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Minutes of Meeting of Sheriff Court Rules Council

Ordinary Cause Committee

Held at Perth Sheriff Court on 8 November 2007

Present

Sheriff Principal Sir S S T Young Bt QC (Chairman)
S Brand
J d'Inverno
R Conway
G Way
A Johnston
K Stewart (Committee Secretary)
S McCourt (SCRC Secretary)

1 Apologies

Sheriff W Holligan, P Cackette

2 Minutes of previous meeting

The minutes of the previous meeting held on 13 April 2007 were approved.

3 Personal Injuries –Draft Rules

The Committee considered the draft instrument and agreed that the following amendments should be made:

Application and Interpretation of this Part

- Amend rule 36.A1. by deleting the word "injury" wherever it appears and inserting instead the word "injuries". Thereafter the draft to be amended throughout by deleting the reference to the words "personal injury" wherever this occurs and inserting the words "personal injuries" instead. This would make the provisions consistent with the provisions of Chapter 43 of the Rules of the Court of Session 1994 as well as other statutory provisions such as the Damages (Scotland) Act, 1976.
- Amend rule 36.A1.(2) by deleting the reference to rule "36.G1" and inserting instead rule "36.B1"

Actions based on clinical negligence

Rule 36.C1.

- Amend rule 36.C1.(4)(a) by deleting the word "was" in line 1 and inserting instead the word "are"
- Amend rule 36.C1.(6) by inserting the word "following" between the words "not" and "personal" in line 2
- Incorporate a new 36.C1. (6A) in similar terms to that contained in rule 36.F1.(4) as now amended but subject to a reference to paragraphs (4)(a) or (6) rather than paragraph (1)
- Amend rule 36.C1.(7) by deleting the word "case" in line 3 and inserting instead the word "care"

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- Amend the personnel in the definition of "health care professional" from the singular to the plural to be consistent with rule 43.1A(7) of the Rules of the Court of Session 1994

Inspection and recovery of documents

Rule 36.D1.

- Amend rule 36.D1.(2) by deleting the number "P15" in line 3 and inserting instead the number "P12" and after the word "effect" by adding the words "by endorsing thereon, a docquet in the following terms " Court.....Date.....The Sheriff Grants commission and diligence for the production and recovery of the documents called for in this specification of documents. (Sgd) Sheriff Clerk" The point of this is that it will assist the sheriff clerk in processing the Form
- Amend rule 36.D1.(3) by deleting the words "of the sheriff" in line 2
- Amend rule 36.D1.(5) by deleting the brackets and reference "fn" in line 3 and by removing the brackets from the words "whether or" in line 4

Application of other rules

Rule 36.E1.

- Amend rule 36.E1.(4) by inserting a new "(b) rule 9.3 (return of initial writ)" thereafter re-number the references to other rules accordingly
- Amend rule 36.E1.(5) to read " But the defences shall not include a note of pleas-in-law" By doing this the provision will then accord with Court of Session Practice Note No. 3 of 2004
- Amend rule 36.E1.(7) to read " In relation to an action proceeding in accordance with personal injuries procedure" in line 1; delete the reference to "(a)" and the word "and" in lines 2 and 4 respectively and delete paragraph (7)(b) as this is no longer necessary due to the earlier amendment on pleas-in-law.

Disapplication of personal injury procedure

Rule 36.F1.

- Amend rule 36.F1.(1) by removing the brackets around the number "28" in line 2
- Amend rule 36.F1.(4)(b) by adding the words "rather than in accordance with personal injuries procedure" at the end of that line
- Add a new rule 36.F1.(4)© - "The pursuer shall within 14 days thereof lodge a revised initial writ as nearly as may be in Form G1"
- Add a new rule 36F1.(4)(d) - "The defender shall thereafter adjust his defences so as to comply with rule 9.6(2) of the Ordinary Cause Rules 1993" This is to ensure that the standard procedure is adhered to.

Allocation of diets and timetables

Rule 36.G1.

