

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

**McDiarmid Park, Perth**

**06 November 2009 10.30am**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff Principal J A Taylor  
Sheriff W Holligan  
Sheriff C Scott  
Mr S Di Rollo QC  
Mr J d'Inverno  
Mr F Simpson  
Mr S Brand  
Mr G Murray  
Mr A Johnston  
Mr R McMillan  
Ms S O'Neill  
Ms R Smith  
Ms J Alcock (Lord President's Private Office)  
Mr S McCourt (Secretary)  
Miss M O'Neill (Assistant Secretary)

### **1 Apologies**

Sheriff M J Fletcher  
Ms C McLachlan  
Mr C McKay

The Chairman welcomed Sheriff Principal Taylor back to the meeting, following his work on the Civil Courts Review.

The Chairman advised that, in relation to item 04, Chris Graham had contacted the secretariat wishing to attend the meeting to speak to his written representations. The Council agreed that this was unnecessary and it would proceed on the basis of his written submissions at the meeting.

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

The Council agreed to delete the words "the draft Act of Sederunt along with" in the first line of item 03. Thereafter, the minutes of the previous meeting were approved.

### **Matters Arising:**

#### Adoption

The Chairman advised that the instrument is now in force and that Practice Notes had been issued in five sheriffdoms.

#### Bankruptcy and Diligence (Scotland) Act 2007

Sheriff Holligan advised that Lord Reed would take over as chair of the Advisory Group. The next meeting is scheduled to take place on 09 December. He

advised that the money attachment provisions come into force on 23 November 2009. He advised that there may be an overlap in relation to the removings provisions and the new Home Owner and Debtor Protection Bill and it was agreed that the relevant groups would liaise accordingly. In relation to the admiralty provisions, he advised that the intention was for the current Court of Session rules to be amended in the first instance. The draft rules would then be passed to the Sheriff Court Rules Council to adopt as required. The Chairman expressed his thanks to Sheriff Holligan for his ongoing work in relation to this matter.

#### Public Health (Scotland) Act 2008

The Chairman advised that the instrument is now in force. He thanked Ms S O'Neill and Ms Smith for their consideration of the forms 52 and 55. He also expressed thanks to Ms M O'Neill and Mr Smith in relation to the work involved in the drafting of the instrument.

#### Debt Action Forum Report – Repossessions

The secretary advised that the working group of the Council was due to meet on 20 November. He advised that the group has been extended to include the drafter from the Lord President's Private Office, a Scottish Government representative to advise on policy matters and Eric Cumming to represent Scottish Court Service policy.

#### SCRC Business Continuity Plan

The Council agreed that the plan should be amended to include authority for Sheriff Principal Taylor to act as the temporary chair in the first instance.

#### SCS Headquarters Relocation

The secretariat advised that the relocation would take place on 23<sup>rd</sup> November and agreed to email members with new contact details. The SCRC website would be updated following the move.

### **3 Scottish Civil Courts Review Report**

The Council considered the terms of the Scottish Civil Courts Review Report. The Council welcomed the Report and agreed to set up a small working group to consider the recommendations. Whilst it was acknowledged that the recommendations in the report should be considered as a whole package, the Council agreed that consideration should be given to procedural changes that could be implemented with relative ease. It was agreed that the working group would consist of Sheriff Scott; Mr Di Rollo; Mr McMillan; Mr Brand; Mr Murray; Ms Smith and Mr d'Inverno and that the remit of the group would be to consider the report and make proposals for changes to the rules in time for the Council meeting in May 2010.

**Action: Meeting of working group to be arranged**

### **4 Miscellaneous Act of Sederunt 2009 – Regulated Agreements**

The Council considered all the written representations received and in light of these decided to instruct the deletion for the time being of the requirement for a copy of the regulated agreement to be attached to either the initial writ or summons. It was agreed that a sub-committee of the Council be set up to consider the matter further and report back to the Council with its recommendations at its next but one meeting in May 2010.

It was agreed that the Chairman would write to the Lord President outlining the reasoning for the amendment.

**Action: Meeting of sub-committee to be arranged  
Chairman to write to the Lord President outlining the reasoning for the amendment**

## **5 Companies Act 2006 – Derivative Proceedings**

The Council considered the draft instrument along with the drafter's note. The Council agreed that the wording of the instrument should be amended to reflect applications for leave under rule 33.65A of the Ordinary Cause Rules. The Council agreed that an additional rule should also be included to provide that applications under section 267 of the Companies Act should be by way of minute in the original process. 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 and that the provisions should be included in the next Miscellaneous instrument.

