

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

**McDiarmid Park, Perth**

**01 May 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  
Ms C McLachlan  
Mr A Johnston  
Mr R McMillan  
Ms S O'Neill  
Ms R Smith  
Mr C McKay  
Mr D Smith (Lord President's Private Office)  
Mr S McCourt (Secretary)  
Miss M O'Neill (Assistant Secretary)

### **1 Apologies**

Sheriff Principal J A Taylor  
Mr S Di Rollo QC  
Mr J d'Inverno

The Chairman welcomed Ms McLachlan and Ms Smith to the meeting. He advised that Ms McLachlan had been appointed to replace Ms Flanagan and that Ms Smith had been appointed as a lay member.

The meeting offered congratulations to Mr Way on his recent appointment as an all Scotland floating Sheriff. The secretariat advised that arrangements were ongoing to secure his replacement on the Council.

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

The minutes of the previous meeting were approved.

### **Matters Arising:**

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

Sheriff Holligan advised that the matters still requiring consideration were land attachment, residual attachment, admiralty actions and removings. He confirmed that it is likely that the Lord President's Advisory Group will be disbanded, which will require the respective Rules Councils to consider the remaining provisions separately. He advised that the majority of provisions related to sheriff court procedure.

He confirmed that the final meeting of the group was scheduled for 22 June and that he would advise the Council of the outcome.

**Action: Sheriff Holligan to advise of developments with LPAG**

#### Ordinary Cause Personal Injury Rules

The Chairman confirmed that the content of a Practice Note was being considered by Mr Simpson.

The Council considered the timing of the rules changes in relation to time to pay provisions, adoption and the personal injury rules and it was agreed that the implementation dates should be staggered to allow for relevant training. It was agreed that a commencement date of the end of October would be preferable in relation to the personal injury rules.

(The Ordinary Cause Committee met at the conclusion of the Council meeting to discuss the latest draft rules. The Committee proposed amendments to the draft and the secretariat undertook to instruct the drafter accordingly.)

**Action: Mr Simpson to consider the content of a Practice Note**

#### Adoption

The Chairman advised that the rules were nearing completion. He advised that difficulties had arisen in relation to the intercountry adoption provisions. He confirmed that the implementation date has now been postponed until 28 September 2009.

He further advised that a BAAF adoption conference is to take place in June which would feature the draft rules.

The issue of a Practice Note in relation to the new rules had been raised by Civil Courts Review researchers. Council members from the working group agreed that it would be appropriate for a Practice Note to be made and it was agreed that this matter would be taken forward by the working group.

**Action: Adoption working group to consider the content of a Practice Note**

#### Joint IT Committee Recommendations

The Council noted the terms of the letter from Eleanor Emberson.

#### Association of Commercial Attorneys

The secretariat advised that the relevant instrument has now been made and is due to come into force on 20 May 2009. It is anticipated that it will predominantly affect Glasgow Sheriff Court in the first instance.

#### Confidentiality of Council papers

The Chairman drew attention to the confidential nature of the papers provided for Council meetings. It was agreed that any requests for sight of Council papers should be routed through the secretariat.

#### Policy Memoranda

The secretariat confirmed that the memoranda would be provided to the Lord President's Private Office for circulation along with statutory instruments. In

addition, it would also be published on the Scottish Court Service website. The term “policy memorandum” was discussed and it was agreed that the term “Note” was more appropriate.

The secretariat advised that this matter would be taken forward in relation to new instruments made and confirmed that, where appropriate, it was content to receive input from members in relation to specific rules changes in which members had been involved.

### **3 Counter-Terrorism Act 2008 – Foreign Travel Restriction Orders**

It was agreed that the reference to “paragraph 8” in Rule 3.38.1 of the draft be amended to read “paragraph 9”. Subject to the amendment, the instrument was cleared by the Council.

The secretariat advised that a commencement date was still to be confirmed by policyholders.

### **4 Bankruptcy & Diligence (S) Act 2007 – Attachment of money provisions**

The Chairman expressed his thanks to the Council members on the Lord President’s Advisory Group for their work in relation to the various instruments made.

Sheriff Holligan advised the meeting that the draft had been amended in light of the Advisory Group’s meeting on Monday. Subject to the amendment of certain forms, the Council agreed in principle to the content of the draft. It was agreed that the final draft would be cleared by the Chairman in consultation with Sheriff Holligan prior to consideration by the Chairman of the Lord President’s Advisory Group.

**Action**            **Draft to be cleared by the Chairman in consultation with Sheriff Holligan**

### **5 Miscellaneous Instrument 2009**

The Council considered the draft Act of Sederunt along with the drafter’s note. Given the terms of the letter from Eleanor Emberson on IT e-transmission, it was agreed that the provisions on this particular subject be removed from the draft. In relation to the time order provisions, it was agreed that provision should be made for the regulated agreement to be attached to the initial writ or statement of claim as the case may be by the pursuer. The Council proposed amendments to the draft and the secretariat undertook to instruct the drafter accordingly. Thereafter, it was agreed that the amended instrument would be cleared by the Chairman in consultation with Sheriff Holligan and Ms O’Neill. It was also agreed that there should be a three month lead in time to commencement in order to ensure that the necessary forms and guidance are suitably updated.

