

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

**McDiarmid Park, Perth**

**05 February 2010 10.30 am**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff Principal J A Taylor  
Sheriff W Holligan  
Sheriff M J Fletcher  
Mr J d'Inverno  
Mr F Simpson  
Mr S Brand  
Mr G Murray  
Ms C McLachlan  
Mr A Johnston  
Mr R McMillan  
Ms S O'Neill  
Ms R Smith  
Mr C McKay  
Ms J Alcock (Lord President's Private Office)  
Mr S McCourt (Secretary)  
Miss M O'Neill (Assistant Secretary)  
Mrs L McCabe (Assistant Secretary)

### **1 Apologies**

Sheriff C Scott  
Mr S Di Rollo QC

The Chairman welcomed Mrs McCabe to the meeting, who has joined the secretariat in place of Karen Stewart.

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

The minutes of the previous meeting were approved.

#### **Matters Arising:**

##### Miscellaneous Act of Sederunt 2009 – Regulated Agreements

The Chairman has written to the Lord President outlining the reasoning for the amendment to the recent Miscellaneous Act of Sederunt in relation to regulated agreements.

##### Companies Act 2006 – Derivative Proceedings

The Chairman advised that the draft provisions have been cleared for inclusion in the next miscellaneous instrument.

##### New Ordinary Cause Personal Injuries Rules – Guidance Note

The Chairman advised that a Guidance Note has been issued for the Sheriffdom of Glasgow and Strathkelvin.

#### Sheriff Court Bankruptcy Rules

Sheriff Holligan advised that he was waiting to hear back from policyholders. He advised that investigations are being made into the English procedure, which is in similar terms to the Scottish provisions.

#### Pensions Act 2008

The Chairman advised that the instrument has still to be finalised, as the secretariat is still awaiting sight of the final regulations and commencement order.

#### Simplified Divorce Applications – Intimation by Sheriff Officers

The Chairman advised that the draft provisions have been cleared for inclusion in the next miscellaneous instrument.

#### The 2007 Lugano Convention

The Chairman advised that the instrument is now in force.

#### Adults with Incapacity (Scotland) Act 2000 – Subsequent Applications

The Chairman advised that he had written to the Lord President outlining the reasoning for the Council's decisions not to make further rules of court. The secretariat advised that they had written to Mr Condy asking for details of instances in which a difficulty has arisen in practice in consequence of the current rules but no response has been received.

### **3A Bankruptcy & Diligence (S) Act 2007 - Admiralty actions**

The Council considered the paper produced along with the amended Court of Session Rules on Admiralty actions. Sheriff Holligan advised the meeting that the Scottish Law Commission had previously published a paper on arrestments, recommending that rules of court should be provided for admiralty actions in the sheriff court.

Following discussion, the Council agreed in principle that provision should be made in rules of court in order to confirm the procedure for sheriff court applications. It was agreed that such applications should be made under Ordinary Cause procedure, in similar terms to the amended Court of Session rules.

It was agreed that Sheriff Holligan liaise with both the secretariat and the drafter in relation to the draft provisions with a view to the draft instrument being considered by the Council at its May meeting.

**Action: Sheriff Holligan to liaise with both the secretariat and the drafter in relation to the draft provisions**

### **3B Bankruptcy & Diligence (S) Act 2007 – Section 216 provisions**

The Council considered the policy paper along with the paper produced by the secretariat. The Council agreed that the proposed legislation would place the debtor in a worse situation than under the current legislation. The Council agreed that the anomaly lay in the interaction between the proposed legislation and the current rules of court. Although the Council normally takes the view that it cannot through rules rectify an unintended consequence of primary legislation, it agreed that given the particular circumstances here an exception could be made. The Council agreed to amend Rule 24.1(4) of the Summary Cause Rules to

provide that the time limit does not apply to charges served under section 216 of the 2007 Act.

Ms Smith asked the Council to consider removing the general 14 day time limit and also to consider the circumstances in which a decree can be recalled, citing difficulties in practice. Following discussion, Ms Smith agreed to provide a policy paper outlining the difficulties in practice with the current provisions for consideration at the next Council meeting.

**Action: Ms Smith to provide a policy paper outlining the difficulties in practice with the current provisions**

#### **4 Northern Rock plc Transfer**

The Council considered the exchanges of correspondence between Tods Murray, Solicitors and the Lord President's Private Office over a change of name by Northern Rock plc. The Council discussed the current procedure for companies changing their name and discussed past cases, including Glasgow Housing Association and Halifax Bank of Scotland and how the changes had been achieved.

Following extensive discussion, the Council agreed in principle that they supported the idea of Sheriffs Principal being given the power to issue directions in such circumstances by Act of Sederunt. This would be subject to the following conditions:

- a) The company would require to submit to the Sheriff Principal within each relevant sheriffdom the names of the cases to which the name change should apply
- b) if and when such a direction is made by the Sheriffs Principal, the company would be responsible for intimating the change of name to the parties involved in all the cases. It is envisaged this would be by first class post with a certificate of intimation requiring to be lodged in process
- c) any party to an action can apply to the court for the Order to be reconsidered in their particular case

The Council also considered that the cost of such procedure should be borne by the Pursuer rather than being costs within the action. The Council agreed to ascertain the views of Tods Murray in relation to the proposed action above in relation to Northern Rock and requested the secretariat write to them in the above terms. The matter was continued until the next meeting for this purpose.

**Action: Secretariat to write to Tods Murray to seek their views in relation to the proposed action**

#### **5 Human Fertilisation & Embryology Act 2008**

The Council considered the draft instrument along with the drafter's note. It was agreed that the matter be cleared by the Chairman in consultation with the working group comprising of Mr Brand and Sheriff Fletcher.

