

**Minutes of Sheriff Court Rules Council Meeting
Mc Diarmid Park, Perth
04 May 2012 10.30 am**

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal CAL Scott
Sheriff R Dickson
Sheriff A Deutsch
Sheriff A G McCulloch
Mr S Brand
Mr R McDonald
Mr F Simpson
Mr M Speirs
Ms C McLachlan
Mr R Sandeman
Ms R Smith
Mr R McMillan
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; Mrs M McLean

The Chairman welcomed Sheriff Deutsch to the meeting as the replacement for Sheriff Holligan.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Admiralty Rules

Mr Sandeman advised he had been in contact with the Lord President's Private Office over the proposed amendment to the Small Claims (Scotland) Order 1988 and this was now under consideration.

The drafter had also questioned whether it might be desirable to make admiralty rules only in relation to ordinary cause actions. After discussion the Council agreed to this.

Mr Sandeman advised that if it was Council policy to change the procedure for admiralty actions then the Scottish Government may ask whether other changes required to be made to rules more generally, particularly in regard to the summary cause and small claim rules. The Council agreed that because of their special nature admiralty actions required rules to be put in place.

Scottish Civil Courts Review

Mr Sandeman provided the meeting with an update on the Scottish Civil Justice Council and Criminal Legal Aid Assistance Bill which had been introduced to the Scottish Parliament on 2 May. It was anticipated that the Bill would complete its parliamentary process and receive Royal Assent by the end of 2012. It was also anticipated that the new Council would be up and running by May 2013. Mr Sandeman also advised a Courts Reform Bill was planned by autumn 2013 and which would be consulted upon later in 2012.

Civil Courts Review Working Group

The Secretary advised that one further revision to the draft provisions required to be instructed before being cleared by the Chairman in consultation with Sheriff Principal Scott for inclusion in a future miscellaneous instrument.

Action: The secretariat to instruct the drafter further;

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

3(a) SCRC Child Welfare Working Group: The Children's Hearings (Scotland) Act 2011

The Chairman informed the meeting that due to Sheriff Principal Scott's illness, Sheriff McCulloch had become acting chair of the group. The Council agreed that Sheriff McCulloch take over the chair on a permanent basis.

The Council agreed with the proposed revised timetable for having rules in place in time for commencement of the Children's Hearings (S) Act 2011.

The Council also agreed in principle to consulting on the new rules and that 8 weeks was sufficient time in which to do so. The Council, subject to some suggested additions, agreed to the proposed list of those who should be consulted.

It was agreed that the working group consider the initial draft and accompanying note by the drafter at the end of the meeting and also consider any specific questions to be set in the consultation paper.

3(b) SCRC Child Welfare Working Group: Family/Adoption Proceedings

Sheriff McCulloch informed the meeting that the proposed changes to rules in regard to family and adoption proceedings were almost complete and would soon be in a position to be instructed for consideration at the next meeting.

Action: The secretariat to instruct proposed changes to rules in regard to family and adoption proceedings for consideration at the next meeting;

4. Lay representation

The Council considered the draft provisions and note by the drafter.

Ms Smith was of the view that the wording of draft rule 1.A.2(1) was too restrictive as it limited the circumstances in which a lay representative may appear. Detailed discussion of her point then followed after which it was agreed that the drafter should consider an alternative form of wording which was not as restrictive.

It was also agreed that the draft Form 1A.2 ought to provide for an additional declaration by the representative that “no charge has or will be made against the party litigant directly or indirectly in respect of the representation”.

The Council also discussed whether specific provision ought to be made to exclude certain categories of person (such as struck off solicitors) beyond what was already provided for in the draft provisions. It was suggested that the Form 1A.2 be amended to provide for an additional declaration by the representative along the lines that “he/she had never been struck off or disciplined by a professional regulatory body *or* he/she was struck off or disciplined by (insert details and date)”.

It was agreed that the drafter discuss the points raised with the Chairman of the joint working group after which the sub- group would consider matters further along with the various detailed drafting points raised today.

The matter was continued to the next meeting for these purposes as well as for the secretariat to instruct any proposed amendments to the draft provisions.

Action: The sub- group to consider matters further once the drafter had discussed the points raised with the Chairman of the joint working group;

Action: The secretariat to instruct any proposed amendments to the draft provisions in time for consideration at the next meeting;

5. The Protection of Freedoms Bill

The Council considered the further policy paper produced and after discussion agreed that because of the complexity of the primary legislation the application i.e. the prescribed form must be properly completed and signed by a solicitor on behalf of a local authority. This was to ensure that the application complied with the requirements of the 2012 Act. It was also agreed that the rules were to be deliberately silent on who could actually appear before the sheriff with the application.

The Council also considered whether provision ought to be made in the rules to allow local authorities two business days in which to make representations from the date of the refusal by a sheriff to approve the grant or renewal of an authorisation. The Council was of the view that as this was beyond what the primary legislation allowed for then the sheriff could not be compelled to make such an order. It was agreed that the

rules should remain silent on this and that the matter be left to the discretion of the sheriff.

Certain amendments were proposed to the draft provisions which once made were to be cleared by the Chairman.

Action: The secretariat to instruct amendments to the draft provisions which once made were to be cleared by the Chairman;

6. The Policing and Crime Act 2009

The Council considered the policy paper produced and agreed that changes to rules were required. These were to be instructed by the Secretariat and the matter was continued to the next meeting for that purpose.

Action: The Secretariat to instruct changes to rules for consideration at the next meeting;

7. Recall of Summary Warrant

The Council considered the email from Mr McIntosh and agreed that no action needed to be taken.

8. SCRC Draft Business Plan 2012-2013

The Council considered the draft business plan which it approved.

9. Business Update

The Council noted progress on the various matters mentioned in the update.

10. AOCB

Council Membership

The Chairman advised that Mr McMillan was taking up a new post within SCS at the end of May and because of this a replacement for him would have to be found. The Council expressed their thanks to him for all his work and wished him well in the future.

The Chairman advised that upon his retirement, it was anticipated that the Lord President would appoint Sheriff Principal Scott as the new Chairman to the Council.

Sheriff Principal Scott, on behalf of the Council, expressed his thanks to the Chairman for his excellent work as Chairman and wished him a long and happy retirement.

Date of subsequent meetings

03 August 2012

02 November 2012

01 February 2013