

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

06 February 2009 10.30am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff W Holligan
Sheriff C Scott
Sheriff M J Fletcher
Mr G Way
Mr F Simpson
Mr S Brand
Mr M Anderson (Lord President's Private Office)
Mr S McCourt (Secretary)
Miss M O'Neill (Assistant Secretary)
Mr A Hughes (Assistant Secretary)

1 Apologies

Sheriff Principal J A Taylor
Mr A Johnston
Mr S Di Rollo QC
Mr J d'Inverno
Ms S O'Neill
Mr R McMillan
Mr C McKay

The Chairman advised the meeting that Mrs Flanagan had resigned from her appointment. He advised that the Lord President would contact the Law Society in order to appoint a replacement member. Mr Way suggested that when he does, the Law Society should consider nominating a Solicitor-Advocate.

2 Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters Arising:

Unfair Relationships

Ms O'Neill has advised the Secretariat that she has spoken to advice agencies who have confirmed that there appear to be no difficulties in practice when dealing with such cases. It was agreed that this item could now be removed from the agenda.

ADR Rules

The meeting considered the correspondence between the Chairman and the Lord President and confirmed that they were content that consideration of the matter should be deferred until the Civil Courts Review has reported.

Lay Person Appointment

The Chairman advised that a successful candidate had been nominated and this was awaiting endorsement by the Cabinet Secretary.

Child Maintenance Rules 1997

The secretariat advised that a paper was still awaited from Mr McKay. It was agreed that this matter be continued until the next meeting. The Chairman advised that he was still to write to the Scottish Government in relation to the issues surrounding this matter.

Action: Policy paper to be provided by Mr McKay for May meeting
Chairman to write to Scottish Government to highlight issues

Public Health (Scotland) Act 2007

The secretariat advised that work is ongoing in relation to the drafting of forms and advised that a draft instrument should be available for the August meeting.

Bankruptcy and Diligence (Scotland) Act 2007

Sheriff Holligan advised that the small working group had met and considered the draft instruments in relation to the time to pay provisions and diligence as well as a new instrument in relation to money attachment. He advised that revised drafts have been instructed, which would require clearance by the Council in due course.

EOP and ESCP Regulations

The secretariat advised that the relevant rules were now in place. The meeting was advised that Regulations are awaiting being drafted to exclude applications being made to the Court of Session.

Policy Memoranda

The secretariat advised that this matter had been discussed with Susan Whiteford, Director of Communications for the Scottish Court Service. Ms Whiteford was of the view that, given the fixed target audience of those who would be interested in changes to rules and providing that they are adequately informed of these, a press release is unnecessary unless there is a particular subject matter which the Council considers is likely to be of significant interest. It was therefore suggested that the best way forward would be for the policy memoranda to be added to the Scottish Court Service website. The Council agreed to proceed on this basis, subject to any further comments from members not in attendance at today's meeting.

The secretariat sought clarification on the content of the policy memoranda. It was agreed that the aim of the memoranda was to explain miscellaneous rules changes. In relation to rules giving effect to larger pieces of legislation, it was agreed that all that would be required is an outline of the implications of the new rules, for example, "this affects...".

Mr Anderson advised the Council that the Lord President's Private Office had recently changed the style of the miscellaneous Acts of Sederunt by adding separate headings within the instrument. It was agreed that this was useful in identifying the relevant changes.

Ordinary Cause Personal Injury Rules

The Chairman advised that he still required to clear the draft rules. The Council considered whether a Practice Note would be necessary and agreed that in the first instance publicity of the rules changes would be required. It was agreed that the Chairman and Mr Simpson would look at this in further detail and report back to members.

The timescale for implementation was considered by the Council. The secretariat advised that Scottish Court Service require an 8-10 week lead-in time for their IT

systems. It was agreed that a three month lead-in time would be appropriate for all court users.

Action: Draft rules to be cleared by Chairman
Chairman and Mr Simpson to consider publication of rules changes

3 Sheriff Court Bankruptcy Rules 2008

The secretariat advised that the Accountant in Bankruptcy wishes to have further discussions with the Keeper, Scottish Court Service and those responsible with other public registers in order to share best practices. It was agreed that this matter be continued until the next meeting.

4 Counter-Terrorism Act 2008 – Foreign Travel Restriction Orders

The Council considered the policy paper produced along with the relevant provisions of the Counter-Terrorism Act. The Council agreed that no form required to be prescribed for the granting of an order and confirmed that the details of the order should be contained within the final interlocutor and extract.

In relation to the variation, renewal and discharge of a foreign travel order, it was agreed that applications should be in similar terms to Rule 3.25.5 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999, which relates to sexual offences prevention orders in terms of the Sexual Offences Act 2003.

It was agreed that no specific provision was necessary for the recording of evidence as the sheriff can always regulate the procedure by virtue of Rule 2.31 of the 1999 Rules.

The secretariat undertook to instruct the drafter in those terms.

5 Adoption (Scotland) Act 2007

The Council considered the policy paper produced along with the draft Act of Sederunt and the drafter's note. The Chairman advised that there were ongoing discussions concerning the convention adoption order provisions, therefore, part 3 of the instrument required further amendment. The Council confirmed that they were content with general framework of the draft rules in relation to adoption orders and permanence orders.

