

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

**McDiarmid Park, Perth**

**05 December 2008 10.30am**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff W Holligan  
Sheriff C Scott  
Mr S Di Rollo QC  
Mr G Way  
Mr J d'Inverno  
Mr F Simpson  
Mr S Brand  
Ms S O'Neill  
Mr R McMillan  
Mr C McKay  
Mr S McCourt (Secretary)  
Miss M O'Neill (Assistant Secretary)  
Mr A Hughes (Assistant Secretary)

In attendance:            Mr M Anderson  
                                      Mr D Smith  
                                      Ms C Breeds

### **1 Apologies and Welcome**

Sheriff Principal J A Taylor  
Sheriff M J Fletcher  
Mrs C Flanagan  
Mr A Johnston

The Chairman welcomed the members of the Lord President's Private Office to the meeting. Mr Anderson gave a brief overview of the function of the Office and confirmed that they will be represented at future meetings of the Council.

### **2 Minutes of previous meeting**

The members agreed that Item 12 of the minutes of the previous meeting should be amended to read "Sheriff Court Bankruptcy Rules 2008". Thereafter the minutes were approved.

### **Matters Arising**

#### Recorded Delivery Intimation

The secretariat advised the Council they had received a letter from a solicitor's firm highlighting difficulties that had arisen in relation to the recent changes to Royal Mail procedures for recorded delivery intimations. The secretariat advised that they had contacted the policy and legislation branch of the Scottish Court Service who agreed that they saw no need for changes to rules as a consequence. The Council agreed that for the time being no action was required.

### Unfair Relationships

Ms O'Neill advised that she has still to produce a style form but would contact advice agencies to see whether difficulties still exist in practice and if a form is still required and confirm the position at the next meeting.

### ADR Rules

The Chairman confirmed he wrote to the Lord President on 11 November 2008. Mr Anderson confirmed that the letter had been received and is due to be considered at the meeting of the Court of Session Rules Council on 08 December 2008.

### Employment of Counsel

The Chairman advised that he had circulated a memorandum along with a draft Practice Note to his fellow Sheriffs Principal for consideration at their next meeting.

### Lay Person Appointment

The secretariat advised that dates had been canvassed for holding interviews for the vacancy and it was anticipated these would take place by the end of January.

## **3 Child Maintenance Rules 1997**

The Council considered the query received from the Lord President's Private Office in relation to the disparity of fees for the payment of safeguarders and curators *ad litem*. The Council agreed that the issue of fees in relation to family matters as a whole required further consideration. It was agreed that a policy paper should be prepared by the Scottish Government to be considered by the Council at the next meeting. If members had any views or background to offer on the issue then they should write to Mr McKay, copying the correspondence to the secretariat.

## **4 Tribunals, Courts & Enforcement Act 2007**

The Council considered the policy paper produced along with the relevant provisions of the Tribunals, Courts and Enforcement Act 2007. Following discussion, it was agreed to continue this item to the next meeting to allow the secretariat to investigate the procedure to be adopted by the County Courts and Employment Tribunals in England. This is with a view to harmonising the procedures under each system as much as possible in relation to the time limits for making an application and for when a compromise sum is not recoverable. It was agreed that Mr D'Inverno would provide the secretariat with contact details for the Employment Tribunal. The Council agreed in principle that an application will be deemed to be pending from when it is lodged with the Sheriff Clerk until the extract is issued on the final decision of the application.

## **5 Sheriff Court Bankruptcy Rules 2008**

The Council considered the policy paper provided by the Accountant in Bankruptcy in relation to the proposal to amend the Sheriff Court Bankruptcy Rules 2008 to provide for the removal of a debtor's contact details from the Register. The Council agreed that the policy paper should be circulated to the Bankruptcy and Diligence Implementation Board for their views.

Ms O'Neill undertook to provide the secretariat with a note of those protection agencies which she considered should be included in the consultation and this

would be forwarded on to the Accountant in Bankruptcy. The Council agreed to continue the matter until the next meeting.

## **6 Public Health (S) Act 2007**

The Council considered the policy paper provided alongside the relevant provisions of the Public Health (Scotland) Act 2007. In general terms, the Council agreed that given the urgent nature of the applications, the application process should primarily be by way of standard forms. It was however agreed that detailed forms would be required to ensure the provisions within the Act were met. The Council considered that discretion should be left to the sheriff in relation to intimation of applications and orders. The secretariat undertook to instruct the drafter in those terms.

## **7 Bankruptcy and Diligence (S) Act 2007**

### **(1) Time to Pay provisions etc**

The Council agreed that a small group be set up consisting of Sheriff Holligan, Mr Way, Ms O'Neill, Ms Montgomery and Mr McCourt to discuss the draft instrument. It was agreed that the group would meet as soon as practicable with a view to the provisions being included in the next miscellaneous instrument which is anticipated to be available for the Council meeting next May.

The Council considered the issue raised in relation to Form 43 of the Debtors (Scotland) Act 1987 and agreed to amend the form to include the employee's place of employment. The secretariat undertook to instruct the drafter accordingly.

Mr Way withdrew the issue raised in relation to interim diligence stating that this had now been resolved.

### **(2) Draft diligence instrument**

Sheriff Holligan provided the Council with a background to the content of the draft instrument on arrestment in execution. He advised that an issue had arisen in relation to jurisdiction, which was currently being considered by the Accountant in Bankruptcy.

Ms O'Neill raised concern in relation to the reference on the forms to the sheriff clerk providing advice. Following discussion, it was agreed that this would be raised for consideration at the next meeting of the Lord President's Advisory Group.

The Council agreed that, once the necessary revisions have been made, Sheriff Holligan should clear the draft instrument.

## **8 EOP & ESCP Regulations**

The Council considered the draft instruments along with the drafter's note. In relation to both instruments, the Council agreed that the drafts should be amended in such a way as to provide that the sheriff has discretion to make such order as thought appropriate to be consistent with the ordinary cause, summary cause and small claims procedures. It was also agreed that applications for review and refusal of enforcement should be by prescribed form. Subject to the instruction of these further amendments, the Council agreed that revised drafts

should be issued to Mr Way and Sheriff Scott for consideration prior to the final instruments being cleared by the Chairman.

## **9 Policy Memoranda**

The Council approved the style policy memoranda prepared in respect of the Miscellaneous Act of Sederunt. The publication of the policy memoranda was discussed, including the possibility of issuing a press release. The item was continued until the next meeting to allow the secretariat to make further investigations as to the feasibility of doing so.

## **10 Ordinary Cause Personal Injury Rules**

The Ordinary Cause Committee met and considered the email received from Nicola Brown of the Scottish Court Service in relation to the draft ordinary cause personal injury rules. In light of the issues raised, it was agreed that amended instructions be issued to the drafter.

The Chairman agreed to consider whether a Practice Note would be required in relation to the introduction of the new rules.

## **11 Business Update**

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

## **12 AOB**

### Mortgage Arrears and Repossessions

The Council considered the letter from the Deputy First Minister to the Lord President but was of the view that, under the current primary legislation framework, it was unable to propose changes to rules of court as the issue was outwith its remit.

### DVLA

The Council considered the letter from John Thurso, MP in relation to time limits which apply to Scotland and that of England and Wales for lodging appeals against decisions made by DVLA under the Road Traffic Act 1988. The Council decided it was not appropriate to amend the current time limit of 21 days contained within the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 given the flexibility that exists within the Rules, including the sheriff having discretion to hear an application notwithstanding it was not lodged within the prescribed time limit.

## **Date of subsequent meetings**

Friday 06 February 2009

Friday 01 May 2009

Friday 07 August 2009