

**Minutes of Sheriff Court Rules Council Meeting  
Mc Diarmid Park, Perth  
04 November 2011 10.30 am**

**PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
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  
Mr R Sandeman  
Ms R Smith  
Mr R McMillan  
Ms O McShane  
Ms J Alcock (Lord President's Private Office)  
Mr S McCourt (Secretary)  
Mrs L McCabe (Assistant Secretary)

**1. Apologies**

Sheriff Principal CAL Scott  
Mr A McLean QC

The Chairman welcomed Mr Robert McDonald to the meeting as the replacement for Sheriff G Murray.

**2. Minutes of previous meeting**

The minutes of the previous meeting were approved.

**Matters arising**

Housing (Scotland) Act 2010 - Evictions

Mr McCourt advised that the drafter had been instructed to prepare draft provisions. The Council agreed that the draft provisions should be cleared by the Chairman for inclusion in the next appropriate Miscellaneous Instrument.

**Action: The Chairman to clear for inclusion in the next appropriate  
Miscellaneous Instrument;**

### **3. Admiralty Rules.**

The Council considered the draft provisions along with comments provided by Mr McLean, Solicitor, Brodies and agreed that provision for such actions should be made in the Ordinary Cause Rules and that it was not appropriate that such actions be raised by way of summary application given the terms of rule 1.4 of the Summary Applications and Appeals etc. Rules 1999.

The Council agreed in principle with Mr McLean's suggestion that if the value of a claim is less than £5000 then it should be raised as a summary cause. The Council further agreed that in view of the terms of section 35(2) of the Sheriff Courts (Scotland) Act 1971 the draft provisions would need to provide for actions for payment of less than £3000 to be raised by way of a small claim until such time as the Small Claims (Scotland) Order 1988 has been amended by Scottish Ministers. Mr Sandeman undertook to liaise with the Lord President's Private Office over the proposed amendment to the Order. After further consideration, the Council approved the draft provisions in principle, thereafter to be cleared by the Chairman in consultation with Sheriff Holligan once the points which Mr McLean raised had been addressed.

**Action: The Chairman in consultation with Sheriff Holligan to clear for inclusion in the next appropriate Miscellaneous Instrument; Mr Sandeman to liaise with the Lord President's Private Office over amendment of the Small Claims (Scotland) Order 1988;**

### **4. Scottish Civil Courts Review**

#### **(a) Scottish Civil Justice Council consultation**

Having discussed the Consultation paper on the creation of a Scottish Civil Justice Council the Council agreed to submit a formal response.

**Action: Formal response to be submitted;**

#### **(b) draft rules on extempore judgements, summary disposal, financial provision**

The Council considered the draft provisions along with the points raised by the drafter and agreed some minor amendments. Thereafter, in view of a number of other points which were raised at the meeting including those in an e-mail from Sheriff Holligan and as two members of the Scottish Civil Courts Review Working Group were not present, the whole matter was continued for further consideration by the group at their next meeting.

**Action: SCRC Working Group to consider draft provisions further;**

### **5. SCRC Child Welfare Working Group**

The Council noted the terms of the report produced by the Chairman of the group and the progress made to date. Ms McLachlan agreed to canvas the matter at the Family Law Association Scotland Annual General Meeting later this month and obtain feedback for consideration by the Working Group.

Mr McCourt advised the Council that the Secretariat had met with Scottish Government Officials to discuss (i) The Children's Hearings (Scotland) Act 2011 and (ii) review of Form F9 and the process for seeking the "Views of the child". Policyholders have been asked to submit papers for consideration by the Working Group at their next meeting on 9 December 2011.

**Action: Ms McLachlan to obtain feedback from the Family Law Association Scotland AGM;**

#### **6. Family Law (Scotland) Act 2006 – section 28 and 29 applications**

The Council at their last meeting agreed that applications under section 28 and 29 of the Family Law Scotland Act 2006 should be included in the definitions of family actions in Chapters 33 and 33A of the Ordinary Cause Rules.

The Council agreed that the matter be continued to the February meeting to enable Mr Brand and Ms McLachlan to liaise with the drafter and the Secretariat to instruct the necessary changes to rules, with a view to draft rules being available for consideration by the Council at that meeting.

**Action: Instructions to be issued;**

#### **7. Adults with Incapacity (Scotland) Act 2000 – subsequent applications**

The Council, having considered Sheriff Baird's comments on the draft provisions for intimation of a subsequent application on the adult and others and the drafter's views on these, agreed in principle that the provisions should be cleared by the Chairman for inclusion in the next appropriate Miscellaneous Instrument once the background to the introduction of rule 3.16.8(5) had been fully investigated by both the drafter and the Secretariat.

**Action: The Chairman to clear for inclusion in the next appropriate Miscellaneous Instrument once matters have been fully investigated;  
Secretariat to advise Sheriff Baird;**

#### **8. Visual Recordings of children lodged in court**

The Council agreed that they were content for the sub-group to consider the preparation of draft rules in relation to the lodging in court of visual recordings of children and to which sets of rules they should apply at the end of the meeting.

Having considered the matter in detail, the sub-group of the Council later agreed that the Secretariat instruct the preparation of draft rules with a view to these being available for consideration by the Council at the February meeting.

**Action: Instructions to be issued;**

#### **9. Repossessions Advice Group**

The Council, after considering the Repossessions Advice Group's written representations on the subject of rules relating to the Home Owner and Debtor Protection (Scotland) Act 2010 agreed (1) that for the purposes of rule 3.4.4(b)

of the Summary Applications and Appeals etc. Rules 1999 there should be a new form of warrant of citation modelled on the Form 20 used for notice of an application under the Adults with Incapacity (S) Act 2000, and (2) that an amendment be made to the recall of decree provisions contained in the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010, enabling service of the minute for recall to be effected upon a lender's solicitor rather than the lender themselves, and that such provision be along similar lines to that already provided for in Ordinary Cause Rule 14.5(1)(b).

The Secretariat was invited to instruct the preparation of draft rules. It was agreed that the provisions should thereafter be cleared by the Chairman for inclusion in the next appropriate Miscellaneous Instrument.

**Action: Instructions to be issued; The Chairman to clear for inclusion in the next appropriate Miscellaneous Instrument; Secretariat to advise the Repossessions Advice Group**

## **10. Business Update**

### The Lord President's Advisory Group on Diligence

Sheriff Holligan provided a verbal update on the Removings provisions and advised that the sub-group were due to meet on 16 November 2011 to consider an initial draft of the provisions with a view to draft rules being available for consideration by the Council at the February meeting.

Ms Alcock advised that rules for the sanction of the employment of counsel could not be made until such time as changes were made to the regulation made under section 40 of the Sheriff Courts (Scotland) Act 1907 which would not be until later in the month.

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

## **18. AOCB**

### **Date of subsequent meetings**

**03 February 2012**

**04 May 2012**

**03 August 2012**