

# APPROVED MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

Perth Sheriff Court

2 September 2005

## PRESENT

**Sheriff Principal Sir S S T Young, Bt, QC (Chairman)**

**Sheriff Principal B A Kerr, QC**

**Sheriff I Peebles, QC**

**Sheriff W Holligan**

**Sheriff M Fletcher**

**J d'Inverno**

**S Brand**

**A Johnson**

**J Murphy**

**S Di Rollo**

**C Flanagan**

**J McCormick**

**P Cackette**

**G McKeand (Secretary)**

**Karen Stewart (Assistant Secretary)**

**Heather Fraser (SCS observer)**

### 1. **Apologies** : R Conway, Richard Young

The council welcomed Heather Fraser from the Scottish Court Service as an observer at today's meeting. The council congratulated Mrs Flanagan on her appointment as President of the Law Society. The Chairman advised that Sarah O'Neill has been appointed as a lay member of the council and will attend the next meeting. On behalf of the council, the Chairman thanked the secretariat for all the preparatory work and making the domestic arrangements for the meeting.

### 2. **Minutes**

The minutes of the previous meeting on 3 June were approved.

Matters arising:

The chairman queried the current position regarding the instruction of a draft rules for the 'Enterprise Act'. The secretariat advised that rules had not yet been instructed due to the need to ask for further advice from the council. A paper will be prepared for the next meeting.

### 3. **Miscellaneous Act of Sederunt**

The council considered the paper and the draft act of sederunt produced. Lady Paton was informed of our proposed rule 28.16 regarding taking of evidence via

television link to seek her opinion as a code of practice is currently being developed. The Secretariat have been advised that the Lord President and Lady Paton want both sheriff and supreme courts to have the same civil procedural rules on this matter.

- The council agreed to the withdrawal of this rule from the current draft to await further consideration by CSRC. The secretariat were requested to keep a watching brief on the issue and advise on progress in due course.
- The council approved draft rule 33.27A
- The council requested amendment of draft forms G11, Form 24, Form 15
- It was agreed that the amended draft be taken forward with the chairman in due course.

#### **4. Proceeds of Crime (S) Act 1995**

The council considered the paper produced and agreed that Summary Application Rule 3.9.3 requires to be amended to delete reference to the 21 day period and the discretion of the sheriff.

The amendment should be instructed in the current Miscellaneous Act of Sederunt being prepared.

The Secretariat were asked to write to the author of the letter to advise of the position and to thank her for drawing this matter to the attention of the council.

#### **5. Civil Partnership Act**

The council considered the paper produced by the secretariat and the draft act of Sederunt. It was noted that policy holders are aware that advice has been sought on proposals for regulations under section 219 of the Act. The following matters were agreed:

- Amend draft Rule 33A.791)(b)(ii) to refer to 'continuing and welfare attorney' with equivalent rule in Chapter 33 to be amended in like terms.
- Draftsperson's recommended wording in Rule 33A.8 accepted with equivalent rule in Chapter 33 to be amended in like terms.
- Draft rule 33A.79(4) to be amended by insertion of the words 'or before an administrative authority' after the word 'court'
- Amend draft rule 33A.79(3)(a) by deletion of the words 'in any action in a sheriff court'
- Amend draft rule 33A.79(3)(b) by deletion of the words 'any such action' and substitution therefore the words 'an action'
- New forms to be drafted for chapter 33A

When forms have been drafted these should be issued to members for comment and thereafter, the council agreed to the draft being cleared with the chairman.

The amendments required in Chapter 33 should be instructed separately and will be cleared through the chairman.

The amendments should be co-ordinated to be introduced at the same time if possible.

## **6. Mental Health (Care & Treatment) (Scotland) Act 2003**

The council considered the paper and the draft act produced.

The following matters were agreed:

- Delete draft rule 3.29.1(2) as unnecessary
- Draft rules 3.29.2 (1) & (2) are suitable
- Draft rules 3.29.3 (1) & (2) are suitable subject to minor alteration
- Amend draft rule 3.29.4(1) by insertion of the words ' of the act' after 'section 320'

The amended draft to be cleared by the chairman.

## **7. European Enforcement Order – consideration was postponed to end of agenda**

The council considered the draft statutory instrument and the commentary paper produced.

The council agreed the following points:

- Draft rules 3.2 and 3.3 should be deleted as unnecessary
- Draft rules 3 & 4 and 5(a)&(b) must be checked to ensure they mirror the regulation accurately.
- Draft rule 6 satisfactory - No hearing is required
- Draft rule 7 satisfactory - No hearing is required
- Draft rule 8 satisfactory
- Article 21- no requirement for rules
- Article 17 – import wording similar to para1.32 of MacPhail 2nd edition into forms of citation (the vires of this must be checked with the draftsperson)
- Incoming Orders-enforcement procedures must be checked to clarify the need for any rules of court.
- There were also some wording amendments proposed to the draft.

The council agreed to the draft being cleared by the chairman or with Sheriff Principal Kerr in the chairman's absence.

