

**APPROVED MINUTES OF SHERIFF COURT RULES COUNCIL MEETING**

**EDINBURGH SHERIFF COURT**

**11 FEBRUARY 2005**

**PRESENT**

**Sheriff Principal Sir Stephen S T Young, Bt, QC (Chairman)**  
**Sheriff Principal B A Kerr, QC**  
**Sheriff W Holligan**  
**Sheriff M Fletcher**  
**J d'Inverno**  
**S Brand**  
**A Johnson**  
**R Conway**  
**C Flanagan**  
**P Cackette**  
**Sheriff I Peebles, QC**  
**J McCormick**  
**G McKeand**  
**Karen Stewart**  
**Ann Oxley**

- 1. Apologies : Richard Young, Simon Di Rollo QC, Joe Murphy**
- 2. Rules Council Membership**

The Chairman welcomed the new council members.

There was discussion and agreement on the reconstitution of the Council sub-committees :

- IT Committee
- Mediation Committee
- Ordinary Cause Rules Committee

Membership was agreed per Appendix 1

- 3. Minutes of previous meeting**

There was one proposed amendment agreed - in item 17, line 2, substitution of the words "Justice Division" with the words "Justice Department". The Minutes were thereafter approved.

**Matters Arising**

The Secretariat advised the Council on the following matters

- **Cautioners & Guarantors** – Statutory Instrument was signed 18 January with commencement date on 1 February 2005
- **Mental Health (Care & Treatment) Order** – Draft Rules have been prepared. However, further policy advice is required as there may be additional provisions for inclusion. Secretariat had a meeting with policy holders on 8 February and await further instruction.
- **Land Reform** - Statutory Instrument was signed 4th February with commencement date on 9 February 2005
- **Freedom Of Information** – the Secretariat arranged for publication of approved minutes on SCS website per agreement at last meeting.

#### **4. Form F26 – Notice of Intention to Defend in a Family Action**

The Council considered the paper produced by the Secretariat. After discussion of the issues, the Council reached agreement that there was need for re-wording of Form F26. The Council approved an amended Form and authorised this to be included in the pending Miscellaneous Act of Sederunt.

There was further discussion on the current wording of Part C of form F26 in relation to the appropriateness of the requirement to state reasons for opposition to craves. It was agreed that it would be appropriate to remit this matter to the Ordinary Cause Committee for further consideration.

#### **5. Miscellaneous Act of Sederunt**

The Council noted that the Secretariat instructed the draft Act on 29 December but that it was as yet unavailable.

#### **6. EU Regulation on Parental Responsibilities**

The Council Considered the paper produced by the Secretariat.

Articles 15 & 39 of the EU Regulation may necessitate the requirement for court rules. The Court of Session Rules Council (CSRC) have produced a draft Act of Sederunt. Their draft rule 49.94 relates to the provisions of Article 15 of the Regulation. It is the view of the Council any similar Sheriff Court rule should contain the reference to the regulation to assist practitioners.

There was discussion on how this matter be taken forward. It was agreed that a SCRC sub-group comprising of Sheriff Principal Young, Sheriff Holligan and Steven Brand would consider the issues arising and report back their recommendations at the next meeting.

The Council requested the Secretariat to contact the policy holders to seek information explaining in clear terms:

- what they are trying to achieve
- why Article 15 is being interpreted as a court being asked to decline jurisdiction.

This advice should then be conveyed to the sub-group considering the issues.

## **7. Gender Recognition Act**

The Council considered the draft Act of Sederunt produced and agreed the changes proposed by the Secretariat. The Council authorised that these amendments be instructed with the draftsman and agreed to the final draft being taken forward with the chairman.

## **8. Civil Partnership Bill**

The Secretary advised the Council that much family law is affected by this Bill which is due to be implemented in Dec (there is no official date as yet).

The Secretariat require advice from OSSE on how to take this forward in terms of changes to Sheriff Court Rules. A preference was expressed for a new Chapter 33A to cover Civil Partnership issues. The Secretariat will soon be meeting with Court of Session Rules Council and respective draftsmen to take this matter forward and will advise of progress in due course.

## **9. IT Committee Report on Consultation**

The Chairman of the Committee addressed the Council on progress to date. It was noted that there had been a disappointing response to the IT Consultation Document but that all major stakeholders had responded. The overall response to the proposals was positive.

The issue of lodging of productions electronically was raised by a number of respondents and the Council agreed that this issue should be canvassed further with those who responded to the consultation. The Committee Chairman advised that the programme timetable was on track and that the Secretariat is looking at Rules and primary legislation in consultation with OSSE to see what amendments may be required.

## **10. Vulnerable Witnesses (Scotland) Act 2004**

It was noted that the commencement order enacts Section 23 of the Vulnerable Witnesses (Scotland) Act which inserts 2 new sections into the Children (S) Act 1995 and effects 4 types of proceedings under that Act:

- S51 Appeals
- Applications under S65(7)

- Applications under S65(9)
- Applications under S85(1)

The Council considered the papers 10 & 10a produced by the Secretariat along with the draft Act of Sederunt (dated 3 February 2005).

The following matters were agreed:

- The Council do not consider that forms of intimation of a diet of hearing are required. The terms of draft Rule 3.75 should be echoed in 3.67, 3.69 and 3.72 to cover intimation.
- The Council consider that draft Rule 3.67(2) to (4) should be removed.
- The Council do not consider that forms of interlocutor should be attached to each of Forms XX1 and XX3.
- The Council agree that draft Rule 3.74 should be removed in its entirety as unnecessary.
- The council agree that under the new Section 68B, an application must be made in the process in a similar manner to that currently undertaken in criminal procedure. There should be no time limit for making such an application. Rules should be drafted similar to draft rules 3.70 to 3.72. and such an application may be considered without a hearing.

