

Minutes of Sheriff Court Rules Council Meeting
Parliament House, Edinburgh
03 August 2012 10.00 am

PRESENT

Sheriff Principal CAL Scott
Sheriff Principal M Stephen
Sheriff R Dickson
Sheriff A Deutsch
Sheriff A G McCulloch
Mr F Simpson
Mr M Speirs
Ms C McLachlan
Mr R Sandeman
Ms R Smith
Mrs F MacPherson
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Mr S Brand; Mr R McDonald; Mr A McLean QC; Mrs M McLean; Mr A McIntosh

Sheriff Principal Scott who replaced Sheriff Principal Young as Chairman to the Council, welcomed Sheriff Principal Stephen to the meeting as his replacement, and also welcomed Mrs MacPherson as the replacement for Mr McMillan.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Lay representation

Ms Alcock advised that the Subordinate Legislation Committee has drawn the attention of the Scottish Parliament to new Chapter 12B of the Rules of the Court of Session which came into force on 9 July 2012. The new Chapter provides that a party litigant who wishes to have a lay representative make oral submissions on their behalf must apply to the court for permission to do so by enrolling a motion accompanied by Form 12B.2. The Committee has raised concerns over Part 2 of the Form which a prospective lay representative is required to complete and which contains a declaration relating to previous convictions including those which are spent for the purposes of the Rehabilitation of Offenders Act 1974. The Scottish Government has offered to amend the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order

2003 by adding this requirement to the list of exceptions. Ms Alcock further advised that until the matter is resolved the sheriff court rules cannot be made.

Scottish Civil Courts Review

Mr Sandeman provided the meeting with an update on the proposed Courts Reform Bill which is to be consulted upon later in 2012. The Bill will take forward many of the recommendations by Lord Gill such as the structure of appeal courts, the increase in the privative limit etc.; He advised that stakeholder events had been held in June and the Making Justice Work Board plans to conduct roadshows in rural areas from September onwards.

Mr Sandeman advised that Sheriff Principal Taylor's review on litigation costs will be taken forward in a separate Bill either at the end of 2012 or in spring 2013 and that Stage 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Bill will take place this September.

Mr Sandeman undertook to provide a further update at the next meeting.

3(a). SCRC Child Welfare Working Group: The Children's Hearings (Scotland) Act 2011

Sheriff McCulloch, Chairman of the group informed the meeting that a Consultation Paper on proposals for procedural rules in the sheriff court was issued on 5 July 2012. The period for consultation ends on 31 August 2012 and to date one response has been received.

It was agreed that the working group meet again on 4 October 2012 to consider revised rules and consultation responses. The draft rules would then be revised further to take into account matters considered at the meeting to enable a final draft of these to be considered by the Council at its November meeting.

Action: The secretariat to instruct further changes to rules for consideration by the Council at the next meeting;

3(b). SCRC Child Welfare Working Group: Family/Adoption Proceedings

The Chairman proposed that Mrs MacPherson be appointed to the group as the replacement for Mr McMillan. This was agreed to.

It was also agreed that the working group meet to consider the initial draft rules and accompanying note by the drafter at the end of the meeting. They were then to be revised to take into account matters considered at the meeting.

The Council identified a number of interested parties that should be afforded the opportunity to comment on the draft rules and agreed they be circulated to them for comment by end September.

Sheriff McCulloch expressed his concerns over comments made in the Supreme Court decision *NJDB V JEG +1* in relation to the structure of pleadings in civil cases and updated the Council on his request for research assistance from the Judicial Studies Committee to assist in this regard.

The working group agreed to meet again on 4 October to consider the revised rules and responses along with any research assistance that may be available. These rules would also then be revised further to take account of matters considered at the meeting for consideration by the Council at the November meeting.

The Council also discussed issues relating to the appointment, training, duties and remit of bar reporters and curators *ad litem*. Mr Sandeman advised that the Scottish Government were planning a consultation paper on this. The Chairman noted it would be desirable to have a national approach to such appointments.

The Chairman thanked the working group for their continuing efforts in regard to both aspects of work.

Action: The secretariat to instruct further changes to rules in regard to family and adoption proceedings for consideration at the next meeting;

Action: The secretariat to circulate the draft rules for comment to the working group by end September;

4. Policing and Crime Act 2009

The Council considered the paper produced by the Secretariat along with the draft rules and drafter's note. Mr McCourt advised that the relevant provisions of the Act are not now due to commence until April 2013. The Council cleared the draft rules for inclusion in the next appropriate Miscellaneous Instrument.

5. Bankruptcy and Diligence etc. (Scotland) Act 2007 – Part 15 Actions for removing from heritable property

The Council considered the papers produced by the secretariat and the Society of Messengers-at-Arms and Sheriff Officers (SMASO) in relation to a number of suggested amendments to the instrument which had come into force on 18 June 2012. The Council also considered an email from Mr Nicholson, Deputy Legal Secretary to the Lord President along with a draft amending instrument which gives effect to the changes sought by SMASO to rules 3(5), 3(7) and Form 4 of the instrument. The Council agreed to the suggested amendments but reached the view that the suggested amendment to rule 7(4) to refer at (a) and (b) to a sealed "transparent" envelope was unnecessary. The Council also agreed that the current wording of rule 4 should not be changed as the rule is designed to cover circumstances where the defender does not live at the property or when the property in question is commercial premises with its purpose being to ensure the defender receives the notice concerned.

Subject to the above, the Council cleared the instrument.

Action: The secretariat to advise the Lord President's Private Office of what was agreed to by the Council;

6(a). Service of Sheriff Court Inhibitions – Furth of Scotland

The Council continued consideration of the paper produced by the Society of Messengers-at-Arms (SMASO) until the November meeting to allow the Accountant in Bankruptcy to provide comments on whether it would be possible to amend the Regulations concerned.

6(b). Service of Calling Up Notices

The Council having considered the papers produced by the Secretariat and the Society of Messengers-at-Arms (SMASO) regarding the service of calling up notices, agreed that this was not a matter which could be addressed by changes to rules and that instead SMASO should raise the issue with the Scottish Government with a view to having the relevant primary legislation amended.

7. Child Support Rules

The Council considered the paper produced by the Secretariat along with draft rules and agreed that the Child Support Rules 1993 and corresponding Forms only required textual amendments which simply replace any references to the Child Maintenance and Enforcement Commission with a reference to the Secretary of State. The Council cleared the draft rules for inclusion in the next Miscellaneous Instrument.

Action: To be included in the next Miscellaneous Instrument

8. Business Update

Mr McCourt provided a verbal update on the various matters mentioned.

9. AOCB

Sheriff Dickson raised concerns over a problem that has arisen regarding a delay by the Royal Mail in the return of "returned citations" in civil cases to the sheriff court in circumstances where service cannot be effected. The Scottish Court Service is in discussions with the Royal Mail over this and has put interim measures in place until the matter is resolved. The Council agreed that as the matter is on-going that consideration of it should be continued until the November meeting.

Date of subsequent meetings

09 November 2012

01 February 2013