**Action:**            **Draft rules to be cleared by Chairman**

Ms Smith advised difficulties in practice exist in relation to time orders being extracted. It was agreed that she should provide a note to the secretariat

outlining the difficulties in further detail to allow the matter to be considered fully by the Council.

**Action: Ms Smith to submit a note to the secretariat in relation to difficulties with time order extracts**

## **6 Child Maintenance & Other Payments Act 2008**

The Council considered the policy paper along with the relevant provisions of the Child Maintenance and Other Payments Act 2008. The Council agreed that the most appropriate way to introduce the provisions would be to amend the existing 1993 Rules. In relation to the specific provisions, the Council agreed that applications should be made under the Summary Application Rules by way of a prescribed form. However, it was agreed that applications for orders preventing avoidance should be made under the Ordinary Cause procedure. The secretariat undertook to instruct the drafter in those terms. It was agreed that the draft be scrutinised by Sheriff Scott and Ms McLachlan with the final draft being cleared by the Chairman.

**Action: Draft to be scrutinised by Sheriff Scott and Ms McLachlan  
Final draft to be cleared by the Chairman**

## **7 Child Care and Maintenance Rules 1997**

The Council considered the papers produced along with the correspondence between Adam Ingram and the Chairman. Mr McKay spoke to the policy paper he had prepared for the meeting. Following extensive discussion, it had become clear that significant issues exist in relation to the scale and level of payment, the quality of the reports and the training of the reporters. It was agreed that, as these issues related to matters of policy as well as to legislative difficulties, they were too wide to be considered by the Council alone. It was agreed that the Chairman would write to Adam Ingram recommending that the Scottish Government form a working group to investigate the issues in further detail.

**Action: Chairman to write to Adam Ingram requesting the formation of a working group to investigate the issues**

## **8 Companies Act 2006 – Sec 266**

The Council considered the paper produced along with the opinion of Lord Glennie and the provisions of Section 266 of the Companies Act 2006 concerning applications for leave in derivative proceedings. Mr Smith advised the Council that the Court of Session Rules Council is due to consider the matter when it next meets on 28 September 2009.

Following discussion, the Council agreed that provision should be made for a written application for leave to be submitted along with the initial writ, which would be considered in advance of the substantive application. It was also agreed that a rule would be necessary in relation to expenses for the application for leave. The secretariat undertook to instruct the drafter in those terms.

## **9 Business Experts & The Law Forum**

The Council considered the exchange of correspondence between Fergus Ewing and the Lord President in relation to the Business Experts and the Law Forum. Mr McKay outlined to the Council the main points contained within the report of the Forum pertinent to sheriff court procedures. The Council noted the correspondence and agreed to await the report of the Civil Courts Review before considering the matter further.

## **10 Adult with Incapacity Act 2000 – Subsequent applications**

The Council considered the note by Adrian Ward regarding renewal applications under the Adults with Incapacity Act. This matter was previously considered by the Council at its meeting in September 2008. Following discussion, the Council agreed that in practice no alteration of the Rules was required. Mr Way agreed to write to Mr Ward on behalf of the Council to advise him of its decision.

**Action: Mr Way to write to Mr Ward advising of the Council's decision**

## **11 Business Update**

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

## **12 AOCB**

### Small claims/summary cause: Jurisdiction Averments

Sheriff Holligan raised an issue concerning jurisdiction averments in relation to small claims and summary cause actions. At present, there is no requirement within the summary cause and small claim rules for the grounds of jurisdiction to be averred. Following discussion, it appeared that practice varied from court to court as to whether such an averment required to be included. Ms Smith advised the meeting that the requirement to include the averment had recently been removed. It was agreed that the matter be continued until the next meeting for further investigations to be made as to why the requirement was previously removed.

**Action: Ms Smith to investigate the reasoning behind the removal of the previous requirement for jurisdiction averments**

### Instructions for Draft Instruments

Following correspondence with the Lord President's Private Office, the Council agreed that draft instruments would be formally submitted to the Lord President with a covering letter.

### Pre-Action Protocols

The Chairman advised that he was due to meet with Fergus Ewing in his capacity as Chairman in order to discuss mortgage rights applications and the possibility of pre-action protocols in Scotland.

### Equality Bill

Mr McKay advised that the Council that the Equality Bill includes provision for lay assessors in civil court cases. The secretariat agreed to scrutinise the Bill to ascertain whether rules of court are likely to be required.

**Date of subsequent meetings**

Friday 07 August 2009

Friday 06 November 2009

Friday 05 February 2010