

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

07 May 2010 10.30 am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal J A Taylor
Sheriff W Holligan
Sheriff C Scott
Mr J d'Inverno
Mr S Brand
Mr A Johnston
Mr R McMillan
Ms S O'Neill
Ms R Smith
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 M J Fletcher
Mr F Simpson
Mr G Murray
Ms C McLachlan
Mr C McKay
Mr S Di Rollo QC

2 Minutes of previous meeting

The minutes of the previous meeting were approved.

3. Miscellaneous Act of Sederunt 2009 – Regulated Agreements

The Council considered the policy paper produced and all the written representations received. Members agreed that they were content with the proposed rule recommended by the sub-committee, that provision be made in the rules as follows:

- a requirement for a true copy of a regulated agreement to be lodged in the court process when an application for a time order is opposed by the pursuer. The pursuer is required to do so at least seven days before the date fixed for the hearing on the application and at the same time intimate a copy upon the defender;
- a definition of a true copy which is to be "a true copy can be a reconstituted copy of the agreement. It does not have to be an exact copy or include a

copy of the signature. Any reconstituted copy must contain all terms and conditions which governed the contract at the date the action is raised" and

- the sheriff to have a discretion to dismiss the claim when a pursuer who has opposed an application for a time order fails to comply with the requirements of paragraph (1) above;

The secretariat undertook to instruct the drafter in those terms. Subject to those amendments, it was agreed that the draft provisions should be cleared by the Chairman and that the provisions should be included in the next Miscellaneous instrument. It was acknowledged that primary legislation would be required to provide for copies to be lodged with the Initial Writs. Ms S O'Neil advised that this matter has been taken forward by Consumer Focus Scotland.

Action: Chairman to clear provisions for inclusion in the next Miscellaneous instrument

4 Northern Rock plc Transfer

The Council considered the written representation received from Tods Murray. The Council agreed a generic provision should be made by Act of Sederunt to give Sheriffs Principal the power to issue directions which have the effect of amending the name of **any** particular party. This would be subject to the following conditions:

- (a) that it would be the responsibility of the Company in question to submit to the Sheriff Principal of the relevant sheriffdom a list of the names and court reference numbers of the cases to which the name change should apply and that no liability should be placed on the sheriff clerk for doing so;
- (b) that the Company in question intimates the name change to all other parties involved in the proceedings by first class post and lodges a certificate of execution that it has done so in the process;
- (c) that any party to an action can apply to the court for the Order to be reconsidered in those particular proceedings and
- (d) that the cost of the procedure should be borne by the Company and not by any other party in the proceedings

The secretariat undertook to instruct the drafter in those terms. Subject to those amendments, it was agreed that the draft provisions should be cleared by the Chairman in consultation with Sheriff Principal Taylor for inclusion in the next Miscellaneous instrument.

Action: Chairman to clear provisions for inclusion in the next Miscellaneous instrument

5 Service of Sequestration petitions

The Council considered the policy paper produced and the written representation received from the Linda Clark, Policy Development Team Leader, AIB.

Following discussion, the Council agreed that provision should be made in rules of court in order to confirm the procedure for service of sequestrations in the sheriff court. Members agreed that such provision be made in the rules along the following lines:

- 1) subject to 2) service of a sequestration petition shall be by personal service
- 2) a creditor may apply either at the time of first warrant or thereafter for authority to effect service by such other means as the Court may direct

The secretariat undertook to instruct the drafter in those terms. Subject to those amendments, it was agreed that the draft provisions should be cleared by the Chairman in consultation with Sheriff Holligan and that the provisions should be included in the next Miscellaneous instrument.

Action: Chairman to clear provisions for inclusion in the next Miscellaneous instrument

6 Miscellaneous Act of Sederunt 2010

The Council considered the draft Act of Sederunt, together with the drafter's note.

The Council proposed minor amendments to the draft and the secretariat undertook to instruct the drafter in those terms. Subject to those amendments, it was agreed that the draft instrument should be cleared by the Chairman.

The Council considered correspondence received from Fraser Simpson in relation to difficulties in practice with specification of documents under the Ordinary Cause Personal Injury procedure. It was agreed to continue this matter to the next meeting to allow Fraser Simpson to speak to the letter.

Action: Chairman to clear the draft instrument.

7. Home Owner & Debtor Protection (S) Act 2010

The Council considered the draft Act of Sederunt along with related correspondence and instructed minor amendments to the draft.

Members discussed appeal provisions in relation to residential/ non residential properties.

