

MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 23 OCTOBER 2017

- Present:** Lord Justice Clerk (Chair)
Lord Turnbull
Lord Matthews
Sheriff Frank Crowe
Sheriff Norman McFadyen
Sheriff William Gilchrist
Stuart Fair JP
Murdo MacLeod, Q.C.
Professor James Chalmers, University of Glasgow
Anthony McGeehan, COPFS
Catriona Dalrymple, COPFS
Peter Lockhart, Solicitor
Branislav Sudjic, Solicitor
Dennis McCall, Sheriff Clerk
- In attendance:** Lesley Bagha, Scottish Government
Joe Moyes, Deputy Principal Clerk of Justiciary
- Secretariat:** Edward McHugh, Deputy Legal Secretary to the Lord Justice General
- Apologies:** Lord Justice General
The Clerk of Justiciary
Willie Cowan, Scottish Government
Claire Mitchell, Faculty of Advocates

Item 1: Welcome, apologies and private papers

1. The Lord Justice Clerk welcomed Stuart Fair, Sheriff McFadyen and Dennis McCall to their first meeting of the Council. Apologies were noted from Willie Cowan and Claire Mitchell. The Council recorded its thanks for the contributions of Susan Gallagher, Sheriff Morrison and Yvonne Taylor who have resigned from the

Council. It was agreed that Papers 2, 2A 2B , 3,3A , 3B and 4, be treated as private papers.

Item 2: Minutes and matters arising

2. The minutes of the meeting of 19 June 2017 were approved. With regard to matters arising, the Council noted

- *Item 2 (ii)* Correction of an error in SSI 2017/144 (superfluous signing docquet) was made by SSI 2017 / 251 which came into force on 21 August 2017.
- *Item 4* Health (Tobacco, Nicotine etc and Care) court rules. These rules were approved by correspondence and the instrument (SSI 2017/298) came into force 1 October 2017.
- *Item 7* Psychoactive Substances. These rules were approved by correspondence and the instrument (SSI 2017/251) came into force 21 August 2017.

Item 3: Scottish Government Update

3. Lesley Bagha provided members with an update from SG highlighting various pieces of legislation set out in the Programme for Government which may impact on the work of the Council. In particular,

- *Management of Offenders Bill*
- *Minimum Age of Criminal Responsibility Bill*
- *Sexual Offences (pardons and disregards) Bill*
- *Vulnerable Witnesses and Pre-recorded Evidence Bill*

She also mentioned that the jury research project which is due to commence in Autumn 2017 and last approximately 2 years. She expressed the Scottish Government's thanks for the work of the Lord Justice General and his officials in considering appropriate accommodation for filming the mock trials.

Lord Turnbull raised a query regarding the commencement date for s109 of the Criminal Justice (Scotland) Act 2016 (Statements by accused). Lesley Bagha agreed she would check this date (likely to be 25 January 2018) and confirm to LPPO. She has now confirmed that s109 will be commenced on 25 January 2018.

Item 4: Criminal Finances Act: Request for court rules and draft instrument

4. The Council considered the draft instrument. The Council approved the instrument in its current form (subject to a couple of typographical errors). It was noted that due to late confirmation of the 31 October 2017 commencement of s 37 of the Criminal Finances Act (further information orders under the Terrorism Act 2002) this instrument will be circulated in a revised form for approval by correspondence once it has been revised regarding the Terrorism Act Rules and gone through LPPO's internal checking and styling process.
5. The Council also noted that a separate instrument setting out the rules relevant to the provisions of the Criminal Finances Act 2017 which will commence in January 2018 will be circulated for approval by correspondence in due course.

Item 5: European Investigation Order: Request for court rules and draft instrument

6. The Council considered the draft instrument. It was agreed that Rules should be made and a form provided for applications for outgoing EIOs. LPPO was asked to review the drafting in Rules 66.1, 66.2, 66.3, 66.8 and 66.10 and on Forms 66.2 and 66.4-D. The instrument will be circulated in a revised form for approval by

correspondence once it has been reviewed and gone through LPPO's internal checking and styling process.

Item 6: Warrants to search for material in solicitors' offices

7. The Council agreed that this did not seem to be a matter for court rules. LPPO undertook to flag to the Judicial Institute ("JI") that the matter had been considered by the Council and request that the JI review whether any further material or training on the topic was required.

Item 7: Records Management Plan

8. The Council noted that SCTS has agreed a Records Management Plan ("RMP") with the National Records of Scotland effective from 31 July 2017. The plan will cover the Criminal Court Rules Council. The Council noted that LPPO is reviewing the arrangements necessary for the CCRC to align with SCTS' RMP (in particular an information asset register and document retention plan). A further update will be provided at the next meeting in February 2018.

Item 8: A.O.C.B

9. None

Item 9: Next meeting

10. The next meeting is on **Monday 19 February 2018**.

October 2017