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- Amend rule 36.G1.(1)(a) by inserting the words "no later than 9 months" between the words "action" and "and"
- Amend rule 36.G1.(1)(b) by deleting the words "specified from time to time by the sheriff principal" in line 2 and inserting instead the words "specified in the after-mentioned Schedule, which the sheriff principal may vary for his sheriffdom or for any court within his sheriffdom" The Schedule is to form an Appendix to the OCR 1993 and should specify the various stages in proceedings referred to in 36.G1.(b)(i) to (viii) with the following timings:
 - (i) (defences + 28 days)
 - (ii) (defences +28 days)
 - (iii) (defences+ 8 weeks)
 - (iv) (defences+ 8 weeks)
 - (v) (defences +10 weeks)
 - (vi) (defences +12 weeks)
 - (vii) (proof – 8 weeks)
 - (viii) (proof – 21 days)
- Amend rule 36.G1.(1)(b)(viii) by deleting the words "pre-trial meeting" and inserting instead the words "pre-proof conference"
- Amend rule 36.G1.(2) by deleting the words "of the sheriff" in line 2 and the word "order" in line 3
- Amend rule 36.G1.(4) by deleting the words "two copies" in line 1 and inserting instead the words "a certified copy"
- Amend rule 36.G1.(5) by deleting the words "the copies" in line 1 and inserting instead the words "a copy"
- Amend rule 36.G1.(6) by adding the word "thereto" after the word "opposition" in line 4
- Amend rule 36.G1.(7) by deleting the word "may" in line 2 and inserting instead the word "shall" This will then accord with the practice in the Court of Session which makes it mandatory for a hearing to be fixed when the record is not lodged by the date specified in the timetable and will be of benefit to the process in the sheriff court
- Amend rule 36.G1.(9) by deleting the words "more than one cause" in line 1 and inserting instead the words "a number of causes"

Applications for sist or for variation of timetable

Rule 36.H1.

- Amend rule 36.H1.(1)(3) by adding the words "in terms of this rule" after the word "action"

Incidental hearings

Rule 36.L.1.

- Rule 36.L1.(3) to be deleted unless there is good reason to the contrary as it was the view of the Committee that any expenses awarded against a party in default should be up to and including the expenses occasioned by the hearing
- Amend rule 36.L1.(3) by deleting the figure "5" and inserting instead the numeral "V"

Mesothelioma actions: special provisions

Rule 36.19

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- Amend rule 36.19(2)© by adding the words "personal injuries" between the words "the" and "procedure" in line 1 and adding "36.G1.(1)(b) at the end of line 2
- Amend rule 2(4) by inserting the words " or rule 36.F.1." after "36.C1." in line 2

Form P11

- Amend the heading of the Form by deleting the word "injury" and inserting instead the word "injuries"
- Amend the Form by inserting the words "INITIAL WRIT" immediately underneath the heading and then immediately below that the words and brackets "Personal Injuries Action"
- Amend the preamble of the craves by inserting the words "to grant decree" after the word "court"
- Amend by making the craves cumulative rather than alternative so as to be consistent with Form 43.2A of the Rules of the Court of Session 1994
- Amend Statement of Claim 5 by adding the words "the heads of claim and" between the words "and" and "give" in line 1 – as in Form 43.2A

Form P12

- Amend paragraphs 1 and 2 of the Form by adding "36.B1.(1)(b)" after the word "rule" in line 3 of each
- Delete as inaccurate Note 2 and insert instead "Claims for necessary outlays within certain specified limits may be paid. Claims should be made in writing to the person who has obtained an order that you produce the documents."
- Amend Note 3 by adding the words "the sheriff clerk" after the word "to" where this first appears in line 4
- Amend the "CERTIFICATE" section of the form by deleting the words "of the sheriff" in line 2

Form P13

- Amend the Form by adding the words "above the crave(s)" after the words in brackets in italics immediately above the heading "Authority"
- Amend line 1 by deleting the word "thereof" and inserting instead the word "thereon"
- Amend line 2 by inserting a comma after the word "that"
- Amend line 3 by inserting the words "personal injuries" between the words "the" and "procedure"

Form P15

- Amend statement 1 of the Form by deleting the words "trial of" and inserting instead the words "proof in"
- Amend statement 9 by deleting the word "pre-trial" and inserting instead the word "pre-proof"

