

Approved

## **Minutes of Sheriff Court Rules Council Meeting**

**McDiarmid Park, Perth**

**7 September 2007**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff W Holligan  
Sheriff I A S Peebles QC  
Mrs C Flanagan,  
Mr G Way  
Mr P Cackette  
Ms S O'Neill  
Mr A Johnston  
Mr S McCourt (Secretary)  
Ms K Stewart (Assistant Secretary)

### **Agenda**

#### **1 Apologies**

Sheriff Principal J A Taylor, Sheriff M J Fletcher, Mr S Brand, Mr J Murphy  
Mr J d'Inverno, Mr R Young, Mr S Di Rollo QC, Mr R Conway,

#### **2 Minutes of previous meetings and matters arising**

##### **Minutes**

The minutes of the previous meeting were approved

##### **Matters Arising**

**Adult Support and Protection (S) Act** : Sheriff Holligan gave a verbal update on progress to date. The Council agreed to him setting up a meeting with the Law society for input from them which may assist with the proposals for draft rules. Any suggestions to be forwarded to the secretariat.

#### **3 Vulnerable Witnesses (Scotland) Act 2004 – revised draft rules**

The Council considered the draft act of sederunt which had been scrutinised in detail by Sheriff Peebles previously. Some further textual amendments were proposed and agreed. The secretariat to instruct these additional amendments and issue the draft for clearance by the chairman in due course. The Council suggested that the Scottish Courts Service could make further information on vulnerable witnesses and witnesses in general available on their website and asked the secretariat to contact them in this regard.

#### **3a Vulnerable Witnesses (Scotland) Act 2004 – miscellaneous draft rules**

The council considered the six acts of Sederunt produced and noted below. It was agreed that drafts A to E be amended to include reference to the new provisions for vulnerable witnesses contained within the proposed chapter 45 of the Ordinary Cause Rules. It was agreed that the Judicial Factor Rules were to be amended in similar manner.

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Sheriff Holligan agreed to consider Draft F in further detail and revert to the secretariat to confirm any additional proposals. Subject to the secretariat instructing the required amendments, it was agreed that the chairman clear each instrument in due course.

- A. Act of Sederunt (Sheriff Court Company Insolvency Rules 1986) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007
- B. Act of Sederunt (Sheriff Court Bankruptcy Rules 1996) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007
- C. Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007
- D. Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007
- E. Act of Sederunt (Chancery Procedure Rules 2006) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007
- F. Act of Sederunt (Child Care and Maintenance Rules 1997) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007

### **4 Personal Injury – draft rules**

It was agreed that this matter be remitted to the Ordinary Cause Committee for detailed scrutiny. A date to be afterwards fixed.

### **5 Scottish Commission for Human Rights Act 2006**

The Council considered the paper produced. It was agreed that there was no need for rules of court in relation to applications under Section 10 of the Act. In relation to applications under Section 14, it was agreed that the proposed new Chapter 95 of the Court of Session Rules be suitably adapted for inclusion in each of the Sheriff Court Ordinary Cause, Summary Application, small claim and summary cause rules. The draft instrument to be cleared by the Chairman in due course.

### **6 Equality Act 2006**

The Council considered the paper produced. In relation to applications under Section 30 of the Act, it was agreed that the proposed new Chapter 94 of the Court of Session Rules be suitably adapted for inclusion in each of the Sheriff Court Ordinary Cause, Summary Application, small claim and summary cause rules. The draft instrument to be cleared by the Chairman in due course.

### **7 EU Insolvency Regulation**

The Council considered the three draft instruments produced along with the draftspersons note. Subject to minor amendments, it was agreed that they be cleared by the Chairman in due course.

### **8 Family Actions**

The Council considered the draft rule previously instructed together with the draftspersons note. The Council discussed the issue further and agreed that it was appropriate that an appeal provision be included in the rule similar to pre-1993 rules. The amended draft to be instructed by the secretariat and cleared by the Chairman in due course.

## **9 Summary Cause Heritable Rule**

The council considered the advice received to date on this issue. After consideration and detailed debate it was agreed that a rule of court was appropriate and necessary and that the rule previously instructed was to be drafted.

## **10 Inner House Opinion - Tonner & Anr v Reich & Hall**

Having considered the opinion, the Council agreed that it is appropriate to make provision in rules of court for circumstances where a defender wishes to have an action dismissed or decree of absolvitor granted due to inordinate and inexcusable delay in the prosecution of the case.

### Ordinary Causes

- Such application will be by motion - chapter 15 to be amended
- In such a motion, the grounds should be specified
- The notice of opposition should specify grounds of opposition
- The period of notice of such a motion will be 14 days

### Summary Causes

- rules to be amended to include period of notice of 14 days for such an application

Summary application – no need for amendment (automatic via rule 2.30)

Small claim – not required in these rules.

These matters are suitable for inclusion in the next Miscellaneous Act of Sederunt and will be considered by the Council in due course.

## **11 Electoral Administration Act**

The council considered the papers produced and agreed that providing the Court of Session has authority (to be checked with the draftsperson) the following provision for rules of court are appropriate:

### Summary Application rules to be amended

- A rule to protect the identity of the petitioner
- A rule providing for confidentiality of documents
- Unnecessary to make express provision under the Contempt of Court Act 1981

It was noted that Scottish Court Service will require to issue staff guidance on practical issues in due course.

## **12 Bankruptcy & Diligence (Scotland) Act 2007 – Commencement No. 1 Order 2007**

The Council considered the paper produced by the secretariat and agreed that no rules provisions are required at this time. The secretariat will inform the draftsperson and all relevant parties for their interests.

## **13 Representation to Council**

- Rule 22 Notes – the Council considered the suggestion and agreed that no action was required at this time.

## Approved

- Peremptory diet – the Council considered the issue raised and concluded that the rules provision was appropriate and necessary therefore no action was required at this time.
- Representations – the Council's primary function is to keep under review the procedure and practice in civil proceedings in the sheriff court, representations from anyone are welcome at any time.

### **14     Council Regulation (EC) No1348/2000 - Service Regulation - Extension To Denmark**

The Council considered and approved the draft instrument produced and agreed that rules relevant to the 1968 Brussels Convention should for the time being remain unchanged.

### **15     Business Update**

Members noted progress on the various issues. An oral update was given by Sheriff Holligan regarding both the Lord President's Advisory Group and the Bankruptcy and Diligence Working Group.

### **16     Any Other Business**

**Bankruptcy and Diligence Act 2007** – amendments to Debtors (S) Act 1987  
There was detailed discussion of the need for any amendment to rules of court and accompanying forms for time to pay direction applications. It was agreed that to do so will assist in shrieval decisions being made on a fully informed basis, avoiding court continuations and ultimate additional expense to debtors, and will assist creditors in making more effective and relevant applications to court.

It was agreed that:

- Application forms be revised
- Provision in rules of court be made for a response by creditor (to an application) within specified time limit
- Provision of prescribed form of response
- Hearings to be assigned within a specified time limit

Mr Way, Sheriff Holligan and Ms O'Neill to prepare recommendations on behalf of the Council to be forwarded to Lord President's Advisory Group by end September.

### **Pension Protection Fund**

The paper and draft instrument was considered. Subject to some proposed amendments, the draft to be cleared by the Chairman in due course.

### **Date of subsequent meetings.**

Friday 7 December 2007  
Friday 7 March 2008  
Friday 6 June 2008