

MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

McDiarmid Park, Perth

8 September 2006

PRESENT

Sheriff Principal Sir S S T Young Bt QC (Chairman)
Sheriff W Holligan
Sheriff M Fletcher
S Brand
R Conway
J d'Inverno
S Di Rollo QC
C Flanagan
A Johnston
J McCormick
J Murphy
S O'Neill
G McKeand (Secretary)
A Oxley (Assistant Secretary)
S McCourt (Assistant Secretary)

1 Apologies

Sheriff Principal B A Kerr, QC, Sheriff I Peebles, QC, P Cackette, R Young.

2 Minutes of previous meeting and matters arising

The minutes of the last meeting of 2 June 2006 were approved. There were no matters arising.

3 Commissioners for Revenue and Customs Act 2005

The Council considered the papers before it and responded to the questions posed therein by the Secretariat. Following discussion it was agreed that the Secretariat would instruct the draftsman to amend the necessary rules to accommodate s25 (4) of the Commissioners for Revenue and Customs Act 2005 and also provide for intimation to the Advocate General for Scotland where application is made for recovery of documents held by UK government departments.

The draftsman is to be asked to consider the question of expenses of litigants with particular regard to Summary Cause Rule 23.3 (2) and the absence of such a rule in the Ordinary Cause and Small Claim rules.

A draft Act of Sederunt will be considered at the Council meeting in December.

4 Statutory Reports in Sequestration proceedings - Bankruptcy petitions – Paper from Sheriff George Presslie

The Council noted the progress made.

5 Family Law Act – Simplified divorce forms

The Council considered the papers before it and responded to the questions posed therein by the Secretariat. It was content with the proposal made subject to the necessary amendment being made to guidance. The Secretariat was asked to seek clearance from policy holders that they, and their stakeholders, were content with the proposed amendment prior to instructing the draftsman. The revised draft rule is to be considered by Sheriff Fletcher and Mr Brand prior to it being cleared by the Chairman.

On behalf of the Council the Chairman offered a note of congratulation to Sheriff Fletcher and Mr Brand for their work on this particular piece of legislation.

6 Equality Act

The Council considered the draft Act of Sederunt before it and responded to the questions posed by the Secretariat. Following discussion it directed the Secretariat to respond to the draftsman as agreed. Sheriff Holligan was asked to forward his suggested amendments to the Secretariat and Ms O'Neill.

It was agreed that if necessary Sheriff Principal Kerr would clear the draft Act of Sederunt.

7 Electronic Evidence Rule

Members were advised that at the joint Court of Session/SCRC IT Committee meeting held on 6 September the Committee had resolved that the rule allow audio as well as audio/visual technology for submissions, including motions, and in the case of evidence, on cause shown but always at the discretion of the court. The word "building" where it occurs in the draft rule would be substituted with "room" to allow a witness, party or representative to be seen and heard in the proceedings at any place which is outwith the court room. The Committee had decided that there was no need for a Practice Note.

The Council was content with this as a matter of policy and it was agreed that the Chairman would clear the draft rule once the further amendments had been effected.

It was agreed that Sian Warren (Court Technology Forum), be co-opted onto the SCRC IT Committee. Sheriff Peebles will issue an invitation letter to Ms Warren.

8 Vulnerable Witnesses Act Phase 3

The Council noted the progress made.

9 Ordinary/Summary Cause/Small Claim Rules – letter and papers from Aberdeen In-Court Adviser

Members considered the correspondence from the Aberdeen In Court Adviser. Following discussion it was agreed that the Secretariat would instruct the draftsman to amend:

- ♦ Summary Cause Rule 24.17 to provide that the hearing following recall of decree may proceed in terms of rules 8.2 and 8.3. Also, Small Claim Rule 22.1(8) to provide that the hearing following recall of decree may proceed in terms of rules 9.1 and 9.2
- ♦ The Ordinary Cause Rules to allow for a defender to apply for a time order under the Consumer Credit Act 1974
- ♦ Summary Cause Rule 30.4 to allow the defender or their representative to request a sheriff to give direction as he deems proper for the preservation of the defender's goods and effects

Members discussed the issue raised to the effect that design of the small claims and the summary cause forms and guidance create problems for party litigants. The Council were not aware that this was a widespread problem and it was decided to circulate the correspondence on this issue to all In Court Advisers and seek their views.

The matter would be reviewed at the December meeting.

10 Business Update

Council members noted with interest recent progress on the various issues.

In response to the invitation from the Lord President's private office it was agreed that Sheriff Holligan and Ms O'Neill (if available) would be the Council representatives on the non-statutory Advisory Group to be established for the purpose of considering draft rules relating to the diligences to be created by the Bankruptcy and Diligence (Scotland) Bill.

11 Any other business

(a) DWP Consultation Mesothelioma Case Handling

It was agreed that the Secretariat would reply on behalf of the Council thanking DWP for advising the Council of the consultation and asking to be kept informed of the outcome. Also to remind DWP of the current Council consultation on "*Proposals for Procedural Rules for Personal Injury Actions in the Sheriff Court*".

(b) EU Insolvency Report

The Report "*EC Regulation on Insolvency, Scottish Court Rules*" was circulated at the meeting. It was agreed that this would be considered at the 1 December meeting. The Secretariat was asked to instruct a draft Act of Sederunt for consideration at the same meeting.

12 Date of subsequent meetings.

The meeting arranged for 1 December was confirmed. The following dates for 2007 were agreed:

Friday 2 March 2007
Friday 1 June 2007
Friday 7 September 2007
Friday 7 December 2007