

**Minutes of Sheriff Court Rules Council Meeting
Parliament House, Edinburgh
09 November 2012 10.00 am**

PRESENT

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

1. Apologies/Welcomes

Mr R Sandeman

The Chairman welcomed Mrs M McLean to the meeting as the replacement for Ms McShane.

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Lay representation

Ms Alcock advised the meeting that the aim is to have the lay representation rules for the sheriff court made before the end of the year.

Scottish Civil Courts Review

The Secretary provided an update on the Scottish Civil Justice Council and Courts Reform (Scotland) Bills as well as the Review of the Expenses and Funding of Civil Litigation in Scotland.

3. Lay support

Members were not aware of any difficulties in the operation of the provisions since their introduction on 1st January 2011. Sheriff McCulloch advised that although during that time he had presided over cases in which both a party litigant and lay supporter had appeared the question of expenses had not arisen.

The Council agreed that as the provisions appeared to be working satisfactorily that no further action was necessary.

4. Service of Sheriff Court Inhibitions – Furth of Scotland

The Council continued further consideration of the paper produced by the Society of Messengers-at-Arms (SMASO) until the next meeting to enable the Accountant in Bankruptcy's Office to make further investigation.

5. Royal Mail – Recorded Delivery Citations

The Council considered the paper produced by the Secretariat. Mr Speirs advised that despite the Royal Mail amending their policy, his firm were still experiencing difficulties over the timeous return of citations which could lead to the fees of sheriff officers being disallowed by the sheriff clerk in those instances where they had been instructed. The Law Society has raised its own concerns with the Royal Mail.

Mrs MacPherson advised that there were no delays over the return of citations to Inverness Sheriff Court. Mrs McLean advised that at Hamilton Sheriff Court a local practice has been introduced in which practitioners are informed by email when a returned citation has been received and this appeared to be working satisfactorily. It was agreed that they should both continue to monitor the situation and inform members of any operational difficulties at the next meeting, the matter to be kept under review until then.

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

The Chairman thanked the working group for all their work to date. His thanks were endorsed by the group's Chairman Sheriff McCulloch.

Sheriff McCulloch provided an update on progress made since the last meeting. The group had met on 4 October to consider revised rules and responses to the consultation. The group is to meet again both at the end of today's meeting and then on 28 November to consider further revised rules.

It was agreed that the Secretariat issue the revised rules to Council members as soon as possible after the meeting on 28 November. Mrs Alcock reminded members that a commitment had been given to the Scottish Government for the rules to be signed off at the February meeting as they had to be in place for the commencement of the 2011 Act on 24 June 2013.

Given this the Chairman asked that in the event members wished to raise any points of substance on the rules that they email Sheriff McCulloch and the Secretariat with these well in advance of the next Council meeting in February.

Action: The Secretariat to issue revised draft rules to Council members as soon as possible after the working group meeting on 28 November;

Action: Members to email any points of substance to the Secretariat and Sheriff McCulloch well in advance of the next Council meeting in February;

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

Sheriff McCulloch provided the meeting with an update. He advised that the Secretariat had just received a paper from the Scottish Government in relation to adoption and permanence orders but which because of its general nature did not really advance matters.

Sheriff McCulloch reminded members of the original remit of the working group which was to consider the implications of the two opinions of the Inner House and report to the Council on what rules of procedure ought to be put in place to expedite proceedings in cases involving the welfare of children.

Since then the group had been asked to consider the comments made in the Supreme Court decision *NJDB V JEG +1* in relation to the structure of pleadings in civil cases although this particular strand of work was now being taken forward by the Joint Working Group on Family Law.

The remit of this latter group is to consider the possibility of one set of family rules for use in Scotland. Lord Brailsford, the Chairman of the group, is keen that forms be used rather than written pleadings and also in the use of specialist sheriffs and family law centres although the latter are matters of policy rather than rules.

Sheriff McCulloch asked members to consider whether in light of the overarching work of the Joint Working Group, whether the Child Welfare Working Group should continue and finalise the case management rules currently being worked upon and have these submitted to the Court of Session or whether they should be shelved meantime.

After discussion, the Council agreed that as it was unlikely the Joint Working Group would be in a position to produce case management rules for some considerable time that the Child Welfare Working Group should proceed to finalising the rules.

Action: The Child Welfare Working Group to proceed to finalising the case management rules;

7. Simplified Procedure for Parental Rights and Responsibilities

The Council considered the papers produced by the Secretariat and Morag Driscoll, Director of the Scottish Child Law Centre on her proposal to introduce a new simplified procedure for parental rights and responsibility into the ordinary cause rules.

After discussion, the Council reached the view that although the proposal was well intentioned it could not be regarded as a simplified procedure given it involved the welfare of children. The Council agreed this was a matter which would have to be considered by the new Scottish Civil Justice Council once it was established in May 2013.

8. Service of Postal Copies

The Council considered the papers produced by the Secretariat and the Society of Messengers-at-Arms (SMASO) regarding the current requirement to send a postal copy of a document to a defender following service by the depositing or leaving modes.

After consideration, the Council agreed that the proposal be rejected both on the basis of its decision at the last meeting in relation to the rules on removing as well as the need for overall consistency.

On the separate question of how long a charge of removing should remain in effect the Council agreed it would not be appropriate to offer guidance on this and suggested instead that SMASO raise the matter with the Accountant in Bankruptcy's Office with a view to consideration being given to amending the relevant primary legislation.

9. Housing (Scotland) Act 2001 – Evictions

The Council considered the papers produced by the Secretariat and the Scottish Government in relation to concerns over the prescribed Form introduced as a consequence of section 16(5A) of the Housing (Scotland) Act 2001 as amended.

After discussion the Council reached the view that the new Form 28BA complied with what is required by the relevant provision of the Housing (Scotland) Act 2001 as amended. That being so the Council as presently advised considered it would be inappropriate to recommend any changes to the detail of the Form.

It was agreed that the Chairman and the Secretariat would take matters forward with the Scottish Government.

It was agreed also that a further prescribed Form be devised for use in cases involving private tenancies and authorised the Secretariat to instruct the drafter accordingly.

Action: The Chairman and the Secretariat to take the matter forward with the Scottish Government;

Action: The Secretariat to instruct a further prescribed Form;

10. Repossessions Advice Group

The Council considered the draft provisions produced and suggested some amendments to the prescribed Forms. Subject to these being made it was agreed that the provisions be cleared by the Chairman for inclusion in the next miscellaneous instrument.

The Council further agreed it would be impractical to make provision in the rules for the new Form of citation to be stapled to the top of the summary application as this could lead to disputes in instances where it was found not to be.

Action: The Secretariat to instruct amendments to the prescribed Forms;

Action: The Chairman to clear the provisions for inclusion in the next miscellaneous instrument;

11. Business Update

The Secretary provided a verbal update on the various matters mentioned.

12. AOCB

The Secretary advised that the final meeting of the Council would take place on 3 May 2013.

Date of subsequent meetings

01 February 2013

03 May 2013