

Minutes of Sheriff Court Rules Council Meeting

McDiarmid Park, Perth

06 August 2010 10.30 am

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Mr S Di Rollo QC
Mr J d'Inverno
Mr F Simpson
Mr S Brand
Mr G Murray
Ms C McLachlan
Mr A Johnston
Mr R McMillan
Ms S O'Neill
Ms R Smith
Mr C McKay
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Miss M O'Neill (Assistant Secretary)
Mrs L McCabe (Assistant Secretary)

1 Apologies

Sheriff Principal J A Taylor
Sheriff M J Fletcher
Sheriff W Holligan
Sheriff C Scott

2 Minutes of previous meeting

The minutes of the previous meeting were approved subject to minor amendments.

Matters Arising

Miscellaneous Act of Sederunt 2009 – Regulated Agreements

The Chairman advised that this instrument had now been cleared.

Miscellaneous Act of Sederunt 2010

The Chairman advised that this instrument had now been cleared.

European Commission Reasoned Opinion – Infringement No 2006/4033

The Council agreed in principle that similar provisions be made in rules as those proposed for the Court of Session. The secretariat to instruct the drafter on that basis. A draft to be considered at the next meeting.

Sheriff Court Bankruptcy Rules

The secretary provided the Council with an update on Sheriff Holligan's investigations. He also advised he had met recently with the AIB, Keeper of the Register and SCS to discuss the practical implications of the proposal. As a consequence the Accountant in Bankruptcy wished to consider whether to pursue the matter further.

3 Scottish Civil Courts Review

Summary Disposals

Consideration of this particular matter was continued until the next meeting.

McKenzie Friend

After discussion, the Council proposed that the draft instrument should not contain provision for application by motion and certification as contained within Chapter 12A1(4) of the Rules of The Court of Session 1994. Members discussed whether the term "McKenzie Friend" should be included in the draft provisions either in the title of the chapter or in the explanatory note and also proposed some minor amendments. The Council remitted the matter back to the drafter for further consideration. The secretariat undertook to make SCS Policy & Legislation branch aware of the need for guidance for party litigants on the SCS website.

Ms Smith proposed that paragraph (7) should be deleted.. After discussion, members agreed that as this might be ultra vires in light of the Litigants in person etc Act and that in any event the question whether an expense incurred by a litigant as a result of the support of a McKenzie friend would be determined by reference to the Act and the related Act of Sederunt so that there was no need for the rule and it should be deleted.

Members agreed that the draft provision should be contained within the four sets of rules.

Mr McKay gave an update on the Scottish Government's proposed response to the Civil Courts Review.

Action: Chairman to clear provisions for inclusion in the September Miscellaneous instrument, or in his absence by Sheriff Principal Taylor or Sheriff Fletcher in his absence

The secretariat to write to the Lord President giving the Council's reasons for the deletion of the motion and

certification procedure

The secretariat to make SCS Policy & Legislation branch aware of the need for guidance for party litigants on the SCS website.

Judicial Expenses

Members discussed the draft and the problem of how it could be made clear to Sheriffs that they can sanction employment of counsel, (which now includes a solicitor/ advocate). A separate issue was also discussed regarding the Fees Instrument, but this was outwith the remit of the Rules Council. It was not clear from the draft that the definition of Counsel included a solicitor-advocate and the drafter was invited to consider the matter further once the fees instrument had been dealt with.

Action: Drafter to consider further the definition of counsel

Draft to be cleared by the Chairman or in his absence by Sheriff Principal Taylor, or Sheriff Fletcher, for inclusion in the September Miscellaneous Instrument

4 Home Owner and Debtor Protection (Scotland) Act 2010

The Council considered the paper produced by the secretariat along with the revised draft instrument, Note from the drafter and Sheriff Fletcher's report. Members agreed the revised draft instrument subject to some amendments to the Form 11C. The secretariat undertook to instruct the drafter in those terms. Mr McCourt advised of a matter which had been raised by policy holders concerning the transitional provisions relating to pre-commencement applications and calling up notices which may affect the transitional and savings provisions in the draft Act of Sederunt. Mr McCourt and Ms Alcock to consider and amend the transitional provisions, if necessary. The instrument to be cleared by the Chairman or in his absence Sheriff Principal Taylor or Sheriff Fletcher. Further, the Council considered a recommendation contained in the Repossessions Group Protection of Tenants Final Report that the initial writ for repossession of a property should be served by Sheriff Officers in all cases. Following discussion, members agreed that this was a matter of policy rather than for Court procedure.

Action: Mr McCourt and Ms Alcock to clarify the amendments which were agreed by the working group at the meeting on 30 June 2010.

Mr McCourt and Ms Alcock to consider and amend transitional provisions if necessary. The instrument to be cleared by the Chairman or in his absence by Sheriff Principal Taylor or Sheriff Fletcher

05 Personal Injury Rules

Ordinary Cause

Mr Simpson addressed the Council on his previous correspondence in relation to difficulties in practice with specification of documents under the Ordinary Cause Personal Injury procedure. After discussion, Members agreed that the drafter should be instructed 1) to amend subparagraph 3 of Form PI5 of the Ordinary Cause Rules so that the Pursuer, rather than serve an order under rule 28.3 may execute the commission, and 2) to make provision in the Ordinary Cause Rules setting out the obligation on a party and havers in this type of procedure, similar to that used in rule 35.3 of the Rules of the Court of Session 1994, and thereafter to reflect both amendments in the Summary Cause PI Rules.

Summary Cause

The Ordinary Cause Committee considered the draft instrument along with the Note from the drafter. The OCC proposed amendments to the draft and Forms, and the secretariat undertook to instruct the drafter in those terms. The OCC agreed that the provisions should be contained in the January 2011 miscellaneous instrument.