## **8. Vulnerable Witnesses Act - Phase II**

The council considered the papers produced by the secretariat and authorised the instruction of a draft act of Sederunt. Sheriff Peebles agreed to consider the first draft with the secretariat prior to full council consideration.

When received by the secretariat the commencement order should be sent to council members.

## **9. Protection of Children from Sexual Harm Act**

The council considered the paper and the draft statutory instrument produced. The council noted the anomalies the drafting of the Act had created for civil procedure but took the view that this cannot be remedied by subordinate legislation and that matters must proceed under existing law. The secretariat were asked to draw the following points to the attention of policy holders on behalf of the council seeking that the act be amended at the first opportunity :

- The wording 'sheriff of the sheriffdom' to be removed
- Interim Orders should remain within jurisdiction of the original court
- Variation etc of orders should be permissible elsewhere

There was a detailed discussion of the problems with the legislation and the draft statutory instrument. The following points were agreed:

- There is no need to repeat provisions of primary legislation in the rules for RHSOs
- Draft rule 3.25.5 – insert additional paragraph in similar terms of OCR 31.5 to the effect that 'failure by sheriff clerk to comply with 3.25.5(b) shall not invalidate any of the order made'
- Draft rules 3.25.6(3) and 3.29.2(3) are correct in adopting the minute procedure set out in chapter 14 of OCR
- Delete draft rules 3.25.7(5) , 3.25.8
- New rule required at 3.25.8 for variation, renewal, discharge of interim SOPO with provision that the original papers or copies (certified by applicant's agent or sheriff clerk) must be produced along with the summary application
- Delete draft rule 3.29.3 (5) and insert rule similar to current 3.25.7(5)
- There were also some minor wording amendments proposed to the draft

The council agreed to the final version of draft being cleared by the chairman

## **10. Caveats**

The council considered the paper and the draft statutory instrument produced. The secretariat were requested to check if there is an S.I relating to caveats in commissary proceedings. The council agreed :

- It is appropriate to include an order for appointing an administrator as draft rule 2 (1)(e).
- It should be permissible to lodge a caveat against a sequestration
- Draft rule 2(3)-delete the words 'apprehensive' to 'company' in lines 3 and 4
- Deletion of draft rule 3(4)
- There were also some minor wording amendments proposed to the draft

Sheriff clerk members were asked to check current working practices for renewal of caveats. This is to be relayed to the chairman and Sheriff Holligan who will look at rule 3(2) in light of the information received.

#### **11. SCRC working practices**

The council considered the proposals in the paper produced. The aim being to reduce the amount of time Council members require to spend preparing for meetings and discussing minor drafting and stylistic issues whilst the Council is in session. It was agreed:

- Where a particular Act of Sederunt merits it, one of the Sheriffs or Sheriffs Principal on the Council should take the lead in assisting the Secretariat in reviewing it on behalf of the Council.
- Where it was considered it would be helpful, that sheriff could enlist the assistance of another on the Council with a particular interest in the area the Act of Sederunt was addressing.
- The above should be effected by use of electronic communication and where possible be completed prior to the Act of Sederunt being presented to the Council for consideration.

#### **12. Enterprise Act**

In view of the Court of Session opinion and the Kilmarnock Sheriff Court judgment the Council agreed that no further specification is required in the Summary Application Rules on how the breach of an enforcement order under Part 8 of the Enterprise Act 2002 should be treated.

#### **13. Business update**

The council noted with interest recent progress on the various issues.

#### **14. Letter from APIL re mediation**

The council considered the terms of the letter received and noted the current position on the work being undertaken by the council's mediation sub committee. It was agreed that the committee should conclude their work in progress and that it is not be appropriate to meet with APIL representatives at present.

The secretariat should write to advise the outcome of council considerations.

#### **15. Letter from Dr and Mrs Wright**

Sheriff Principal Young (chairman) offered to pass the 'chair' to Sheriff Principal Kerr. It was agreed this was appropriate by the council and the chairman withdrew from the meeting.

The secretariat sought direction from the council on how to proceed with the letter received. Members considered the matter and found that there were no specific or particular issues raised in the correspondence relating to court procedure and practices which the council could consider. The council has no locus to deal with complaints against the judiciary. The council members indicated they would be happy to consider any suggestions for improvement in court procedure and practice, which is within their remit and requested the secretariat to respond in these terms, inviting Dr and Mrs Wright to set out specific points for consideration.

The chairman returned to the meeting and resumed his seat

## **16. Any other business**

### **Bankruptcy & Diligence Bill**

The council considered the paper produced and agreed in principle to the need for sheriff court rules for admiralty actions in similar terms to those in Court of Session Rules.

### **Adoption Review**

The council considered e-mails from BAAF advising that it is likely there will be primary legislation next year. It was thought appropriate to defer any amendment to sheriff court procedural rules at this time pending new primary legislation. The secretariat will request a policy paper from BAAF as offered by Ms Plumtree in her e-mail of 31 August 2005 in relation to the Adoption and Children Act 2002.

## **17. Dates of meetings were scheduled for**

2<sup>nd</sup> December 2005 at 10.30 am in Perth – venue to be confirmed

3<sup>rd</sup> March 2006 at 10.30 am in Perth – venue to be confirmed