

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

04 February 2011 10.30 am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff Principal J A Taylor
Sheriff W Holligan
Sheriff R Dickson
Mr S Brand
Mr F Simpson
Mr G Murray
Mr M Speirs
Mr R Sandeman
Mr R McMillan
Ms O McShane
Ms R Smith
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Sheriff C Scott
Mr A McLean, QC
Ms C McLachlan
Miss M O'Neill (Assistant Secretary)

The Chairman welcomed Sheriff R Dickson, Mr M Speirs, Mr R Sandeman and Ms O McShane to the meeting. He advised that Sheriff Dickson had been appointed to replace Sheriff Fletcher, Mr Speirs to replace Mr d'Inverno, Mr Sandeman to replace Mr McKay and Ms McShane to replace Mr Johnston. Apologies had been received from Mr McLean, QC who has been appointed to replace Mr Di Rollo, QC.

The secretariat advised that arrangements were ongoing to secure a replacement for the lay member vacancy on the Council.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Equality Act 2010

The drafter undertook to provide a short paper on the issues raised including what the Council might reasonably be expected to do in the performance of their function under section 34 of the Sheriff Courts (Scotland) Act 1971, for the next meeting. The Chairman advised that he will write again to Lord Wallace about the need for Government departments to give sufficient notice of potential new legislation.

Action: The drafter to provide a short paper for consideration at the next meeting

Chairman to write to Lord Wallace

Bankruptcy & Diligence (S) Act 2007 - Admiralty actions

Sheriff Holligan advised the meeting that he and Mr McCourt had recently met to discuss the draft provisions and that further drafting instructions would be issued next week. The Council confirmed that they had no objection to Mr McLean, Solicitor, Brodies being consulted over the revised draft provisions.

Protective Costs Orders:

European Commission Reasoned Opinion – Infringement No 2006/4033

The Council at an earlier meeting had agreed in principle to having similar rules in the sheriff court as that in the Court of Session. The rules which are to apply in environmental cases are still under consideration. In relation to stage two of the process, a joint consultation of both the Sheriff Court and the Court of Session Rules Councils will be undertaken in due course.

Miscellaneous Instrument 1 of 2011:

Change of Name of Party

The sub-committee set up to take a look at the practicalities of making the procedure work is still to meet. The Court of Session Rules Council is due to discuss the matter on 14 February 2011 and the sub-committee will meet shortly thereafter. The Chairman invited Ms O McShane to join the sub-committee as a replacement for Mr A Johnston.

Action: Meeting of sub-committee to be set up.

Ordinary Cause Personal Injury Rules/ Summary Cause Personal Injury Rules

Members of the Ordinary Cause Committee discussed this matter at their meeting on 27 January 2011 and agreed that once the drafter had prepared a revised version of the draft provisions in similar terms to that of the Court of Session, they should be circulated by e-mail to members for consideration. The Council today agreed that the matter should thereafter be cleared by members of the Ordinary Cause Committee for inclusion in the next but one Miscellaneous Instrument.

Action: The Secretariat to instruct the drafter to prepare revised draft provisions

The Ordinary Cause Committee to clear provisions for inclusion in the next but one Miscellaneous Instrument

Child Welfare Cases

The Chairman advised that at a recent meeting with the Lord President he had raised the possibility of introducing new rules to deal with these cases and the Lord President had responded sympathetically, at least in principle. The Chairman also advised that he would contact Sheriff S Raeburn to seek her views.

Action: The Chairman to write to Sheriff Raeburn

3 Judicial Expenses

Members agreed to continue consideration of the matter until the May meeting to enable the proposed amendment of the general regulation to be discussed by the Lord President's Advisory Committee (LPAC) at its next meeting which is not likely to be until late February/early March.

4 Regulated Agreements

Sheriff Principal Taylor spoke to the sub-committee's recommendation that it is unnecessary to make any specific provision in the rules and after discussion, members agreed. The secretariat undertook to write to all those who corresponded informing them of the Council's decision. Further the Council agreed that the relevant sections of the current time to pay direction/time order application Forms contained within the four main sets of rules be amended to provide that a debtor is required to attach a copy of the regulated agreement if this had been retained and provide details of the agreement where known.