**Action: Chairman to clear provisions for inclusion in the next Miscellaneous instrument**

## **6 New Ordinary Cause Personal Injuries Rules – Guidance Note**

The Chairman extended thanks to Mr Simpson for producing a draft Practice Note, which amalgamated the Court of Session Practice Notes in relation to personal injury rules. He advised that the Sheriffs Principal had met to discuss the matter and the conclusion was that, as the information is more of guidance, it would be more appropriate to issue a Guidance Note rather than a Practice Note. He advised that the matter was being considered further as there was not unanimity in issuing a guidance note, with concerns relating to the legal effect of such a document.

Mr Simpson advised that the Law Society was providing training to faculties in relation to the new rules.

## **7 Sheriff Court Bankruptcy Rules**

The Council considered the policy paper produced. It was agreed that, in principle, the Council was supportive of the proposed changes. However, it was agreed that further investigations would be required in relation to the Council's power to make the necessary amendments. It was agreed that it may be appropriate for such power to be specified in primary legislation and that suitable legislation for doing so may be the Home Owner and Debtor Protection Bill.

Sheriff Holligan agreed to consider the matter further and make contact with policyholders through the secretariat as required.

**Action: Sheriff Holligan to consider the amendment of primary legislation to allow the Council to make the necessary changes**

## **8 Pensions Act 2008**

The Council considered the paper produced by the secretariat along with the draft instrument. The Council proposed minor amendments to the draft and the secretariat undertook to instruct the drafter in those terms. The Council agreed that the draft could not be finalised until sight of the relevant regulations and commencement order. The Council agreed that the final instrument should be cleared by the Chairman in consultation with the drafter, in light of the relevant regulations and commencement order.

**Action: Instrument to be cleared by the Chairman after consideration of the commencement order and related regulations**

## **9 Sanction for Employment of Counsel**

The Council considered the draft regulation and confirmed that they were content with the draft and had no further comment to make.

## **10 Simplified Divorce Applications – Intimation by Sheriff Officers**

The Council considered the correspondence received along with the relevant provisions of the Ordinary Cause Rules. The Council agreed that the intention was that rules 5.4(3) and (4) should also apply to service in simplified divorce and dissolution of civil partnership applications. In the circumstances, the Council agreed to amend rules 33.76(4)(b) and 33A.69(4)(b) to specify that service should be in accordance with rule 5.4(1) to (4).

It was agreed that the draft amendment should be cleared by the Chairman and included in the next Miscellaneous Instrument.

**Action: Chairman to clear provision for inclusion in the next Miscellaneous instrument**

## **11 Manning v Manning – Administration of Justice (Scotland) Act 1972**

The Council considered the provisions of rules 3.1.2 and 3.1.3 of the Summary Application Rules 1999 in light of the decision in the case of Manning v Manning, reported in the 28<sup>th</sup> August 2009 issue of the Scots Law Times. The Council agreed that it was content with the current provisions and that no amendment to the rules was necessary.

## **12 Recognition/Non-recognition of foreign decrees**

This matter was placed on the agenda for today's meeting following correspondence received from Sheriff Jamieson. At the request of Sheriff Jamieson, the matter was continued until the next meeting to allow further investigations to be made.

### **13 The 2007 Lugano Convention**

The Council considered the policy paper produced along with the relevant provisions of the Convention and the Act of Sederunt (Child Care and Maintenance) Rules 1997. The Council also considered draft Regulations, which propose to amend the Civil Jurisdiction and Judgments Act 1982 to take account of the new Convention. Sheriff Principal Taylor agreed to consider all relevant matters on behalf of the Council and to liaise with the secretariat to instruct amendments as thought necessary. It was agreed that any amendments would be cleared by the Chairman.

**Action: Sheriff Principal Taylor to consider the required legislation and advise the secretariat of any necessary amendments  
Chairman to clear any required provisions**

### **14 Business Update**

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

### **15 AOCB**

#### Adults with Incapacity (Scotland) Act 2000 – Subsequent Applications

The Council considered the letter received by the Lord President from the Mental Health and Disability Sub-Committee of the Law Society of Scotland in relation to the procedure for making subsequent applications under Part 6 of the Adults with Incapacity (Scotland) Act 2000. It was noted that the Council had considered the matter on three separate occasions previously and it had been agreed that, since there appeared to be no problem in practice in regard to the service of subsequent applications, there was no need to change the rules. No further specification of difficulties in practice was given to the Council and in light of this the Council affirmed its view that the matter shall remain at the discretion of the sheriff. It was agreed that the secretariat should write to Mr Condry of the Sub-Committee to ask if he could provide details of any instances in which a difficulty has arisen in practice in consequence of the rules as they stand at present. It was also agreed that the Chairman should write to the Lord President advising him of the reasoning for the Council's decisions.

**Action: Chairman to write to the Lord President advising him of the reasoning for the Council's decisions  
Secretariat to write to Mr Condry to ask him to provide details of instances in which a difficulty has arisen in practice in consequence of the current rules**

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

Friday 05 February 2010  
Friday 07 May 2010  
Friday 06 August 2010  
Friday 05 November 2010