meeting of sub-committee to be set up.

Closure Orders/Licensing Appeals

Closure Orders

The Council agreed that paragraph 3(a)(ii) be deleted from the draft as this was unnecessary given that section 99(3)(E) of the 2010 Act was not adding other matters to which the court had to pay regard but simply elaborated on these.

Licensing Appeals

The Council agreed that the wording of the existing summary application rule 3.34.2(1)(c) be retained to the extent that the appeal is to be lodged with the sheriff clerk of the sheriff court district in which the principal office of the Licensing Board is situated not later than 21 days after the relevant date. The Council noted that the Transitional Provisions have not yet been drafted.

Action: The Chairman, whom failing Sheriff Principal Taylor, to clear provisions for inclusion in the November Miscellaneous Instrument

06A Ordinary Cause Personal Injury Rules/ Summary Cause Personal Injury Rules

Having considered the paper from the secretariat along with the draft provisions, the Council agreed that a consistent approach to that of the Court of Session on the procedure for the recovery of documents should be taken. It was also agreed that the relevant rules under the Ordinary Cause Optional Procedure should be identical to those in the PI rules.

The Chairman invited the drafter to prepare a discussion paper on the matter, for consideration by the Ordinary Cause Committee.

Action: The drafter to prepare a discussion paper for consideration by the Ordinary Cause Committee.

7 EU Mediation Directive

The Council considered the policy paper produced and agreed that no rules of court were required.

8 Rule 30.5 of the Ordinary Cause Rules

Having considered the paper from the secretariat the Council agreed that the reference in lines 1 and 2 of rule 30.5 to an award of custody, access or aliment be amended to refer to an interlocutor making an order made under section 11 of the Children (Scotland) Act 1995 or in respect of aliment, in order to reflect the terms of rule 31.9. It was also agreed that the reference in lines 3 and 4 of rule 30.5 to **rule 31.5 (appeals in connection with custody, access or aliment)**

be amended to read **rule 31.9 (appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment)**.

Action: Instructions to be issued, thereafter, the Chairman, whom failing Sheriff Principal Taylor, to clear provisions for inclusion in the November Miscellaneous Instrument

9 Amendments to rules on service/Form 17 Report of Auction

The Council considered the paper produced by the secretariat along with the correspondence from the President of the Society of Messengers-At-Arms and Sheriff Officers.

Use of envelopes in service of documents

The Council agreed that an amendment should be made to the four main sets of rules providing for the use of an envelope where the service of a document is executed by any of the leaving, depositing or affixing modes.

Form 17 Report of Auction

The Council agreed that Form 17 Report of Auction should be amended to include the declaration required by section 32(2)(c) of the Debt Arrangement and Attachment(Scotland) Act 2002.

The secretariat undertook to instruct the drafter in the above terms. Subject to those amendments, it was agreed that the provisions should be included in the March Miscellaneous instrument.

Action: Amendments to be instructed for inclusion in the March 2011 Miscellaneous Instrument.

10 Intimation to Local Authority in family actions

The Council considered the paper produced by the secretariat and agreed that, given there no longer remains any legal basis for intimation to a relevant authority in form F8 directing them to prepare a report in family actions, that Rules 33.7(1)(g), 33.7(4) and 33.12(1), (2) and (4) should be deleted. The Council agreed, subject to amendment, to retain Form F8 and rule 33.12(3), to be used in circumstances where a sheriff considers intimation to the Local Authority is appropriate.

Action: Amendments to be instructed for inclusion in the March 2011 Miscellaneous Instrument (which in fact has been included in the November Instrument).

11 Service and Evidence Conventions

The Council considered the policy paper regarding transfer of functions for outgoing requests for service and evidence from Scotland. The Council was

content with the approach suggested in the paper and agreed that the changes in those terms should be instructed.
It was agreed that the draft amendment should be cleared by the Chairman and included in the next Miscellaneous Instrument

Action: Amendments to be instructed.

Chairman, whom failing Sheriff Principal Taylor, to clear provisions for inclusion in the next Miscellaneous Instrument.

12 Sheriff Court Bankruptcy Rules 2008

The Council considered the policy paper produced and agreed that provision be made in sections A and B of Appendix 2 of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 for the addition of the debtor's date of birth (where known) to the information to be contained in the Register of Insolvencies

The secretariat undertook to instruct the drafter in those terms. Subject to those amendments, it was agreed that the draft provisions should be cleared by the Chairman in consultation with Sheriff Principal Taylor and that the provisions should be included in the March Miscellaneous instrument.

Action: Amendments to be instructed for inclusion in the March Miscellaneous Instrument.

13 Child Welfare Cases

The Council considered the paper from the secretariat and agreed that no amendment is required to the current rules of court. It was agreed that the Sheriffs Principal be invited to consider adapting the current Practice Notes on adoptions to address the issue.

14 Business Update

The Council noted the progress on the items contained within the business update.

15 AOCB

Council Membership

The Chairman advised the meeting that Sheriff Fletcher, Mr S Di Rollo QC and Ms S O'Neill did not seek to renew their membership of the Council which was due to end in January 2011 and further Mr J d'Inverno had indicated that, having been a member since 2002 he would be willing to give way to a new member if this was the wish of the Lord President.

The Council expressed their thanks to them for all their work and wished them well in the future.

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

Date of subsequent meetings

04 February 2011

06 May 2011

05 August 2011