Action: Amendments to be instructed for inclusion in the January 2011 Miscellaneous Instrument.

06 Admiralty actions

The Council considered the draft instrument and the Note from the drafter. After discussion members agreed the minor amendments proposed. Thereafter the Council continued the matter until the next meeting to allow Sheriff Holligan to be in attendance and for general discussions to take place with Mr McLean of Brodies, Solicitors, Edinburgh.

Action: Mr McCourt to discuss the draft with Sheriff Holligan and Mr McLean.

07 Criminal Justice and Licensing (Scotland) Bill 2010

Closure Orders

The Council considered the paper produced by the Secretariat and agreed that no amendment was required to the Summary Application Rules 3.27.6-3.27.9 in the light of the changes introduced by section 72 of the Bill. Members considered the existing Summary Application Rules Forms 25-29 and agreed that there was no requirement for new forms and that the existing Forms should be amended as necessary to reflect the new provisions in the Bill.

Action: **Instruct amendments to the Summary Application Rules Forms 25-29, for inclusion in the January 2011 miscellaneous instrument**

Licensing Appeals

Members considered the paper produced by the Secretariat along with the policy paper produced by policy holders. It was agreed that to reflect the changes introduced by section 137A of the 2010 Bill, Rule 2.6 of the Summary Application Rules should be amended to replicate rules 3.34(2)(1)(c) and 3.34.2(4), so as to provide in applications under the Licensing (Scotland) Act 2005 for an Appeal to be lodged under section 131 of the Act, not later than 21 days after the date of the decision of the Licensing Board or where a statement of reasons has been required under section 51(2) of the Act, the date of issue of the statement of reasons, and that Rules 3.34.1 – 3.34.8 should be revoked. The secretariat undertook to instruct the drafter in those terms.

Action: **The amendments to be cleared by the Chairman in due course**

07a Supplementary Paper

The Council considered the supplementary paper produced by the Secretariat in relation to a request by Jane MacDonald of SCS's Policy and Legislation branch as to whether rules of court are necessary in relation to various sections of the 2010 Bill, which introduce new provisions into the Criminal Procedure (Scotland) Act 1995 relating to the retention of samples following the commission of an offence and where applications may be in respect of children. The Council agreed that there was no requirement for rules of court, but the matter could be reviewed at a later stage on production of a policy paper.

08 Actions for declarator of recognition or non recognition of foreign decrees

Members considered the paper produced by the Secretariat along with a letter from Sheriff George Jamieson in relation to actions for declarator of recognition or non recognition of foreign. After discussion, the Council agreed to invite the drafter to reconsider the following points: -

- (1) whether the Court of Session has the power to make a rule about this and
- (2) whether evidence would be required in these cases even if they were undefended

The Council continued the matter until the next meeting for this purpose and asked for sight of any Court of Session rules.

Action: **The Secretariat to invite the drafter to respond to points raised by the Council and ask for sight of any Court of**

Session rules

9 Equality Act 2010

The Council considered the paper produced by the secretariat along with the drafter's Note and the draft instrument. The Council proposed minor amendments to the draft, and the secretariat undertook to instruct the drafter in those terms. The Council, in relation to the drafter's Note, confirmed that no specific provisions were required in respect of applications under Section 24 of the Equality Act 2006 and that the timescale for transmission of the process to the Employment Tribunal was within 7 days from the date of such order in all four sets of rules. The Chairman also expressed concern over the length of the policy paper from policy holders, and the tight timescale allowed for proper consideration by the Secretariat and the Council. It was agreed that the Chairman should write to the Advocate General for Scotland about this. Thereafter, the Council agreed that the final instrument should be cleared by the Chairman, or by Sheriff Principal Taylor and Sheriff Fletcher in the absence of the Chairman.

Action: Amendments to be instructed

The Draft Instrument to be cleared by the Chairman or in his absence, Sheriff Principal Taylor or Sheriff Fletcher

Secretariat to prepare draft letter to the Advocate General for Scotland for consideration by the Chairman

10 Child Maintenance and Other Payments Act 2008 – Orders Preventing Avoidance

The Council considered the paper produced by the secretariat along with correspondence from policy holders and Ms J Alcock and after discussion agreed that no further action was necessary.

11 Draft Business Plan 2010/11

The Council considered the draft business plan and subject to a minor amendment this was approved.

12 Business Update

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

13 AOCB

Correspondence form Aberdeen Considine

The Council considered the correspondence form Aberdeen Considine relating to the use of I-Pads in the courts of Scotland. The Council was of the view that no rules of court were required. The Chairman advised that he intended to discuss the matter with other Sheriffs Principal, who may decide to circulate the letter to Sheriffs within their respective sheriffdoms for their views.

Council Membership

Mr McCourt advised the Council that the current term of membership is due to end in January 2011. The Chairman intimated that he would write to the Lord President in due course, but meantime asked the Secretariat to canvass members on whether they wished to be considered for re-appointment

Action: Secretariat to canvass with members whether they wished to be considered for re-appointment

Treaty of Lisbon (Changes of Terminology) Order 2010

It was agreed that the Chairman should clear any amendments to rules as a consequence of the Order.

Equality Impact Assessments

Mr McCourt advised that as a consequence of the new Equality Act, public bodies were required to undertake equality impact assessments where necessary so as to ensure they do not discriminate. The requirement also extends to those who carry out a public function. The Council agreed it would be helpful if a member of the SCS Equality team were to attend the next meeting to inform the Council more on the matter.

Action: Secretariat to invite member of SCS Equality Team to attend next meeting

Date of subsequent meetings

Friday 05 November 2010
Friday 04 February 2011
Friday 06 May 2011