

# APPROVED MINUTES OF SHERIFF COURT RULES COUNCIL MEETING

## PARLIAMENT HOUSE EDINBURGH

26 NOVEMBER 2004

**Present:** Sheriff Principal I D Macphail (Chairman)  
Sheriff Principal B A Kerr  
Sheriff M J Fletcher  
Sheriff N Morrison  
Sheriff I Peebles  
Mr J Murphy  
Mr A Loudon  
Mr S Di Rollo  
Mr J d'Inverno  
Mr Richard Young  
Mr P Cackette, SEJD  
Mrs G McKeand, Secretary  
Miss K Stewart, Assistant Secretary  
Mrs Ann Oxley, Assistant Secretary

**Apologies:** Mrs E Laing  
Mrs C Flanagan  
Mr J McCormick  
Mr R Conway

The Chairman welcomed Mrs Ann Oxley to her first meeting.

### 1. **Minutes of Previous Meeting**

The minutes of meeting of 10 September 2004 were approved.

### 2. **Matters arising**

The Secretary informed the Council that the DAS Bankruptcy Rules have been delayed but it is hoped they will be sent to the Chairman in 1 week.

### 3. **Taking of Evidence via video link – *(continued item from meeting on 10 Sept 04)***

**The Council considered the questions raised in the Chairman's paper and the following matters were agreed :**

- In order that both Court of Session and Sheriff Court Rules Council act consistently, this matter must be considered by the Council now and it was agreed that CSRC be informed of Council's thoughts with their comments invited
- The Council agree in principle to the extension of the circumstances in which video-link evidence may be received

- It is necessary for the taking of evidence by video link to be further regulated
- It would be competent to regulate the matter by Act of Sederunt
- There should be no conditions imposed relative to the witness but the Sheriff may attach such conditions as the Sheriff deems fit
- The conditions in OCR Rule 28.10 should remain the same
- There should be a rule that such an application may be made by motion and at any time during the course of a proof
- The Rules should permit the court to allow a witness to give evidence through a video link or by any other means when the court in its discretion considers this appropriate in the circumstances of the case
- A motion to allow evidence by video-link shall be determined by a Sheriff and not by a Sheriff Clerk.

**The Council authorised the instruction of draft Rules by the Secretariat.**

#### **4. Cautioners & Guarantors**

On 10 September, the Council gave approval to the Secretariat to instructed draft Rules. The Council considered the draft Act of Sederunt and proposed minor amendments which the Secretariat would take forward with the drafts person. The Council authorised the amended Act to be taken forward with the Chairman.

#### **5. Mental Health (Care & Treatment) (Scotland) Act 2004**

On 10 September, the Council gave approval to the Secretariat to instructed draft Rules. The Council considered the draft Act of Sederunt and paper produced by the Secretariat.

**The Council agreed all amendments proposed in the paper and agreed that the SI be taken forward with the Chairman.**

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

**The Council considered the draft Act of Sederunt and the paper produced by the Secretariat and agreed the following matters:**

- There is no real requirement for Section 14(2) of the Act but as we have such a sub-section, for the avoidance of doubt the Secretariat should ask for Section 14(2) to be implemented before the Act of Sederunt can be made
- The extent of the proposed implementation should be further clarified with the policy holders

- Draft Rule 2.(3) – this rule is in order subject to further clarification as referred to above
- Placing of the new rules at part XI to Chapter 3 of the Child Care & Maintenance 1997 Rules is appropriate
- Draft Rule 3.66 – this rule is in order subject to further clarification as referred to above
- Draft rules 3.67 - revisions suggested by Secretariat in their paper should be adopted
- Form XX1 – The Council consider this to be a form of application and the form as drafted to be in order
- Draft rules 3.68 & 3.69 – a child witness notice should be intimated at the same time as lodging with the court; there should be no rule to limit the Sheriff's discretion to fix a hearing
- Draft rules 3.70 - revisions suggested by Secretariat in their paper should be adopted;
- Form XX3 - revisions suggested by Secretariat in their paper should be adopted;
- Draft Rules 3.71 and 3.72 – The Council agree that the timing of lodgement be specified in the Rule; there should be no rule to limit the Sheriff's discretion to fix a hearing
- Draft Rules 3.73 to 3.77 – save for provision of echoing the terms of S271(3) of Criminal Procedure (Scotland) Act 1995, these rules require to be removed from the draft act.

**The Secretariat will now require to seek further policy advice and instruct the draftsman on amendments to the draft Act of Sederunt for consideration by the Council at the next meeting.**

## **7. Land Reform Act**

The amended draft Act of Sederunt was received on 11 November and will be taken forward with the Chairman. The Secretariat will update Council members in due course.

## **8. Miscellaneous Act of Sederunt**

**The Council considered the Secretariat's paper and agreed the following matters:**

- SI 222 and 334 of 2004 require to be amended to correct a numbering error

- The matter of 'single issue' causes raised by Sheriff Principal Young should be addressed in due course by the Ordinary Cause Committee
- The matter of amendment of Rule 21.6 Small Claims Rules raised by Messrs Beaumont & Co may be addressed appropriately in a Miscellaneous Act of Sederunt.

