

## **Minutes of Sheriff Court Rules Council Meeting**

**McDiarmid Park, Perth**

**7 March 2008**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff W Holligan  
Sheriff M J Fletcher  
Mrs C Flanagan  
Mr G Way  
Mr A Johnston  
Mr R McMillan  
Mr J d'Inverno  
Mr P Cackette  
Mr F Simpson  
Mr S McCourt (Secretary)

### **Agenda**

#### **1 Apologies and Welcome**

Sheriff Principal J A Taylor, Sheriff C Scott, Mr S Brand, Ms S O'Neill, Mr S Di Rollo QC

The Chairman welcomed Mr F Simpson and Mr R McMillan who have replaced Mr R Conway and Mr J Murphy on the Council.

#### **2 Minutes of previous meeting**

The minutes of the previous meeting were approved.

#### **3 Draft Business Plan**

The Draft Plan was approved subject to some minor amendments.

#### **4 Adult Support and Protection (S) Act – Part 1**

The Council agreed that the issue be remitted to the Ordinary Cause Committee for consideration.

#### **4A Bankruptcy & Diligence (S) Act 2007**

The Council considered a revised draft bankruptcy instrument and confirmed its previous decision that it was only necessary for a creditor to check the Debt Arrangement Scheme Register at the lodging of the petition for sequestration. The Council agreed that subject to the instruction of some further amendments a revised draft be cleared by the Chairman.

The Council considered a draft diligence instrument and discussed at length paragraphs 3, 4 and 5 (time to pay provisions) particularly in relation to how these would work in relation to the summary cause and small claim rules. The Council agreed that the most appropriate solution was to extend the current time interval of 7 days between the return day and calling date but mindful of the potential ramifications of doing so felt it was inappropriate to rush through change without full consideration. The Council agreed

in principle that the time interval should instead be 14 days and as a consequence the period for a pursuer to intimate an objection to a time to pay application be extended from 2 days to 9 days.

The Council expressed its dismay over only having received the first draft of the instrument on 3 March and then a final draft on 6 March but reluctantly agreed to submit the draft instrument to the Court of Session for approval subject to the deletion of paragraphs 3, 4 and 5 and the associated forms as well as some other amendments. The time to pay provisions would be re-considered by the Council in June. The Council wished it noted that in view of the very short timescales it was unable to consider the issue as rigorously as it would have preferred. Sheriff Holligan undertook to email the Chairman of the Lord President's Advisory Group and advise him of this as well as a general concern the Council had over the diligence implementation timetable.

## **5 UK Borders Act 2007**

The Council considered the paper produced and agreed that provision be made in the rules allowing for the period for lodging an appeal in proceedings under the Act to be 21 days following intimation of the Secretary of State's response to an objection. The secretariat was to instruct the draftsman accordingly.

## **6 Pension Protection Fund**

The Council considered the revised draft provision and subject to the instruction of certain further amendments agreed that a revised draft be cleared by the Chairman in due course.

## **7 Equality Act 2006 – Commission for Equality and Human Rights**

The Council considered the revised draft Act of Sederunt produced and subject to the instruction of certain further amendments agreed that a revised draft be cleared by the Chairman in due course.

## **8 Scottish Commission for Human Rights Act 2006**

The Council considered the draft Act of Sederunt produced and subject to the instruction of certain amendments agreed that a revised draft be cleared by the Chairman in due course.

## **9 Summary Cause Rules – Specification of Documents**

The Council considered the letter from Mr Conway produced and agreed that an amendment to Rule 34.2 of the Summary Cause Rules 2002 be made to reflect the provisions of rule 28.2(3) of the Ordinary Cause Rules 1993. It was further agreed that the existing Form 10E contained in the 2002 rules should be replaced with a Form in similar terms to that of the Court of Session Form 43.2B. The amendments when instructed to be included in the next miscellaneous Act of Sederunt.

The Chairman undertook to investigate whether the Practice Notes issued by the Sheriffs Principal in 2006 and which removed the requirement for intimation of medical records upon the Lord Advocate should be extended to include the summary cause rules.

## **10 Family Actions – Late Appearance**

The Council considered the revised draft Act of Sederunt along with the Note from the draftsman. The Council agreed that the appeal provisions in paragraphs 8 and 9 of the draft be deleted as it was of the view that the ordinary cause rules governing appeals set

out in sections 27 and 28 of the Sheriff Courts (Scotland) Act 1907 and Chapter 31 of the Ordinary Cause Rules 1993 should apply. The secretariat was to so instruct along with certain other amendments and it was agreed the revised draft be cleared by the Chairman in due course.

## **11 Joint IT Committee**

The Council agreed that Sheriff Peebles be co-opted onto the Court of Session and Sheriff Court Rules Council Joint IT Committee. Mr McCourt would issue an invitation on behalf of the Council to Sheriff Peebles.

The Council considered the correspondence from the Scottish Court Service along with the approved minutes of the Joint IT Committee meeting of 30 January 2008. The Council agreed in principle that it was in favour of the use of IT in facilitating litigation processes in the sheriff court. Members agreed to invite Glynis McKeand of SCS and Sheriff Peebles to attend the next meeting so they could provide more insight into how it is envisaged the proposals would work. It would be helpful also if they could provide members with a paper to assist them in their consideration before the meeting.

## **12 Summary Cause Rules – Personal Injury Actions**

The Council considered the letter from Mr Carrigan along with an email from Mr Cackette. Members recognised that with the recent increases to the jurisdiction limits in both summary causes and small claims there was now potential for more personal injury actions to be raised as summary causes. The Council agreed to write to both the President of the Law Society and the Dean of Faculty of Advocates inviting their views on whether to extend the modified procedures proposed for the ordinary cause rules into the summary cause rules as well. Sheriff Holligan undertook to draft a letter in these terms for issue by the secretariat.

## **13 Commercial Actions – Rule 40.9 OCC Rules 1993**

The Council considered the Note from Sheriff Pyle along with an email from the Chairman. The Council agreed that provision be made in the Ordinary Cause Rules 1993 for a new rule 5.2(e) and 40.7(3) and as a consequence a new Form 04A in order to alert defenders to the fact that different rules applied in commercial actions. The secretariat was to instruct the draftsman accordingly.

## **14 Business Update**

Members had no comment to offer on the business update.

## **15 Any Other Business**

### **Increases to jurisdiction limits**

Mr Cackette noted a concern raised by Mr Way about changes in rules needed in consequence of the increases in court jurisdiction limits. He asked Council members to give consideration to other changes that may be needed to other rules arising from the recent increases. He noted that it would be useful to flag these up with the Council and secretariat as soon as practicable.

### **Leave to appeal – interim diligence**

The Council discussed an issue raised by Sheriff Holligan about leave to appeal a recall of arrestment. It was agreed that the issue be remitted to the Ordinary Cause Committee

Approved

for consideration. Sheriff Holligan undertook to advise Committee members of any relevant case law prior to the meeting.

### **Notices to Admit**

The Council agreed that the issue be remitted to the Ordinary Cause Committee for consideration.

### **Civil Courts Review**

The Council considered that it would not be appropriate to respond formally to the review but that it should indicate that it would be only too willing to assist on any points which may arise from the consultation. Mr McCourt undertook to prepare a draft letter to Lord Gill for approval by the Chairman on that basis.

### **Date of subsequent meetings.**

Friday 6 June 2008

Friday 5 September 2008

Friday 5 December 2008

Friday 6 March 2009