Form P17

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- Amend statement 1 of the Form by adding a bracket after the word "means" (to correspond with the brackets before "telephone")
- Add a new statement 2A similar to that which is contained as in Form 43.10 of the Rules of the Court of Session 1994
- Amend NB by deleting the words "or less" in line 1 and inserting instead the figure "2" for the figure "4" in the same line
- Amend each of the two following sections by deleting the word "course" where it appears in each and inserting instead the word "court"
- Delete the reference to "counsel or" at the foot of the Form. Draft timetable schedule for purposes of rule 36.G1(1)(b) as in Form 43.6 of the Rules of the Court of Session

Supplementary Matters

Note by Mr Way

The Committee considered the Note by Mr Way on further suggested rule changes to the Ordinary Cause Rules 1993 and agreed the following:

- Amend 3.1(1)(e) of the OCR 1993 by adding a new rule 3.1 –"in the case of a personal injuries action by initial writ in Form P11
- No amendment to rule 5.2(1) necessary
- Amend rule 13.1(4) by inserting in line 1 after the word "record" the words " or in a personal injuries action subject to personal injuries procedure after the date upon which the record is required to be lodged"
- Add a new rule 13.2(4) providing that "this rule shall not apply to a personal injuries action which is subject to personal injuries procedure" and "provide instead that where the sheriff grants an application under rule 13.1 the sheriff may make such further order as he thinks fit"
- The provisions of Chapter 18 should not apply to personal injuries procedure and instead there should be a new rule 36.M1 which would deal with amendment procedure in personal injuries actions. Mr Way undertook to draft a compatible provision for personal injuries actions
- Similarly that the provisions of Chapters 19 and 20 should not apply to personal injuries procedure and Mr Way undertook to draft compatible provisions for personal injuries actions
- No amendment to Chapter 25 is necessary
- Mr Way to consider if the provisions of Chapter 36(1), 36(2), 36(3), 36(4A), 36.6(2);36.12© and 36.13(1)© require any amendment so that they apply to both actions governed by personal injuries procedure as well as those which do not

Note by Draftsperson

- Agreed with reference to paragraph 6 that the proposed change to rule 28.10 of the OCR 1993 so as to correspond with that of rule 35.11 of the Rules of the Court of Session 1994 can be made in the next miscellaneous instrument

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The Committee discussed whether as a consequence of the proposed rule changes it should consider any amendment to the rules contained in Chapter 34 of the Summary Cause Rules 2002. It was agreed that the Chapter 34 provisions should remain as they are.

4. Personal Injuries User Group Meetings

The Chairman asked if anyone was willing to attend future meetings of the Group. Given that no member considered they had sufficient expertise in personal injuries related work the Chairman undertook to write to Lady Paton advising her of the current position. The matter would be further canvassed at the next meeting of the Sheriff Court Rules Council in December.

5. Family Actions – Late Appearance

The Committee considered the Note by the Chairman and agreed that the draft rule should only apply to those actions mentioned in rule 8.1(1)(a) of the OCR 1993 and that the application may be made at any time before extract of the decree. It was also agreed that there be a provision to exclude the dispensing power under rule 2.1 of the 1993 rules as it was considered there had to be a finality to the proceedings. The secretariat was authorised to instruct the draftsman in these terms.

6. Equality Act 2006/Scottish Commission for Human Rights Act 2006

The Committee considered the Note prepared by the Chairman and agreed that the secretariat should seek confirmation from the draftsman as to whether the Court of Session has power under sec 32 of the Sheriff Courts (Scotland) Act 1971 or any other provision to exclude an appeal against a decision of a sheriff in relation to either sec 14 of the SCHR Act 2006 or sec 30 of the Equality Act 2006. If the Court of Session did have this power then the right of appeal should be excluded in both the proposed interventions under the provisions of these Acts and the secretariat was authorised to instruct the draftsman accordingly.

7. Commissioners for Revenue & Customs

The Committee agreed that similar provision for representation be made in insolvency rules as was made previously to other sets of rules. It was also agreed that the provision should extend to rules governing judicial factors. The secretariat was authorised to instruct the draftsman accordingly.

8. AOCB

None

9. Date of Next Meeting

To be confirmed