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

Council Regulation (EC) 2201/2003 will apply in Scotland from 1 March 2005. The Secretariat was alerted to the need for procedural provisions in rules of court.

**The Council considered the paper produced by the Secretariat and agreed the following matters:**

- The necessary amendments to the Sheriff Court Rules should, insofar as possible, reflect what is to be contained in the Court of Session Rules in relation to this regulation
- The Council agree to the Secretariat awaiting the Court of session proposals for rule changes before instructing the necessary changes to sheriff Court rules
- If time necessitates it, the Council agree to the matter being taken forward with the chairman alone.

#### 10. **European Enforcement Order for uncontested claims**

The above regulation was ratified on 21 April 2004. It applies from 21 October 2005. Its purpose through agreed minimum standards is to allow for the free circulation of judgments, court settlements and authentic instruments throughout the EU without the need for intermediate proceedings.

**The Council agree that the Secretariat should instruct draft rules for consideration in consultation with the Court of Session.**

#### 11. **Gender Recognition Act**

**The Council considered the legislation and the paper produced and agreed the following requirements for rules:**

- Require the applicant, when he/she is the subject of an interim gender recognition certificate to provide the original or certified copy certificate to the court when applying for divorce on these grounds.
- An applicant for divorce on these grounds, who is not the subject of an interim gender recognition certificate is required to provide a certified copy interim gender recognition certificate.
- All copy certificates should be certified by the issuing authority.

- The person to whom a gender recognition certificate has been issued and the Secretary of State may apply for a corrected certificate. Such an application should be by Minute in the divorce process which resulted in the certificate being issued.

## **12. Freedom of Information (Scotland) Act – need for rules**

**The Council discussed the papers produced and considered requirements for rules in relation to warrant applications under article 1(a) of Schedule 3 of this Act. The following matters were agreed.**

- An application for a warrant should be by summary application and that there is no need to specify this in the rules themselves.
- The need and scheduling of a hearing or a time and place to take evidence on oath and the form of warrant are matters that can be left to the sheriff to consider in each individual case.
- There is no need for an Act of Sederunt to support an application under Article 1(a) of Schedule 3.

## **13. Freedom of Information Acts - relative to rules council papers**

**The Council discussed the provisions of the Act and agreed to publication on the Sheriff Court Rules Council website of.**

- Approved Minutes of Sheriff Court Rules Council meetings from 2004 onwards
- Consultation documents and reports
- Lists of names and numbers of SIs made hereafter with links to HMSO database

The Secretariat will arrange for the publication of items as required.

Papers for consideration by Sheriff Court Rules Council will be made available on request provided they contain no material that would be exempt from disclosure.

## **14. Business Update**

### **Consultation – Further Extension of IT**

The IT Consultation Paper was distributed on 15 September 2004, the target date for responses being 15 November. At this time the Secretariat is working with colleagues in SE to build a database for collation of responses. It is hoped that a report will be available to the IT Committee for consideration in January 2005.

## **Mediation Committee**

Sheriff Principal Kerr updated the Council on progress.

The Mediation Committee met on 1 November. The Committee discussed a wide range of issues and agreed:

- that some change to the Sheriff Court rules to include reference to mediation is necessary and appropriate
- the committee accepted the value of rule changes to encourage mediation in certain cases
- Committee members agreed to prepare proposals for draft rules for consideration by the committee at the next meeting

The next meeting was scheduled for 7 January 2005.

## **Ordinary Cause Committee**

- The Committee has not met since April 2002
- The last recorded membership of the Committee is:

Sheriff Principal E F Bowen QC, Chairman  
Sheriff I A S Peebles QC, Glasgow  
Mr John McCormick, Solicitor, Glasgow  
Mr Lindsay Wood, Solicitor, Arbroath  
Mrs Evelyn Laing, Sheriff Clerk, Aberdeen  
Mr Peter Beaton, SEJD

The Committee has been awaiting a research report into the operation of the Commercial Court in Glasgow. The Secretariat is informed that this research report should be available early in 2005.

**The Council agreed that the membership of the committee and the scheduling of its next meeting should be reviewed at the next Rules Council meeting following the new appointments of full Council due in January 2005.**

### **15. Civil Partnership Bill**

**The Council considered the Bill, Policy Paper and Secretariat's Paper produced and agreed the following matters:**

- Any rules necessary as a consequence of this Act should form a separate chapter of the Ordinary Cause Rules or be incorporated into chapter 33 – subject to advice from the draftsman.
- A simplified procedure like that provided for divorce should be available to those seeking the dissolution of a civil partnership.

**16. Letter from Bonnar and Company**

**The Council discussed the paper and documents produced and agreed that all matters raised were appropriate for further investigation by the Ordinary Cause Committee.**

**17. Any Other Business**

The Secretary advised the Council that she has learned that Access to Justice Division of the Justice Department of the Scottish Executive have set up a group to look at Regulation of Professionals with implications for competition in the Scottish Legal Services market. As part of their investigations this group will be looking at Rules of Court.

The Chairman thanked Sheriff N Morrison and Mr A Loudon for their contributions to the work of the Council.

**Date of Next Meeting**

11 February 2005 at 10.30 am within Edinburgh Sheriff Court

**KAREN STEWART  
Assistant Secretary  
Sheriff Court Rules Council**