The Council considered in detail the provisions in relation to application for leave. Following discussion, it was agreed that such applications should be a two stage process namely that the application should be considered by the sheriff without intimation and then if he was minded to grant the application then it should be intimated with the opportunity for parties to be heard. Further discussion ensued concerning whether the application should be by motion or initial writ and it was agreed that this should be considered further by the working group.

Consideration was given to the question whether, in the case of an application by a natural parent for contact post adoption, it would be necessary to provide for the process in the original adoption proceedings to be opened up. It was decided that this would not be necessary since the pleadings in the application for contact

would be sufficient to set the scene and focus the issues to be decided by the sheriff in that application.

Given the time constraints and the training implications, the Council agreed that the draft should be cleared by the Chairman in consultation with the working group. The Chairman advised that the working group was likely to meet at the beginning of March to consider the provisions in further detail.

The Council agreed to BAAF's request to use the current draft rules in order to commence the preparation of training materials on the understanding that what is available is only a draft and it may be subject to change.

The Council also considered whether it would be preferable for a Practice Note to be issued by Sheriffs Principal. It was agreed that it was best to gauge how the rules were operating in practice before reaching a decision on this.

Action: Final draft to be cleared by the Chairman in consultation with the working group

6 Employment of Counsel

The Council considered the policy paper produced along with the draft Act of Sederunt and the drafter's note. The Council also considered the correspondence received from the Law Society of Scotland and various members of the Society of Solicitor Advocates.

Following extensive discussion, the Council agreed to adjourn consideration of the matter until the Civil Courts Review has reported.

7 Joint IT Committee recommendations

The Council considered the draft Act of Sederunt along with the drafter's note. The Council noted that the summary application rules would also require amendment to allow for the sheriff clerk to sign documents furth of his sheriffdom and the secretariat agreed to instruct the drafter accordingly.

The secretariat advised the Council that the intention was for the rules to include also provision for the issuing of decrees and/or extract decrees by electronic means, with sheriff officers being able to access an electronic gateway in order to verify independently the existence of a decree/extract decree.

The Council agreed in principle that they were content for such a provision to be made. The Council also considered whether the current definition of "extract" would require to be amended to allow for electronic transmission of extracts. It was agreed that this matter be continued until the next meeting to enable the secretariat to investigate this.

Action: Amendment to rules to be instructed
Investigations to be made in relation to the definition of an "extract"

8 Tribunals Courts and Enforcement Act 2007

The Council considered the policy paper previously produced along with the relevant provisions of the Tribunals Courts and Enforcement Act and the correspondence from the County Courts in England. The Council was advised that there was no intention for rules to be made in relation to employment tribunals.

The Council confirmed it was content to proceed as previously agreed, namely:

- A compromise sum should be recoverable immediately; therefore no rules of court are required
- An application for declaration is to be made within 42 days from the date of the compromise
- An application is pending from the date on which it is lodged with the sheriff clerk until an extract of the final decision has been issued

The Secretariat undertook to instruct the drafter in those terms.

9 Association of Commercial Attorneys

The Council considered the paper produced by the secretariat along with the paper prepared by the Chairman. Mr Anderson advised the Council that a separate Act of Sederunt would be made for each additional authority/scheme, which would specify the rights each authority/scheme confers. Mr Anderson agreed to distribute a copy of the relevant Act of Sederunt in relation to the Association of Commercial Attorneys to Council members once it had been made.

Following discussion, it was agreed that the Ordinary Cause Rules, Summary Cause Rules, Small Claims Rules and Summary Application Rules would all require to be amended to provide for members of such authorities/schemes to have rights of audience and/or to be able to prepare documentation.

It was agreed that the provisions in rules for expenses also require to be amended. Mr Anderson advised the meeting that the issue of expenses was currently under consideration by the Court of Session. Once this has been finalised, Mr Anderson agreed to prepare draft rules in the above terms. The Council agreed that this be cleared by the Chairman in due course.

Action: Mr Anderson to provide a copy of the Act of Sederunt conferring rights of audience
Mr Anderson to prepare draft rules

10 Business Update

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

11 Draft Business Plan 2009/10

The Council agreed to amend the entry in relation to the Draft ADR rules to reflect that action was pending recommendations by the Civil Courts Review. Thereafter the draft business plan was approved.

12 AOB

Motion for Dismissal – (Inner House Opinion – Tonner & Anr v Reich & Hall)

The Council considered the email from Sheriff Holligan along with previous correspondence on the matter. The Council discussed the cases referred to and the concept of abuse of power/process. Before considering the matter further, the Council agreed to ascertain whether the Court of Session has any plans to address the issue. The secretariat undertook to write to the Court of Session Rules Council and report back to the Council at the next meeting.

Council Papers

The Chairman reminded members of the confidential nature of the papers produced for Council meetings, particularly in relation to draft rules which are often subject to detailed changes.

Date of subsequent meetings

Friday 01 May 2009

Friday 07 August 2009

Friday 06 November 2009