

Approved Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

7 December 2007

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff W Holligan
Sheriff M J Fletcher
Mrs C Flanagan,
Mr G Way
Mr A Johnston
Mr S Brand
Mr J Murphy
Mr J d'Inverno
Mr R Conway
Mr R Young
Mr S McCourt (Secretary)
Ms K Stewart (Assistant Secretary)

Agenda

1 Apologies

Sheriff Principal J A Taylor, Sheriff I A S Peebles QC, Mr P Cackette
Ms S O'Neill, Mr S Di Rollo QC

2 Minutes of previous meeting

The minutes of the previous meeting were approved. No Matters Arising.

3 Adult Support and Protection (S) Act - draft rules

The Council considered the draft Act of Sederunt. Some further textual amendments were proposed and agreed. The secretariat to instruct these additional amendments and issue the draft for clearance by the Chairman in due course.

4 Bankruptcy & Diligence (Scotland) Act 2007

Sheriff Holligan advised on progress of the Rules Council Working Group and the Lord President's Advisory Group on diligence rules. The Working Group made recommendations for rules of court and drafting instructions were issued. The Working Group recommendations have not been implemented. The draftsman has taken an opposing view as to the formulation of the rules. Sheriff Holligan advised that a meeting has been arranged with the draftsman and sought views from the Council on the Working Group recommendations. The Council supported their recommendations and advised they would not be inclined to convene an extraordinary meeting for the purpose of considering draft rules. Any draft prepared was to be assigned to the March agenda. The Council requested that the Working Group advise members on the outcome of the meeting with the draftsman. It was noted that it was now unlikely that rules of court would be in place in time for the policy holder's proposed implementation date of 1 April 2008.

5 Licensing (Scotland) Act 2005 – draft rules

The Council considered the draft Act of Sederunt produced along with the drafts person's note. The draft rules were agreed and members authorised clearance of the draft by the Chairman in due course.

6 Family Actions – late appearance by defenders – draft rules

The Council considered the draft Act of Sederunt produced along with the drafts person's note. The Council discussed the issue further and agreed that the draft rules should be placed in a new Part IIA in each of chapters 33 & 33A of Ordinary cause Rules 1993 and that there was no requirement for transitional provisions in respect that the rules when commenced should take effect for all cases. Some additional textual amendments were agreed. It was agreed that a revised draft be instructed by the secretariat and cleared by the Chairman in due course.

7 Electoral Administration Act 2006 – Anonymous Registration (appeals) – draft rules

The Council considered the draft Act of Sederunt produced along with the drafts person's note. The Council discussed at length the issues surrounding electronic registration of these appeals. The principle of allocating a serial number and the creation of a manual register was favoured. It was recognised that such cases may be rare but that any error when registering electronically was of significant risk and outweighed any operational inconvenience. Revised draft rules were to be instructed and cleared by the Chairman in due course. Scottish Court Service was to be advised of the Council's decision.

8 Serious Crime Act 2007 – detained cash investigations

The Council considered the paper produced and agreed that a minor amendment was required to Rules 3.19.21 and 22 of the Summary Application Rules 1999 to give effect to provisions under sections 75 and 76 of the Act which commence in April 2008. The secretariat to instruct the amendment for inclusion in a miscellaneous Act of Sederunt in due course.

9 Immigration, Asylum & Nationality Act 2006

The Council considered the paper produced and agreed that there was no requirement for new or amended rules of court in respect that the Border and Immigration Agency have procedures in place for notification of relevant parties in cases where there is a concurrent objection and appeal.

10 Reciprocal Enforcement of Maintenance- USA Orders

The Council considered the paper produced along with 4 Statutory Instruments. It was noted that the Orders commenced in October but that there had been no policy holder contact with the secretariat prior to implementation of the Orders.

Members remitted the matter to the agenda of the next Ordinary Cause Committee meeting. The Chairman thanked the secretariat for their paper and advised he would submit an additional paper to focus the issues for that meeting.

The Council requested a detailed policy paper providing advice as to the impact upon rules of court and any changes deemed necessary to give effect to Part I and II of the 1972 Act as amended by the 4 Orders. The secretariat to contact the relevant policy holder.

11 Business Update

Members noted progress on the various issues. The Council agreed to maintain a watching brief in relation to the impact upon categories of business due to the increase in sheriff court jurisdiction limits, and the desirability for extension of personal injury rules to other categories of business. These matters to be placed on the agenda for consideration in March along with Lord Gill's Civil Justice Review.

12 Any Other Business

The Chairman undertook to write to Lady Paton and advise her that Council members considered they do not have sufficient expertise in personal injury related work to contribute meaningfully at meetings of the Court of Session Personal Injuries User Group.

On behalf of the Council the Chairman conveyed thanks to Sheriff Peebles, Mr Conway and Mr Murphy for their attendance and contributions to the council and to the secretariat for their research and presentation of papers.

Date of subsequent meetings.

Friday 7 March 2008

Friday 6 June 2008