

**Minutes of Sheriff Court Rules Council Meeting
Mc Diarmid Park, Perth
05 August 2011 10.30 am**

PRESENT

Sheriff Principal Sir S S T Young Bt QC
Sheriff R Dickson
Sheriff A G McCulloch
Mr A McLean QC
Mr S Brand
Mr F Simpson
Mr G Murray
Mr M Speirs
Ms C McLachlan
Mr R Sandeman
Ms R Smith
Mr R McMillan
Ms O McShane
Ms J Alcock (Lord President's Private Office)
Mr S McCourt (Secretary)
Mrs L McCabe (Assistant Secretary)

1. Apologies

Sheriff Principal CAL Scott
Sheriff W Holligan

The Chairman welcomed Sheriff A G McCulloch to the meeting.

2. Minutes of previous meeting

The minutes of the previous meeting were approved subject to amendment of Item 14 by deletion of the words "for their view" where they appear at the end of line 7.

Matters arising

Judicial expenses

The drafter advised that the provisions would be included in the next Miscellaneous Instrument due to be made by end September 2011.

3. Equality Act 2010

The Council considered the paper produced by the drafter and agreed that the Council should carry out an equality impact assessment when considering new

rules and that thereafter, a simple statement along the lines "due regard and consideration has been given to the Equality Act 2010" should be included by the Secretariat in both their drafting instructions and letters submitting draft rules to the Court of Session for approval.

4. Adults with Incapacity (Scotland) Act 2000 – subsequent applications

The Council considered the legal advice obtained from the Lord President's Private Office on whether the current adults with incapacity rules were compliant with the European Convention on Human Rights. The advice provided was that, although they were and there was no actual need to amend the rules, it may be desirable to do so by making specific provision for intimation of a subsequent application to the adult as well as others, so as to be consistent with those rules already in place for intimation of initial applications. On that basis the Council, whilst noting that in practice such intimation was invariably ordered by sheriffs, agreed that the rules be amended accordingly. The Secretariat was invited to instruct an appropriate amendment to the rules which was to be cleared by the Chairman for inclusion in the next Miscellaneous Instrument.

**Action: Instructions to be issued; The Chairman to clear for inclusion in the next Miscellaneous Instrument;
Secretariat to advise the Equality and Human Rights Commission for Scotland**

5. Administration of Justice (Scotland) Act 1972 –Timescale for searches

The Council considered the paper produced by the Secretariat along with the draft instrument and the drafter's note. Subject to some minor amendments the Council agreed that the provisions be cleared by the Chairman for inclusion in the next Miscellaneous Instrument.

Action: The Chairman to clear for inclusion in the next Miscellaneous Instrument

6. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011

Having considered the draft provisions the Council agreed to clear them for inclusion in the next Miscellaneous Instrument. It was noted that Part 1 of the Act was due to come into force on 28 November 2011.

Action: Secretariat to advise policy makers

7. Family Law (Scotland) Act 1985 – section 14(2) orders

The Council considered the paper produced by the Secretariat along with the draft provisions and note from the drafter. There were some concerns over the question of expenses but after discussion it was agreed that draft rule 47.2(5) addressed the point. Thereafter, the Secretariat was invited to instruct some minor amendments and it was agreed that the Chairman clear the draft provisions for inclusion in the next Miscellaneous Instrument.

Action: Instructions to be issued; The Chairman to clear for inclusion in the next Miscellaneous Instrument

The Secretariat to advise Sheriff Reith of the new provisions

8. Council Regulation EC No 4/2009

The working group set up to consider the implications of the Regulation had instructed the preparation of draft rules. The Council, having considered the paper produced by the Secretariat along with the draft provisions and a note by the drafter, were content to clear the draft provisions for inclusion in the next Miscellaneous Instrument. The Chairman expressed his thanks to the working group and the drafter for their involvement in this matter.

Action: Secretariat to advise Scottish Government

9. Ordinary and Summary Cause Personal Injuries/Commission and Diligence Rules

The Council agreed that the draft provisions be cleared by the Ordinary Cause Committee.

Members of the Ordinary Cause Committee subsequently discussed the latest draft of the Summary Cause personal injuries and commission and diligence rules. The Committee agreed that further amendments were required and invited the Secretariat to instruct the drafter to prepare a revised draft in consultation with Mr Simpson which should include amendments previously instructed to the Ordinary Cause commission and diligence rules. The Committee agreed that the revised draft should then be circulated to members electronically for their consideration and clearance for inclusion in a forthcoming Miscellaneous Instrument.

Action: Instructions to be issued

10. Family Law (Scotland) Act 2006 – section 28 and 29 applications

The Council considered the paper produced by the Secretariat along with the paper produced by Mr Brand inviting the Council to amend Ordinary Cause rule 33.1(1) so as to include actions for claims under sections 28 and 29 of the Family Law Scotland Act 2006 in the DEFINITION of family actions in the sheriff court.

