

MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

McDiarmid Park, Perth

3 March 2006

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
S Brand
P Cackette
R Conway
J d'Inverno
S Di Rollo, QC
A Johnston
J McCormick
J Murphy
S O'Neill
G McKeand (Secretary)
A Oxley (Assistant Secretary)

Due to the inclement weather, and at the invitation of the Secretariat, the meeting started early with Sheriff Peebles in the chair for items, 1, 2 and 12. The chair was returned to the Chairman for all other items.

1 Apologies

R Young, C Flanagan.

2 Minutes of previous meeting and matters arising

Item 1, apologies, 1st sentence, 2nd line delete the words after "meeting" to end of the sentence. Thereafter the minutes were approved. There were no matters arising.

3 Police, public order and criminal justice (Scotland) Bill

The Council noted the position regarding this Bill and agreed that the secretariat continue to scrutinise the Bill for rules and, if necessary, instruct rules with a view to a draft Act of Sederunt being prepared for consideration by the Council at its meeting in June.

4 Competition Modernisation

The Council agreed the content of the draft Act of Sederunt in connection with the issues relating to Articles 81 and 82 of the Treaty being raised in an action in the sheriff court. However the draft Act was not cleared as paragraphs 4 to 7 require to be revised to take account of sheriff court terminology. Sheriff Principal Young will take forward with the Secretariat.

5 JM response to Sheriff Principal Young's letter of 6 December 2005

Council Members were advised that, partly driven by the letter, a meeting had taken place at which the Justice Minister, the Deputy Justice Minister, the Lord Advocate and members of the judiciary were present. It was felt that the meeting was useful and productive and there was a willingness to engage with the judiciary. It was explained that the Scottish Executive were still considering the matter and was carrying out stakeholder meetings in order to further inform its decision on how it should address the issues raised in the Nuffield Report.

6 Family Law Bill

The Council acknowledged the work done by Sheriff Fletcher, Mr Brand and the Secretariat. Council members discussed the draft Act of Sederunt and the debate centred on section 24 of the Family Law (Scotland) Act 2006(Act), protection of children from abuse. Although there is a duty for the court to take account of the matters set out in section 24 of the Act it is difficult for the court to do so if these matters are not brought to its attention. The court does not have a duty to investigate and can only take into account matters that are placed before it. There was discussion as to whether there should be a rule requiring parties to include reference to abuse in the initial writ but it was recognised that in some circumstances this could exacerbate the family situation.

The Secretariat were instructed to write to policy holders advising that the Council are considering whether there should be such a rule and invite comments from policy holders. The Council would wish to know the views of the relevant stakeholder Family Groups. It accepted that there might be the potential for a divided response and asked that the policy group should present a balanced view from their stakeholders.

The Council agreed to the draft Act, as further revised, being signed off by Sheriff Fletcher and Mr Brand in an e mail from them to the Chairman.

Notwithstanding the terms of the above the Secretariat sought and obtained legal advice on this issue. The advice was considered by Sheriff Fletcher, Mr Brand and the Chairman who agreed with the advice given to the effect that rules on this issue were not necessary and, accordingly with the agreement of the Chairman, the Secretariat did not comply with the above instruction.

7 Act of Sederunt – UNCITRAL model law on cross border insolvency

It was noted that the intended implementation of UK Regulation was 6 April 2006. Given the complexities and the timescales involved Sheriff Principal Young agreed to take this issue forward. His drafting points arising from the current draft Act of Sederunt will be e mailed to the Secretariat who will revert to the draftsman with further instruction.

8 EU Directive on intellectual property

The Council noted that any necessary rules have still to be drafted. It was agreed that Sheriffs Peebles and Holligan will clear the draft Act once received and report back to Sheriff Principal Young.

9 Draft Mediation Consultation Paper

See Also Item 10. On behalf of the Council, the Chairman thanked the Mediation Committee for its work in preparing the draft paper. The Council considered the draft paper and distribution list. A number of amendments were debated and where relevant

were agreed to. The Secretariat was instructed to incorporate the agreed amendments into the draft paper.