It was agreed that Mr S Brand would write to Professor McDonald to investigate the issues in further detail.

Having considered the forms in detail, it was agreed that the working group should consider amendment of the draft forms to make the forms more user friendly and to provide for the creditor to be much more specific as to how they have complied with the requirements.

The Council referred the matter back to the working group for further consideration and to report back at the next Council meeting in August.

Action: A further meeting of the working group to be arranged.

Mr Brand to contact Professor McDonald.

8 Rule 24.1 SCR 2002

The Council considered the policy paper along with the drafter's note and the paper produced by Ms Smith. The Council was content with the approach suggested by the drafter and agreed that the changes in those terms should be instructed. In particular it was agreed that rule 24.1(1), along with Forms 30 and 30a, of the Summary Cause Rules 2002, and rule 22.1(1), along with Forms 20 and 20a, of the Small Claim Rules 2002, should be amended to delete the requirement to state the reason for failure to appear or be represented.

It was agreed that the draft amendment should be cleared by the Chairman and included in the next Miscellaneous Instrument, unless policyholders indicate that the provisions should be contained within an earlier instrument.

Action: Chairman to clear provisions for inclusion in the next Miscellaneous instrument

9 Scottish Civil Courts Review

Sheriff Scott spoke to the paper produced by the secretariat outlining the Working Group's recommendations for changes at this stage as a result of the Civil Courts Review.

The Council agreed the following recommendations could be advanced at this stage:

Pre-action Protocols (Chapter 8, recommendation 105)

Offers in settlement (Chapter 8; recommendations 107-111)

Summary Disposal (Chapter 9; recommendation 123)

Extempore Judgments (Chapter 10; recommendation 135)

McKenzie Friends (Chapter 11; recommendation 149): the Council requested the Working Group to look at those rules. The Council agreed on a different approach to that of the Court of Session, being less formal and no certification being required.

Judicial Expenses (Chapter 14; Recommendation 186)

The Council referred the matter back to Sheriff Scott's working group to proceed accordingly and for draft provisions to be considered at the next appropriate Council meeting.

Action: Further meeting of Working Group to be arranged

10 The Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2009

The Council considered the policy paper produced and agreed that no rules of court are required.

The Council considered more generally to what extent new legislation should be brought to their attention. It was agreed that it would be a matter of discretion of the Chairman to decide what is put before the Council.

11 Commercial Attorneys

The Council considered the paper produced by the secretariat along with correspondence from Mr Alexander, the Chairman of the Association of Commercial Attorneys.

Following discussion, the members agreed that no change is required to the sheriff court forms as references to a solicitor include a reference to a member of a body which has made a successful application and has rights of audience under section 25 of the Law Reform (Miscellaneous Provisions) Scotland Act 1990.

After consideration, it was agreed that it was inappropriate for the issue of a Practice Note on the matter, given that the issue was not a matter of practice, but is governed by the rules of court.

12 European Commission Reasoned Opinion – Infringement No 2006/4033

This matter was considered by the secretariat and a view was formed that it had no impact on Sheriff Court rules. Following discussion though it was thought it possibly could apply to actions for interdict raised in the sheriff court. On that basis the Council asked the secretariat for sight of any draft rules planned for the Court of Session so that these can be circulated to members for their views on whether rules ought to be put in place for the sheriff court.

Action: Secretariat to contact Mr D Smith for sight of any draft rules planned by the Court of Session

13 Arbitration Act 2010

The Council considered the policy paper along with the relevant provisions of the Arbitration (Scotland) Act 2010. The Council was of the view that the normal summary application rules should apply and that no specific rules of court would be required.

14 Business Update

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

1. The Lord President's Advisory Group on Diligence

Sheriff Holligan provided a verbal update on the 9 February sub-group meeting and advised that rules were currently under consideration for Removing provisions, which left only Land and Residual Attachment provisions remaining.

2. Sheriff Court Bankruptcy Rules

Sheriff Holligan provided a verbal update of his investigations. It was agreed that he should look further into the matter and the council continued consideration of it until the August meeting.

3. Recognition/Non-recognition of foreign decrees

Ms M O'Neill gave a further update and advised that a draft instrument would be prepared for the August meeting.

4. Bill Guidance

The matter is being progressed by Sheriff Holligan and the secretariat. A Scottish Government contact is to be identified to provide a contact point to advise what should be included in legislation.

Date of subsequent meetings

Friday 06 August 2010

Friday 05 November 2010

Friday 04 February 2011