After discussion, the Council agreed that such applications should be designated as family actions. The Council remitted consideration of the practical implications to Mr Brand and Ms McLachlan who should liaise with the drafter and the Secretariat to instruct the necessary changes to rules to provide that section 28 and 29 applications should be included in the definitions of family actions in Chapters 33 and 33A of the Ordinary Cause Rules, with a view to draft rules being available for consideration by the Council at the November meeting.

Action: Instructions to be issued

11. Visual Recordings of children lodged in court

Having considered the paper produced by the Secretariat along with the policy paper produced by the Scottish Government, the Council agreed that a small working group be set up to consider the matter in detail. It was agreed that the

working group should comprise of Sheriff Dickson, Mr Speirs and Ms McShane, and that the remit of the group would be to consider and prepare instructions for new rules in relation to ordinary causes and summary applications, for consideration by the Council at the November meeting.

**Action: Instructions to be issued
Secretariat to advise Scottish Government**

12. Housing (Scotland) Act 2010 - Evictions

The Council considered the paper produced by the Secretariat along with a policy paper from the Scottish Government in relation to certain amendments which the Housing (Scotland) Act 2010 had made to Part 2 of the Housing (Scotland) Act 2001.

The Council was invited to consider whether any changes to rules were required as a consequence of (a) new section 14A which sets out the pre-action requirements which landlords are required to satisfy before proceedings for recovery of possession of a house can be raised in all cases where the grounds for recovery include rent arrears and (b) new section 16(5A) which provides that an order for possession in rent arrear cases must specify the period for which the landlord's right to recover possession is to have effect.

The Council agreed that in so far as new section 14A was concerned no changes to rules were necessary. In regard to new section 16(5A) the Council agreed that a new extract decree Form was required for summary cause cases for recovery of possession of heritable property where the grounds for recovery include rent arrears. The Form was to be modelled on the existing Form 28B with the exception it should provide for the *latest* date in which the ejection was to take place. Form 28B will continue to be used for those cases which do not involve rent arrears. The Council offered no comments on the draft Regulations.

The Secretariat was invited to instruct the preparation of draft rules.

**Action: Instructions to be issued
Secretariat to advise Scottish Government**

13. Citizens Advice Scotland Legal Services Group

The Council considered the invitation from the Citizens Advice Scotland Legal Services Group for a Council member to become a member of the group. The Council agreed that it did not consider this was necessary but asked that the group be thanked for the invitation.

Action: Secretariat to advise Citizens Advice Scotland Legal Services Group

14. Recorded Delivery Intimation

The Council considered the paper produced by the Secretariat along with a letter from Dundas & Wilson, which raised an issue about the relevant postal receipt that is required under Ordinary Cause Rule 5.3(4) in relation to service of

documents by recorded delivery post. After consideration the Council came to the conclusion that no rule change was necessary.

Action: Secretariat to advise Dundas & Wilson

15. Contempt of Court Act 1981 –Reporting Restrictions

Having considered the paper produced by the Secretariat in relation to orders made under the Contempt of Court Act 1981 imposing media reporting restrictions, along with a draft of the proposed Court of Session rules, the Council agreed that similar provision ought to be made in the sheriff court but only in relation to the Ordinary Cause and Summary Application Rules. It was agreed that it would be sufficient for the method of application to be by letter to the sheriff clerk. The Secretariat was invited to instruct preparation of the draft rules which were to be cleared by the Chairman for inclusion in the next Miscellaneous Instrument.

Action: Instructions to be issued; The Chairman to clear for inclusion in the next Miscellaneous Instrument

16. Opinion by the Inner House of the Court of Session ic JB DB and JWDWB v THE LOCAL AUTHORITY REPORTER FOR EDINBURGH

The Council considered the paper produced by the Secretariat along with the Opinion by the Inner House of the Court of Session. It was agreed that a working group be set up comprising of Sheriff Principal Scott, Sheriff McCulloch, Mr Brand, Ms McLachlan and Mr McMillan, with the remit of the working group being, in the light of the observations of the Inner House in NJDB V JEG and Another (in particular paragraph 23) and JB DB AND JWDWB V THE AUTHORITY REPORTER FOR EDINBURGH (in particular paragraph 21),(1) to consider and report to the Council what rules of procedure, if any, might usefully be put in place to expedite proceedings in cases involving the welfare of children, and in particular family actions under the Ordinary Cause Rules, applications for adoption and permanence orders, appeals to the sheriff under section 51(1) of the Children (Scotland) Act 1995 and applications to the sheriff under sections 65(7) or (9) or 85 of the 1995 Act; (2) in the event that such rules by the working group are considered to be appropriate to instruct the preparation of a draft instrument for consideration by the Council at its meeting in February 2012.

**Action: Secretariat to advise Deputy Principal Clerk of Session of what the Council proposed
Meeting of the working group to be set up
Instructions to be issued**

17. Business Update

Civil Courts Review Working Group

Mr Sandeman provided an update on the Scottish Government proposals.

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

18. AOCB

Membership of the Sheriff Court Rules Council

The meeting offered congratulations to Mr Murray on his recent appointment as an all Scotland floating Sheriff. The secretariat advised that arrangements were ongoing to secure his replacement on the Council.

Date of subsequent meetings

04 November 2011

03 February 2012

04 May 2012