After discussion the Council agreed to delay the consultation process until at least the next Council meeting in June pending updated timescales and clarification of the work being done by Lord Clarke's working group on mediation in the Court of Session.

10 Report back from Lord Clarke's Working Group on Mediation

See also Item 9. Sheriff Principal Young advised that he and Sheriff Principal Kerr have attended working group meetings as observers. The working group is a judicial initiative and once it has completed its work will put a report to the Judges of the Court Session and following comments received report to the Lord President and the Court of Session Rules Council.

The group was working through the Report made to the Council by the Mediation Committee and appeared to be reaching the same conclusions. It is also looking at accreditation of the mediator and whether Judges should have any input. The group is aware of where the Council is with progressing its consultation paper.

11 Draft Ordinary Cause Committee Consultation Paper

There was discussion on the content of the draft paper and it was agreed that a meeting of the Ordinary Cause Committee be arranged to put the paper into final form.

The Council noted that a pilot based on a variation of the Court of Session Personal Injury Rules was to be conducted by Sheriff Principal Taylor within Glasgow Sheriff Court. This would involve actions where parties would be invited to and agree to depart from the Ordinary Cause Rules and apply a variation of the Court of Session Personal Injury Rules which involves, to a greater degree, judicial case management.

The Council mooted whether to hold back its consultation until an evaluation of the pilot had been completed or proceed straight to consultation. It agreed in principle to go out to consultation as soon as the Ordinary Cause Committee had finalised the paper. Reference to Sheriff Principal Taylor's pilot and the research into the Court of Session personal injury procedures would be made in the covering letter accompanying the paper. The consultation period would last for 3 months.

12 Business continuity planning

Council Members considered the need for a business continuity plan and agreed that in the event of some sort of major incident or situation that would prevent the Council from meeting and functioning in the usual way it would:

- ♦ Operate purely electronically by e mail and video conferencing– so long as it was available
- ♦ Appoint 6 key members in Edinburgh with shadow backup by other members
- ♦ Delegate decision making down a line for consideration and approval of draft Acts of Sederunt

The Council resolved that in the event of an emergency which would not allow the above to operate the Council would operate as the Chairman, or any person designated for that purpose, so directs

13 Business update

The Council noted with interest recent progress on the various issues. Sheriff Principal Young advised that draft Acts of Sederunt were in the pipeline for the European Union Regulation on Parental Responsibility and the Adoption of Children Act 2002.

14 Any other business

(a) Antisocial Behaviour etc (Scotland) Act 2004

After consideration the Council agreed that Rule 3.27.4 in the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 should be deleted. The Secretariat was asked to:

- (i) Write to Sheriff Principal Taylor conveying the thanks of the Council for bringing this matter to its attention
- (ii) issue the necessary instructions to the draftsman for this deletion to be incorporated into the current draft Miscellaneous Act of Sederunt
- (iii) Identify rules with similar wording for consideration by the Council

The Council noted that the Scottish Court Service has accepted that if service is required by sheriff officer the Agency will have to accept the burden of the cost of such service.

(b) Act of Sederunt (Ordinary Cause Rules) Amendment (Miscellaneous) 2006

Council members considered the paper before them and agreed that as currently drafted the Ordinary Cause Rules are not suitable for case management. There was discussion on the various draft rules contained within the draft Act and it was agreed that it be remitted back to the Ordinary Cause Committee for consideration at its next meeting in May.

(c) Letter from Sheriff Principal Dunlop

The Chairman advised the Council that he and the Secretariat had received a letter from Sheriff Principal Dunlop raising an issue which had previously been raised in *Grimes v Grimes* 1995 SCLR 269. By coincidence rule 8 of the draft Miscellaneous Act of Sederunt currently before the Council would address the issue. The Secretariat was instructed to thank Sheriff Principal Dunlop for drawing this to the Council's notice and to advise him of the matter currently under consideration.

15 Date of subsequent meetings

Friday, 2 June, 10:30 hrs, McDiarmid Park, Perth

Friday, 8 September and Friday 1 December. Venue for these dates to be confirmed.