

Approved

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

1 June 2007

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff M J Fletcher
Sheriff W Holligan
Sheriff I A S Peebles QC
Mr S Brand
Mr P Cackette
Mr J Murphy
Ms S O'Neill
Mr J D'Inverno
Mr R Young
Mr S Di Rollo QC.
Mr S McCourt (Secretary)
Ms K Stewart (Assistant Secretary)

Agenda

1 Apologies

Sheriff Principal J A Taylor, Mrs C Flanagan, Mr G Way, Mr R Conway, Mr A Johnston

2 Minutes of previous meetings and matters arising

Minutes

Ms O'Neill proposed the following amendments to Item 4:

Q1 – Unfair Relationships. Insertion of the words "who are not legally represented" after the word "debtors" in line 1; deletion of the words "and modelled on" in lines 5 and 6 and the insertion of the words "similarly to" instead;

Q4 – Further Amendments of Forms. Deletion of the words "heritable actions" in line 4 and the insertion of the words "small claims and summary causes and Form 03 in ordinary causes" instead; Subject to these amendments the minutes of the previous meeting held on 2 March 2007 were approved.

Matters Arising

The Chairman advised members that the Ordinary Cause Committee (the "Committee") at its meeting on 13 April had agreed the cost of amending Form 1a of Appendix 1 to the Summary Cause Rules 2002 as well as the relevant guidance was too prohibitive. Instead a new rule 30.9 had been proposed. This had since been instructed by the secretariat.

The Chairman further advised that the Committee considered the drafting of a form for completion by the debtor in an application for an order under Sec 140B of the Consumer Credit Act 1974 was impracticable.

3 Pension Protection Fund

The Council considered the papers before it and approved the instruction of a rule similar to that currently in use in England and Wales.

4 Vulnerable Witnesses (Scotland) Act 2004

(a) Civil Proceedings

The Council considered the draft rules previously instructed together with the Note from the draftsman. Members were satisfied that the provisions drafted met the overall criteria set out in the Council's instruction. The Council discussed and agreed various drafting points and designated Sheriff Peebles to consider the draft rules in detail. The secretariat would consult with policyholders on the content of witness citation forms. Ms O'Neill agreed to assist in this.

The Council agreed that in the event SCS agreed to meet the costs associated with the use of a commissioner the relevant provisions in the draft rules were to be deleted. If it did not then the provisions as currently drafted should so remain.

Once the draft has been considered it would be brought before the Council again (time permitting) or cleared by the Chairman.

(b) Fatal Accident Inquiries

The Council agreed it had no locus in the matter and offered no comment on the proposed draft rules.

5 Adult Support & Protection (Scotland) Act 2007

The Council considered the papers before it. Sheriffs Holligan & Fletcher agreed to consult with Sheriff Baird at Glasgow as well as Adrian Ward, Solicitor on the need for amendment to rules of court. If it was established that changes to rules were necessary the secretariat was to instruct a draft instrument for consideration by the Council at the meeting in September.

6 Adoption & Children (Scotland) Act 2007

The Council considered the papers before it and agreed in principle that it would be beneficial to set up a working group to consider the implications of the Act. The Chairman, Sheriff Fletcher and Mr Brand were appointed members. The Council agreed to Marilyn Riddell of SCS, and Lexy Plumtree, BAAF Scotland being asked to join the group. The secretariat would also invite the Court of Session to participate.

7 Family Actions

The Council considered the paper before it and discussed the general principle of reopening in matters involving status of individuals. Members approved the instruction of a draft rule allowing for late appearance in family actions to reflect the corresponding provision in the Court of Session.

8 Bankruptcy & Diligence (Scotland) Act 2007

An oral update was given by Sheriff Holligan regarding both the Lord President's Advisory Group and the Bankruptcy and Diligence Working Group. The Chairman thanked the Working Group for progress made to date.

The Council considered the papers before it and discussed how often a creditor, when petitioning for sequestration, should be required to check the Debt Arrangement Scheme Register. It was suggested that the current rules be amended to require a creditor to certify their checking of the Register only at the time of presentation. Members had diverging views. The issue was put to a vote. Members voted 5 v 5. The Chairman used his casting vote in favour of the proposal. The secretariat was authorised to instruct amendment to the draft rules for consideration by the Working Group and clearance by the Chairman.

9 Licensing (Scotland) Act 2005

The Council considered the papers before it. The Chairman undertook to consider the issue further before discussing with the secretariat how the matter should be progressed. The Chairman would also discuss the issue with other Sheriffs Principal. The secretariat undertook to request sight of proposed Regulations from policyholders or if not yet drafted a paper on what these were likely to contain. Meantime consideration of the matter was continued until the next meeting of the Council in September.

10 Equality Act 2006

The Council was content with the proposed draft rules. The secretariat undertook to advise the draftsman accordingly.

11 Faculty of Advocates

Employment of Counsel

The Council considered the papers before it and agreed a rule was appropriate providing that:

- The court may allow a motion in advance at any stage in the process for certification that the whole cause/step in process is suitable for the employment of junior/senior counsel or both
- the court must grant the motion if parties agree to certification
- the rule was to apply to all forms of procedure

Members approved the instruction of draft rules by the secretariat. Once available they were to be considered by Mr Di Rollo and Mr Brand prior to further consideration by the Council at the meeting in September.

Taxation of Expenses

The Council agreed it would not be appropriate for sheriffs to assess levels of expenses. This matter was being considered as part of the Civil Courts Review.

12 Consumer Credit Act 2006

Time Orders

Ms O'Neill spoke to her paper and outlined the main issues. The Council agreed in principle that provision for Time Orders be made in rules of court. Ms O'Neill and Mr Young agreed to consider the content of a proposed rule and forms and liaise with the secretariat on instruction of a draft instrument for consideration by the Council at the December meeting. The Council agreed there should be a rule requiring a specific averment in cases relating to regulated agreements under the Act. The secretariat to so instruct.

Unfair Relationships

Ms O'Neill agreed to draft a style form of summary application with the assistance of Mr Brand for consideration by the Council at the December meeting.

13 EU Insolvency Regulation

The Council adhered to the views it had reached at the March meeting and requested the secretariat to advise the draftsman accordingly.

14 Business Update

Members noted progress on the various issues. An oral update was given by Mr McCourt regarding future arrangements for announcement of Rules changes. The secretariat undertook to circulate future Policy Memoranda received from the Lord President's Private Office to the Law Society of Scotland, the Faculty of Advocates and arrange for these to be posted on the SCRC website.

15 Any Other Business

Civil Jurisdiction and Judgments Regulations 2007

The Chairman advised members that the regulations now extend to Denmark the relevant provisions on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. As the regulations were due to come into force on 1 July 2007, the Council agreed that the Chairman should clear the draft instrument once this was to hand.

Mr McCourt asked if it was necessary for the secretariat to provide members with hardcopy of papers for meetings given that these were also forwarded to them electronically. It was agreed that in future hardcopy would only be provided if the secretariat was specifically requested to do so by a member.

16 Date of subsequent meetings.

Friday 7 September 2007

Friday 7 December 2007

Friday 7 March 2008

Friday 6 June 2008