

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

**McDiarmid Park, Perth**

**1 December 2006**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt, QC (Chairman)  
Sheriff Principal B A Kerr, QC  
Sheriff I Peebles, QC  
Sheriff W Holligan  
Sheriff M Fletcher  
S Brand  
P Cackette  
R Conway  
J d'Inverno  
J McCormick  
J Murphy  
S O'Neill  
G McKeand (Secretary)  
A Oxley (Assistant Secretary)  
S McCourt (Assistant Secretary)

#### **1 Apologies**

A Johnston, C Flannigan, S Di Rollo, QC, R Young

#### **2 Minutes of Previous Meeting and Matters Arising**

Minutes of the last meeting of 8 September were approved.

Under matters arising it was noted that we still await stakeholders' views in relation to the proposed amendments to rules in respect of Family Law Scotland Act 2006. The Electronic Evidence Rule has still to be cleared by the Chairman.

#### **3 Animal Welfare Act**

The Council considered the papers before it and responded to the questions contained therein. After discussion members approved the instruction of a draft Act of Sederunt which is to be cleared by the Chairman in due course.

#### **4 Vulnerable Witnesses (Scotland) Act 2004 Phase 4 Implementation**

The Council considered the paper before it and answered the questions put forward by the Secretariat as follows:

- Against the application of time limits for the lodgement of child witness notices and vulnerable witness applications
- Agreed that the procedure for lodging notices/applications should follow the same procedure as laid down in the relevant Act of Adjournal or earlier Acts of Sederunt under the Act
- Agreed that the issue of whether there are any vulnerable witnesses be addressed at procedural hearings

- Agreed that all relevant civil rules be amended to include a rule along the lines that “the sheriff shall ascertain whether there is a vulnerable witness within the meaning of Sec 11(1) of the Vulnerable Witnesses (S) Act 2004”
- Agreed that the obligation to provide information on special measures be placed on the party citing the witness and that current forms for citation of witnesses be amended appropriately
- Agreed that the Forms currently used in Children’s Hearings court proceedings could be adapted and regulated by Rules of Court
- Agreed that the Secretariat would instruct the draftsman to provide a draft Act of Sederunt for consideration by the Council at the March meeting

## **5 EU Insolvency Report**

It was agreed that Mr Murphy and the Chairman would consider the Report and the resultant draft Acts of Sederunt with a view to reporting back to the Council in March.

## **6 In Court Adviser - Design of Small Claim and Summary Cause Forms and Guidance**

The Council considered the correspondence from both the Hamilton and Kilmarnock In Court Advisers regarding these issues. Members agreed to take no action regarding the Forms as they were not satisfied this was a widespread problem. It was agreed that the wording of the guidance in relation to the return day should be amended and that members would provide Ms O’Neill with suggestions to enable her to provide a form of suitable wording for consideration by the Council at the next meeting.

It was also agreed that Sheriff Holligan and Ms Oxley would consider further the separate issue regarding the implications for a defender admitting a claim in heritable and certain other types of actions and report back to the Council at the next meeting.

The Secretariat undertook to write to the Scottish Court Service to ensure that the forms displayed on its website are Disability Right compliant.

## **7 Miscellaneous Draft Act of Sederunt**

The Council considered the draft Act of Sederunt. After discussion, the Secretariat were asked to issue further instructions to the draftsman and seek advice as to whether certain changes should be included in other rules such as the summary application/bankruptcy rules relating to S25(4) of the Commissioners for Revenue and Customs Act 2005. It was agreed that the Chairman would clear the draft Act of Sederunt in due course.

## **8 SCRC Consultations – Options for Handling ADR and PI Analysis of Responses Reports**

Following consideration of the paper prepared by the Secretariat the Council agreed that an additional Council meeting be arranged for 6 February 2007 to consider both consultation reports. Copies of non-confidential responses can now be placed on the Scottish Court Service Website and copies of all can be copied to Council members. The Secretariat was asked to write to the Lord President’s Legal Secretary to request a copy of Lord Clarke’s Report on Mediation in the Court of Session and to appraise him of progress made.

## **9 Proceedings for Determination of Devolution Issues Rules IS 1999/1347**

The Secretariat reported orally on this issue.

The Council agreed that once the policy paper was received that the draft Rule be cleared with the Chairman.

## **10 Business Update**

Members noted the progress on the various issues. An oral update was given by Sheriff Peebles regarding the meeting with the Chairmen of Joint IT Committees and the Chief Executive of the Scottish Court Service. It noted that the Scottish Court Service was undertaking a study to establish what the various issues are and would report back to the Joint Committee in early 2007.

It was agreed that the Diligence Working Group should meet in early 2007 and the Secretariat was asked to make the necessary arrangements.

## **11 Any other business**

Mrs Oxley advised that the 3 sheriff members had not received their papers for the meeting. Mrs Oxley asked Members to advise her within 2/3 days of her email forwarding papers if they happen not to receive the hard copies.

The Chairman advised that Sheriff Principal Kerr intended to relinquish his membership of the Council. This would take effect prior to 2 March 2007.

The Chairman also advised that after 3 years as Secretary to the Council, Mrs McKeand was moving on and was to be replaced by Mr McCourt. The Chairman and members wished it noted that they were grateful to Mrs McKeand for her advice during that time.

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

Friday 1 June 2007

Friday 7 September 2007

Friday 7 December 2007

**Steve McCourt**  
**Secretary to SCRC**