

**Minutes of Sheriff Court Rules Council Meeting
Mc Diarmid Park, Perth
06 May 2011 10.30 am**

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal CAL Scott
Sheriff W Holligan
Sheriff R Dickson
Mr A McLean QC
Mr S Brand
Mr F Simpson
Mr G Murray
Mr M Speirs
Mr R Sandeman
Mr R McMillan
Ms O McShane
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Sheriff A G McCulloch
Ms C McLachlan
Ms R Smith

The Chairman welcomed Mr A McLean, QC to the meeting as the replacement for Mr Di Rollo, QC. Apologies had been received from Sheriff A G McCulloch, who had been appointed to replace Sheriff Principal Scott who was invited to attend the meeting as an observer.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Child Welfare Cases

The Chairman advised that he would contact Sheriff S Raeburn further with proposals on how to deal with these cases, including the possibility of introducing new rules or a Practice Note.

**Action: The Chairman to contact Sheriff Raeburn
 The Chairman and Sheriff Principal Scott to take the matter forward**

3. Judicial Expenses

Given that the Lord President's Advisory Committee (LPAC) has now agreed to recommend that changes be made to General Regulation 12 of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) 1993 in September 2011, the Council cleared the draft Act of Sederunt for inclusion in the September 2011 Miscellaneous Instrument.

Action: To be included in September 2011 Miscellaneous Instrument

4. Equality Act 2010

The drafter advised that she has not yet finalised the paper on the issues raised including what the Council might reasonably be expected to do in the performance of their function under section 34 of the Sheriff Courts (Scotland) Act 1971 and the matter was continued to the August meeting for the paper to be produced.

Action: The drafter to provide a short paper for consideration at the next meeting

5. Change of Name of Party

The sub-committee set up to take a look at the practicalities of making the procedure work met on 31 March 2011 to consider the matter, including the scheme proposed by the Court of Session. Their recommendation to the Council was that it was not feasible to introduce a scheme into the sheriff court, due to the impracticalities, both administrative and procedural. Members agreed with their recommendation that no new procedure was required.

Action: Secretariat to inform SCS Policy and Legislation Branch of the outcome

6. Damages (Scotland) Act 2011

The Council considered the paper produced by the Secretariat, the policy paper produced by Scottish Government along with the draft instrument and drafter's note. It was content with the terms of the draft instrument but in addition proposed that by virtue of section 9 of the Act (transmission of relative's rights to executor) there be an amendment made to ordinary cause rule 36.1(b). The drafter advised the meeting that insofar as the summary cause rules were concerned it was the intention to make a holding change to rule 34.6(2) until such time as the new personal injuries rules were in place later this year. The Council agreed that the instrument be cleared by the Chairman or in his absence Sheriff Dickson for inclusion in a miscellaneous instrument which is planned to be made by end May.

Action: The Chairman or in his absence Sheriff Dickson to clear the draft Provisions for inclusion in the next Miscellaneous Instrument

7. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

The Council considered the policy paper produced by the Secretariat and the policy paper produced by Scottish Government and proposed that, as a consequence of the Act,

provision ought to be made in rules for the initial application for an order to be made by Summary Application to be modelled on the best of the following three alternatives, rules 33.6(5)(a) or 46.1 of the Ordinary Cause Rules, or rule 3.5.4 of the Summary Applications Rules 1999, in the following instances:

- Where a person intends to make an application to the sheriff for a forced marriage protection order but who first of all requires leave of the court to do so;
- Where a person must first of all apply for leave of the court for a variation or recall of an order;
- Where a person must first of all apply for leave of the court for an extension of an order;

It was agreed that any subsequent applications ought to be made by minute procedure in terms of Chapter 14 of the OCR. The Secretariat was invited to instruct preparation of a draft instrument and liaise with the drafter, the Chairman and Mr Brand in relation to the precise terms of the draft provisions with a view to them being considered by the Council at its next meeting on 5 August.

Action: Instructions to be issued

8. Family Law (Scotland) Act 1985 – section 14(2) orders for sale

The Council considered the policy paper produced by the Secretariat and a copy of a Note produced by Sheriff Reith in regard to problems she said arise in light of the fact that there are no provisions in the ordinary cause rules governing actions of Division and Sale and in particular no provision to the effect that a party may revert to the court after final decree in the event of difficulty. The Council agreed that provision ought to be made where an order for the sale of heritable property is made for a party to come back to the court after final decree. Members agreed that a provision in similar terms to rules 45.1 and 45.2 of the Rules of the Court of Session should be made in the sheriff court rules. The Secretariat was invited to instruct preparation of a draft instrument and the Council agreed that the draft provisions would be considered at its next meeting on 5 August.

Action: Instructions to be issued

9. Domestic Abuse (Scotland) Act 2011

The Council considered the paper produced by the Secretariat along with the policy paper produced by Scottish Government in relation to the Act, which makes it a criminal offence to breach an interdict where a power of arrest has been attached providing a determination has been made by the Court under section 3(1) of the Act that the interdict is a domestic abuse interdict. It was agreed that provision ought to be made in rules of court in order to confirm the procedure for such an application as follows:

- An application to the court for a determination that an interdict is a domestic abuse interdict should be made by crave in the initial writ

- Any application for such a determination which is made a subsequent stage, should take the form of a minute and be lodged and regulated in accordance with Chapter 14 of the Ordinary Cause Rules
- Any interlocutor of the sheriff containing a determination that an interdict is a domestic abuse interdict should state so in terms within the meaning of section 3(1) of the Act

The Secretariat was invited to instruct preparation of a draft instrument and members agreed that the draft provisions should be cleared by the Chairman, or in his absence Sheriff Dickson, in consultation with Mr Brand, for inclusion in the next Miscellaneous Instrument which is planned to be made by end May.