Action: Instructions to be issued. The Chairman to clear for inclusion in the forthcoming Miscellaneous Instrument

The secretariat to write to all those who corresponded

5. Contempt of Court

Having considered the contempt of court draft instrument, members offered their comments which were to be conveyed to the Court of Session Rules Council for consideration by them at their meeting on 14 February 2011.

Action: Secretariat to convey the Council's comments to the Court of Session Rules Council

6. Miscellaneous SI 1 of 2011

The Council considered the draft instrument and the Note from the drafter, and subject to some minor amendments agreed that the provisions be remitted to the Sheriff Court Rules Council Ordinary Cause Committee for further consideration and clearance.

Action: The Ordinary Cause Committee to clear provisions for inclusion in the forthcoming Miscellaneous Instrument

7. Definition of "family action" in OCR 33.1(1)

Having considered the paper from the secretariat along with an e-mail from Sheriff Holligan in relation to the definition of "family action" as defined in Rule 33.1 of the Ordinary Cause Rules 1993 and whether an application for the appointment of a person as a guardian should be raised as a family action, the Council agreed that it should, and proposed deletion of OCR 33.1(1)(h)(ii) and repeal of paragraph 4 of the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996.

Action: Instructions to be issued. The Chairman to clear for inclusion in the forthcoming Miscellaneous Instrument.

8. 1996 Hague Convention on Jurisdiction

The Council considered the policy papers produced relating to the Convention, which allows for the establishment of uniform rules with other countries. The Council agreed, in principle, that rules are required in relation to Articles 8 and 9 of the Convention, and that any new rules should be along similar lines to those which are contained in the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgements in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006.

The Council agreed that Sheriff Dickson and Mr Murray, would consider the draft rules before being then cleared by the Chairman. The Council noted that policy holders have stated it is essential that rules in Scotland are in place by April to ensure the UK can ratify the Convention and this may not allow sufficient time in which to prepare for commencement of new rules. The Chairman advised that he would write to Lord Wallace over concerns that the Council has with being asked to consider policy papers at such late notice.

Action: Instructions to be issued

**Sheriff Dickson and Mr Murray to consider the draft rules before then
being cleared by the Chairman**

9. Business Update

The Council noted the progress on the items contained within the business update.

10. Lay Representation

Having considered the paper produced by the Secretariat in relation to amendments on lay representation made by the Legal Services (Scotland) Act 2010 the Council formed the view that the new provisions raised a number of significant issues which required time to be considered carefully. Sheriff Principal Taylor expressed concern at the meeting that the suggestion in the Judicial Working Group's report that the court may grant an application for the use of a lay representative at the hearing if satisfied it is in the interests of justice to do so went far further than was ever envisaged by the Civil Courts Review.

The Council agreed that a working group consisting of Sheriff Principal Taylor, Sheriff Dickson, Mr Speirs, Mr McMillan and Ms Smith be set up to consider the issue with its remit being to consider the implications for sheriff court rules in light of section 127 of the Legal Services (Scotland) Act 2010 and to prepare a paper with recommendations for the Council to consider at its next meeting on 6th May. The issue of commencement was also discussed and Mr Sandeman confirmed that the intention was to have an enabling provision in place before the Scottish Parliament dissolved. The Chairman advised that he would write to the Lord President explaining the views of the Council.

Action: Meeting of working group to be arranged

The Chairman to write to the Lord President

AOCB

Membership of the Sheriff Court Rules Council Ordinary Cause Committee

The Council agreed that Mr G Murray and Ms O McShane would now replace Mr d'Inverno and Mr A Johnston respectively as members of the Committee.

Council Membership

The Chairman advised that Sheriff Principal Taylor would be retiring at the end of April. Members expressed their thanks for all his hard work and wished him well in the future. The Council will be advised of his replacement in due course.

Date of subsequent meetings

06 May 2011

05 August 2011

04 November 2011