The Council agreed that the amended draft Act may be taken forward with the Chairman.

## **11. Consumer Credit Bill**

This item was withdrawn from the agenda.

The Secretary advised the Council that further amendments to the Bill have been proposed. The Bill is due to become an Act at the end of February. Approval was sought and granted for the instruction of draft rules of court to cover:

- Lay representation
- Sheriff Clerk to intimate orders

This would be undertaken by the Secretariat prior to the next meeting.

## **12. EU Regulation on Insolvency**

The Council noted that subject to budgetary approval, timetables and willingness of those academics approached, it is hoped a paper will be ready for consideration at the next council meeting:

- Assessing the Impact of the Regulation on both Sheriff Court and Court of Session
- Examining the procedures already in place
- Advising what needs to be done to Rules of Court to ensure the regulation is complied with (in the form of instructions to draftsman or draft rules)

- Advising what further regulations might be required

### **13. Enterprise Act**

Having considered the paper produced by the Secretariat, the Council agreed that legal advice was required from OSAG and OSSE before further consideration of this matter was appropriate.

The Council's view was that an initial application should be by way of summary Application.

### **14. Appeals following Decree by Default**

The Council considered the letter received by the Secretariat from the Sheriffs Principal on the subject of decree by default. It was agreed that this matter be remitted to the Ordinary Cause Committee for further consideration.

### **15. Business update including**

#### **Mediation Committee**

The Chairman addressed the council on progress to date and advised that the Committee will discuss a draft composite rule based on their findings at the next Mediation Committee meeting on 18<sup>th</sup> March (later postponed to 20 April). A drafts person will be instructed as required to produce detailed rules of court. The Committee aim to achieve a consensus on what in principle it is proposing and to prepare a report for the Rules council meeting in September. An approach has been made to the Scottish Executive by Lord Clarke on behalf of the Court of Session who has organised conference to be held in June for the Judiciary to examine and discuss the use of Alternative Dispute Resolution (ADR) in relation to the court process. The Committee expressed the opinion that it was desirable that both Courts should adopt a similar approach in relation to ADR and that they will liaise with the Court of Session in this regard.

#### **Commercial Court Research**

The Secretariat advised the Council that the research paper is nearing final form and that it is hoped that it will be published before the end of the financial year. Copies will be supplied to the Council.

The Ordinary Cause Committee who will look at the Commercial Court research, fixed the date of their next meeting for:

**22 April 2005 at 10.15 am in Perth or Stirling if possible.**

## **European Enforcement Order**

The Secretariat advised the Council as to progress.

In compliance with Article 30, the Secretariat forwarded all relevant information to the Department for Constitutional Affairs for inclusion in the UK response and have arranged a meeting with stakeholders to consider the extent of any rules and/or guidance which is required to effect implementation. The Regulation applies from October 2005.

## **16. Any Other Business**

The Secretary advised the Council that the Adoption Policy Review Group are firming up on their conclusions and their report will be issued before the end of the financial year. Sheriff Principal Macphail's practice note for Lothian & Borders is in place and Sheriff Principal Kerr advised that the other Sheriffs Principal were adopting this too. The Secretariat have a draft Act of Sederunt ready pending the report and it is hoped that the practice note can be incorporated into the draft rules.

Mrs Oxley asked members of the mediation committee to advise her as soon as possible of their intentions regarding attendance at the Second Scottish Mediation Network Conference on 3&4 March.

The Council members agreed to the Secretary's request to retain papers for items carried over to subsequent meetings.

Council members indicated that they wished to receive hard copy documents only.

The Chairman asked if it would be suitable to convene subsequent meetings of the Council out with Edinburgh. Council members agreed that Perth or Stirling would be suitable. The Secretariat undertook to try to facilitate this via the Sheriff Clerk's offices.

## **17. Date of Subsequent Meetings**

Ordinary Cause Committee – 22<sup>nd</sup> April at 10.15 am

Rules Council - June 3<sup>rd</sup> at 10.15 am

Rules Council - September 2<sup>nd</sup> at 10.15 am

At Sheriff Court House, Perth or Stirling (to be confirmed by Secretariat).

## **Appendix 1**

### **IT Committee**

**Sheriff I Peebles, QC(Chairman)**  
**Sheriff M Fletcher**  
**J d'Inverno**  
**J McCormick**  
**Alan Johnston**  
**D Morris**  
**D Bruton**  
**P Cackette**  
**G McKeand (SCRC Secretary)**  
**K Stewart (Committee Secretary)**

### **Mediation Committee**

**Sheriff Principal B A Kerr, QC (Chairman)**  
**Sheriff N Morrison, QC**  
**R Conway**  
**S Di Rollo, QC**  
**J d'Inverno**  
**P Cackette**  
**L Napier**  
**J Murphy**  
**J Sturrock**  
**G McKeand (SCRC Secretary)**  
**A Oxley (Committee Secretary)**

### **Ordinary Cause Rules Committee**

**Sheriff Principal Sir Stephen S T Young, Bt, QC (Chairman)**  
**Sheriff W Holligan**  
**Steven Brand**  
**J d'Inverno**  
**J McCormick**  
**Alan Johnston**  
**P Cackette**  
**G McKeand (SCRC Secretary)**  
**K Stewart (Committee Secretary)**