Action: Instructions to be issued. The Chairman or in his absence, Sheriff Dickson to clear in consultation with Mr Brand for inclusion in the next Miscellaneous Instrument.

10. Administration of Justice (Scotland) Act 1972 – Timescales for searches

The Council considered an issue over the absence of a time scale in the rules for searches carried out by a Commissioner appointed under section 1 of the Administration of Justice (Scotland) Act 1972. The Court of Session Rules Council had already considered the issue earlier this year and agreed that the relevant rules and Forms be amended to bring them into line with the approach taken in England and Wales.

The Council agreed that a provision should be made in the sheriff court rules similar to that in the Rules of the Court of Session. It was agreed that rules 3.1.9 (*Duties of a Commissioner*) and 3.1.12 (*Right of haver to consult*) of the Summary Application Rules 1999 along with Forms 11A and 11B be amended accordingly. The Secretariat was invited to instruct preparation of a draft instrument and the Council agreed that the draft provisions be considered at its next meeting on 5 August.

Action: Instructions to be issued

11. Council Regulation EC No 4/2009

The Council considered the paper produced by the Secretariat and the policy paper produced by the Scottish Government on the Regulation which is to provide a new legal framework for recognition and enforcement of family maintenance obligations across national boundaries within the EU. The Chairman queried the basis for saying in the policy paper that the UK is bound by the Regulation in view of para 47 of the preamble on page L 7/6 and why it was said in article 16.3 of the Regulation that the UK is not bound by the 2007 Hague Protocol. Mr Sandeman agreed to look into the matter. The Secretariat advised the Council that although the Regulation was due to come into force on 18 June 2011, the final policy paper had not been received until 26 April. The Chairman suggested that the short notice was unacceptable and that he would write to the Scottish Government and copy his letter to the Advocate General. This was agreed.

The Council agreed to set up a small working group to consider the matter. It was agreed that the working group comprise of Sheriff Dickson; Mr Murray; Mr Sandeman; Ms J Alcock;

and that the remit of the group would be to look into the whole matter and make proposals for changes to the rules (if any) and instruct preparation of a draft instrument for consideration by the Council at the August meeting.

Action: Meeting of working group to be arranged and instructions to be issued (if required)

12. Adults with Incapacity (Scotland) Act 2000 – subsequent applications

The Council considered a letter from the Equality and Human Rights Commission in relation to concerns it had on the procedure for service and intimation of subsequent applications, including renewal applications under Part 6 of the Adults with Incapacity (Scotland) Act 2000. It was agreed that the Secretariat should seek legal advice from the Lord President's Private Office on the question whether the current rules were in compliance with the European Convention on Human Rights and meantime continued the matter for consideration by the Council at the August meeting.

Action: Secretariat to seek legal advice from the Lord President's Private Office

13. Forth Crossing Act 2011

The Council considered the paper produced by the Secretariat and the policy paper produced by Scottish Government Legal Directorate on the question of whether rules of court should prescribe the method of application to the Sheriff for a warrant to enter in terms of section 44 of the Forth Crossing Act 2011. Members agreed that no new rules of court or forms were required and that such applications for warrants authorising entry should be made by summary application. The Council noted that section 50 of the Sheriff Courts (Scotland) Act 1907 along with Rule 2.31 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 gave sufficient flexibility to the sheriff to deal with the matter without the need for a hearing.

14. Ordinary Cause/Summary Cause Personal Injuries Rules

Members of the Ordinary Cause Committee discussed this matter and agreed that in respect of ordinary causes the drafter be instructed to prepare a revised version of the draft provisions in similar terms to that of the Court of Session, thereafter to be considered by Mr Simpson and the Personal Injuries Users Group before being considered by members of the Ordinary Cause Committee at the August meeting. Members also agreed that the summary cause draft provisions also required amendment and should thereafter be circulated by e-mail to members for consideration before being forwarded to the Law Society. The Council agreed that the matter should thereafter be cleared by the Chairman for inclusion in a forthcoming Miscellaneous Instrument.

Action: The Secretariat to instruct the drafter to prepare revised draft provisions in respect of ordinary and summary causes

The Ordinary Cause Committee to consider the ordinary cause draft provisions at the next meeting

The Chairman to clear the summary cause provisions for inclusion in a forthcoming Miscellaneous Instrument

15. Business Update

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

16. SCRC Draft Business Plan 2011/12

The Council considered the draft business plan which it approved.

AOCB

Mr Brand highlighted an issue with applications to court under section 28 of the Family Law Act 2006 which were understood not to constitute family actions within the meaning of OCR 33.1. Mr Murray suggested that applications under section 29 of the said Act may fall into the same category. The Chairman invited Mr Brand to provide a paper for consideration by the Council at the August meeting.

Action: Mr Brand to provide a paper

Service of sequestration petitions

At the end of the meeting members of the Ordinary Cause Committee considered the draft provisions and the Note dated 2 March 2011 and proposed some minor amendments. Thereafter the Council agreed that this matter be cleared by the Chairman or in his absence Sheriff Dickson, and to be included in the forthcoming miscellaneous instrument which is planned to be made by the end of May.

Action: The Chairman or in his absence, Sheriff Dickson to clear for inclusion in the next Miscellaneous Instrument

Date of subsequent meetings

05 August 2011

04 November 2011

03 February 2012