

**Minutes of Sheriff Court Rules Council Meeting
Parliament House, Edinburgh
01 February 2013 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 R McDonald
Mr A McLean QC
Ms R Smith
Mrs M McLean
Mr A McIntosh
Mr R Sandeman
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Mr S Brand
Mrs F MacPherson

2. Minutes of previous meeting

The minutes of the previous meeting were approved.

Matters arising

Lay representation

Ms Alcock advised the meeting that the Rehabilitation of Offenders Exceptions Order had been made on 23 January which will now enable the lay representation rules for the sheriff court to be made shortly.

Scottish Civil Courts Review

Mr Sandeman provided an update on the Scottish Civil Justice Council and Courts Reform (Scotland) Bills and intimated that the new Scottish Civil Justice Council is due to be in place in May 2013.

He anticipated that consultation on the Courts Reform Bill will commence at the end of the month.

Housing (Scotland) Act 2001- Evictions

The Secretariat advised that the Scottish Government had been informed of the Council's decision not to make any changes to the detail of Form 28.BA. No further representation had been submitted by the Scottish Government.

3. Service of Sheriff Court Inhibitions – Furth of Scotland

The Council considered the e-mail produced by the Accountant in Bankruptcy. After discussion, the Council, whilst noting the concerns raised by the Society of Messengers-at-Arms (SMASO) agreed that it would not be appropriate to take any action as presently advised.

Action: The Secretariat to advise SMASO and the Accountant in Bankruptcy;

4. Royal Mail – Recorded Delivery Citations

Mrs McLean provided the meeting with an update and advised that Hamilton Sheriff Court is making use of the Royal Mail's Track and Trace service. She advised that, with the exception of one instance, no difficulties were being experienced.

Mr Speirs advised that one Calling-Up Notice had taken seven weeks to be returned by the Post Office, but otherwise matters appeared to have settled down.

The Council agreed to take no further action.

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

The Chairman thanked the working group, and all involved, for their efforts in the preparation of the draft rules now before the Council for consideration.

The Chairman advised that the intention was to clear the rules in principle, subject to a number of other matters that have still to be resolved such as, the transitional and savings provision order for the 2011 Act which is still being worked on by Scottish Government who have undertaken to provide the secretariat of the SCRC with sight of the draft order in due course; the draft Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation)(Scotland) Regulations 2012, which are subject to Affirmative procedure; confirmation from the Scottish Government on the position in regard to legal aid rules and the steps taken to close the potential gap in relation to exclusion orders caused by the repeal of section 29 of the Legal Aid (Scotland) Act 1986; terminology changes to the Adoption Rules 2009 as a consequence of the coming into force of the Children's Hearings (Scotland) Act 2011.

Sheriff McCulloch provided a background on the preparation of the rules and expressed his disappointment that it was not possible to finalise the rules at this stage but asked members to consider the draft rules along with the substantive comment raised by Sheriff Dickson in relation to applications for evidence by live link.

After consideration, the Council agreed on further amendments to the draft rules. Subject to these amendments, it was agreed that the rules be cleared in principle and

once the outstanding matters are resolved for them then to be cleared in their entirety by the Chairman in consultation with Sheriff McCulloch.

The Council also agreed that consideration of new rules for section 185(2)(a)(ed) of the 2011 Act be remitted to the Scottish Civil Justice Council for its consideration.

Action: The Secretariat to instruct amendments to the draft rules and once made and all outstanding matters resolved, are then to be cleared in their entirety by the Chairman in consultation with Sheriff McCulloch;

Action: The Secretariat to advise Scottish Government:

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

The Chairman again thanked the working group, and all involved, for their efforts.

Sheriff McCulloch provided a background to the preparation of the rules and explained that this would be a short term fix given the work of the Joint Working Group on Family Law.

The Council considered the draft rules along with some additional points that were raised by the Scottish Court Service (SCS). After consideration, the Council agreed further amendments.

Sheriff Principal Stephen raised a point on whether rule 18(2) of the Adoption Rules 2009 should be reviewed or amended to allow scope for more than one continuation of a preliminary hearing, if circumstances allow. The Council agreed in principle with Sheriff Principal Stephen but allowed the working group time to reflect on the primary legislation and consider and amend the draft rules as necessary in consultation with her. The working group also to review whether draft rules 18(1)(B)(v) and 35(1)(b)(v) were required.

After discussion, the Council, having considered the SCS request for a three month lead in time before commencement to allow for court programming, agreed that the normal interval was sufficient.

Subject to the further agreed amendments being made it was agreed that the rules be cleared by the Chairman in consultation with Sheriff McCulloch.

Action: The Secretariat to instruct amendments to the draft rules as necessary and thereafter for them to be cleared by the Chairman in consultation with Sheriff McCulloch;

Action: The Secretariat to advise SCS;

6. Scottish Court Service representation re electronic signatures

After consideration of the representation from SCS, the Council agreed that because of the tight timetable being worked towards the finalisation of the children's hearings rules there was insufficient time in which to give the matter full and proper consideration. The Council was also of the view that the use of electronic signatures requires to be considered in the context of all civil proceedings and not just in relation to proceedings under the Children's Hearings (S) Act 2011.

In view of the now limited lifespan of the Council it was further agreed that the matter be remitted to the Scottish Civil Justice Council for its consideration.

Action: The Secretariat to advise SCS of the Council's decision;

7. The International Recovery of Maintenance (Hague Convention 2007)(Scotland) Regulations 2012

The Council considered the papers produced by the secretariat and the Scottish Government. After consideration, the Council agreed to the suggested amendments and subject to these being made agreed that the provisions be cleared in due course by the Chairman for inclusion in the next miscellaneous instrument.

Action: The Secretariat to instruct amendments;

Action: The Chairman to clear the amendments in due course;

8. Correspondence from Alison McInnes MSP

The Council considered the correspondence between Alison McInnes MSP and the Lord President about concerns over the length of time it can take to raise eviction proceedings against the occupants of unauthorised encampments.

After consideration, the Council agreed with the view of the Lord President that no rule changes are necessary.

Action: The Secretariat to advise Alison McInnes and the Lord President accordingly;

9. Business Update

The Council noted progress on the various matters mentioned in the update.

10. AOCB

Amendments to the Sheriff Court (Company) Insolvency Rules 1986 in light of the Energy Supply Company Administration (Scotland) Rules 2013

The Council considered the paper produced by the secretariat. After consideration of the proposed amendments and subject to some minor adjustments the Council agreed to clear the draft instrument for inclusion in the next miscellaneous instrument.

Action: The Secretariat to instruct amendments;

The next and final meeting of the Council will be on 3 May 2013.

Date of final meeting

03 May 2013