The working group met at the conclusion of the Council meeting and scrutinised the draft and the drafter's note. Amendments were proposed to the draft and the secretariat agreed to instruct the drafter in those terms. The drafter agreed to

provide a revised draft, to be cleared by the Chairman in consultation with the members of the working group.

**Action: Instrument to be cleared by the Chairman in consultation with Mr Brand and Sheriff Fletcher**

## **6 New Summary Cause PI rules (Ordinary Cause Committee)**

This matter was due to be considered by the Ordinary Cause Committee at the conclusion of the Council meeting. Given time constraints, it was agreed that the Ordinary Cause Committee would meet separately to consider the draft. It was agreed that the final draft would be considered by the Council at its August meeting. The secretariat advised that a lead-in time of around three months was required by Scottish Court Service to allow adaptation to computer systems and forms.

The Council considered the comments from Mr Di Rollo that all personal injury actions should be raised as ordinary actions but agreed that this would not be possible as in terms of Section 35(1)(a) of the Sheriff Courts (Scotland) Act 1971, actions for payment of £5,000 or less must be raised as a summary cause.

The Council also considered the correspondence received from John Henderson & Sons, Solicitors and discussed the following matters:

- ♦ Form 10e – this will be considered by the Ordinary Cause Committee when considering the new personal injury rules.
- ♦ Calling of incidental applications - the Council was of the view that this appeared to be a programming issue in relation to the particular court rather than a widespread problem and agreed that no rules changes were required.
- ♦ Specification of Property - the Council agreed that no rules were required as this could currently be achieved under Rule 18.3 by way of incidental application.
- ♦ Appeal provisions - as these are contained within primary legislation, namely section 38 of the Sheriff Courts (Scotland) Act 1971, the Council does not have the authority to alter the provisions.
- ♦ Notices to Admit – in order to encourage the agreement of evidence, the Council agreed to make general provision in the Summary Cause Rules for Notice to Admit procedure in similar terms to Rule 29.14 of the Ordinary Cause Rules. It was agreed that this provision should be included in the next Miscellaneous Instrument.

**Action: Form 10e to be considered by the Ordinary Cause Committee in conjunction with the draft Summary Cause personal injury rules**

## **7 Service of Sequestration petitions**

The Council considered the paper produced by the Secretariat along with the email from Sheriff Holligan. Sheriff Holligan gave the background to the case in question and advised that there are no specific rules to provide for the service of sequestration petitions.

The Council considered Section 39 of the Sheriff Courts (Scotland) Act 1907, which provides that the procedure in civil causes shall conform to the rules of procedure set forth in Schedule 1 to the Act. In order to clarify the procedure,

the Council agreed that specific rules should be prescribed for the service of sequestration petitions. The Council was of the view that Rules 5.3-5.6 of the Ordinary Cause Rules should apply. However, it was agreed that the Secretariat contact the Accountant in Bankruptcy to ascertain their views on the proposal, in particular, in relation to postal service of such petitions.

**Action: Secretariat to write to the Accountant in Bankruptcy to ascertain their views in relation to proposed rules for service of sequestration petitions**

## **8 Business Update**

The Council noted the progress on the items contained within the business update. Updates were provided on the following matters:

### The Lord President's Advisory Group on Diligence

Sheriff Holligan advised that the removings sub-group is due to meet on 09 February to discuss the consultation responses. The main group has been adjourned pending the report of the sub-group. The Chairman extended his thanks to Sheriff Holligan and the Council members involved for their work in relation to this matter.

### Home Owner & Debtor Protection (S) Bill Working Group

Sheriff Fletcher advised that the sub-group had met twice to consider the draft Bill and its implications for rules of court. He advised that the Bill repeals the Mortgage Rights Act but the provisions are not re-enacted in the Bill. He advised that further amendments are scheduled for Stage 3 of the Bill, which is scheduled for later this month.

The drafter advised that there is also an anomaly in relation to cases calling in court. The policy intention is that the procedure be by way of summary application to allow all cases to call in court. It was expected that this would be contained within the Bill. The Council agreed that, if required, this provision could be included in rules of court.

### Scottish Civil Courts Review Report Working Group

The Secretary advised that a meeting had been scheduled for 16 December 2009. However, this was cancelled to await the outcome of a meeting between the Scottish Government and key stakeholders. He advised that a series of further meetings are scheduled to take place in the next few weeks. Following discussion, the Council agreed to await the outcome of the meetings but that it was important for the Council to progress matters. The Secretary agreed to advise the Council of feedback from the meetings and agreed to arrange a meeting of the working group thereafter.

### Miscellaneous Act of Sederunt 2009 – Regulated Agreements Sub-Committee

Sheriff Principal Taylor advised that the sub-committee had met and formulated proposals for rules of court. A small consultation had taken place and the group is due to meet again to consider the responses.

## **9 AOCB**

### Bill guidance

The Secretariat asked the Council for clarification in relation to the detail of provision/procedure it expected to see in rules of court. This follows enquiries in

relation to what procedure should be specified in rules of court and whether a specific rule making power is required.

The Council agreed that a rule making power should be prescribed as well as appeal provisions, in particular detailing who the appeal is to; the grounds of appeal and the sheriff's power on hearing the appeal.

Mr McKay advised that it would be helpful to create bill guidance through consultation between the Council and the Scottish Government Legal Department. The Secretariat agreed to prepare draft guidance in consultation with the Chairman and Sheriff Holligan.

**Action: Secretariat to create bill guidance in consultation with the Chairman and Sheriff Holligan**

**Date of subsequent meetings**

Friday 07 May 2010

Friday 06 August 2010

Friday 05 November 2010