**MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL**

**VIA WEBEX, MONDAY 21 FEBRUARY 2022**

**Present:** Lord Justice Clerk (Chair)

Lord Beckett

Lord Matthews

Sheriff Gillian Wade

Sheriff Alistair Brown

Sheriff Norman McFadyen

Ruth McQuaid, COPFS

Gail Smith, SCTS

Peter Lockhart, Solicitor

Stuart Munro, Solicitor

John Scullion, QC, Faculty of Advocates

Willie Cowan, Scottish Government

Stuart Fair JP

Professor James Chalmers

**In attendance:** Ross Martin (Deputy Principal Clerk of Justiciary)

Clare Whyte (LPPO) - Observer

 Sinead Campbell (LPPO) - Observer

**Secretariat:** Edward McHugh, Deputy Legal Secretary to the Lord Justice General

**Apologies:** Lord Justice General

The Clerk of Justiciary

Ian Dickson, Scottish Legal Aid Board

Kate Wallace, Victim Support Scotland

**Welcome**

The Chair welcomed members, noting apologies and those attending today’s meeting as observers.

The Chair welcomed Sheriff Gillian Wade QC to the meeting, noting that Sheriff Wade had been appointed to the Council to replace Sheriff Gilchrist, who, since the Council last met, retired as a Sheriff.

The Chair asked that members’ thanks for Sheriff Gilchrist’s service as diligent member of the Council be noted, and that a letter of thanks be sent to Sheriff Gilchrist on members’ behalf.

**Item 1: Private papers.**

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

**Item 2: Minutes and matters arising [Paper 1].**

1. The minutes of the meeting of 10 February 2020 were approved.

Members considered several matters arising from the minutes not otherwise dealt with on the agenda, noting the following:

* *Item 2: Crime (Overseas Production Orders) draft Act of Adjournal*

The drafting of this instrument has now been finalised and it is anticipated that it will be made by the High Court and come into force in the next few weeks.

* *Item 3 Scottish Government update*

*• Age of Criminal Responsibility (Scotland) Act 2019*

The *Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021* ([SSI 2021/452](https://www.legislation.gov.uk/ssi/2021/452/introduction/made)) came into force on 17 December 2021.

• *Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 section 6 -simplified witness notification*

SCTS, in liaison with COPFS and Victim Support Scotland, intend to run a 6 -8 week pilot of the simplified process in 3 sheriff courts, Falkirk, Stirling and Alloa. Sheriff Brown noted that, to his knowledge, the pilot has yet to commence at Alloa. Gail Smith to investigate and update members by email on when pilot likely to start.

• *Management of Offenders (Scotland) Act 2019 (Electronic monitoring)*

SG still working to 16/5/22 as the proposed commencement date. Willie Cowan to consider Gail Smith’s suggestion that that date (a Monday) is perhaps not the best day for the provisions to commence. Further, members noted that the supervised release orders and sexual offence protection orders provisions in the Act are not being commenced at present. As a consequence, two paragraphs in the instrument previously approved IBC by the Council, will be omitted when the instrument comes to be made.

* *Item 4: Digital Evidence Sharing Capability*

The necessary changes were implemented by Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Electronic Authentication of Copy Documents) 2021 (SSI 2021/116) which the CCRC considered and approved in 2021.

* *Item 5 Electronic Search Warrant Process*

This request has been superceded by Coronavirus (Scotland) Act 2020 (to be continued by the Coronavirus (Recovery and Reform) (Scotland) Bill 2022) which enable warrants to be granted by electronic means.

* *Item 7: Transferring Cases Between Sheriffdoms*

Other more pressing business – much of it related to coronavirus - has resulted in this matter not being progressed to date. Members agreed to put this item back on Agenda for consideration. The Council is to revisit the whole question, looking at what is feasible (and vires), before bringing it back to council for further discussions.

* *Item 8: i) The form of affirmation for jurors*

A non-legislative “workaround” is in place, allowing jurors wishing to affirm to do so collectively, rather than individually and consecutively, as was previously the case. Members agreed that a longer term solution should be found, and that this would require amendment of the form of words set out in primary legislation (Oaths Act 1978). Willie Cowan noted that this is an issue that it would be helpful for SG to address in future.

* *ii) Form 20.10-A to be amended*

Amendment of the Form has not been progressed as a suitable amending miscellaneous instrument has not been made in the interim. Members agreed that this change could be incorporated in the instrument which makes the proposed change to Form 16.1-C.

**Item 3: Scottish Government Update [Paper 2- private paper]**.

1. Members considered an update from the Scottish Government highlighting various pieces of legislation which may impact on the work of the Council, in particular the electronic monitoring provisions of the Management of Offenders (Scotland) Act 2019

Members were asked to note that drafting on Sexual Harm Prevention Order Act of Adjournal is well advanced.

**Item 4: Rules Request from DVLA regarding amendment to Form 16.1C [Papers 3 and 3A].**

1. Members instructed LPPO to prepare draft rules making a minor amendment to Form 16.1C for consideration by the Council in due course

**Item 5: Rules Request from Scottish Government regarding amendment of solemn witness citation (Form 8.2 F) [Papers 4 and 4A].**

1. Members’ views were sought on proposed amendments to solemn witness citation. Members were generally in favour in principle to consideration being given to reviewing the language and structure of the form to consider if it possible to address the concerns set out in the Scottish Government paper. However, there was also a general view that care would have to be taken to ensure that the form did not lose sight of its central purpose, namely ensuring witnesses attend to give evidence when required. One possibility suggested was for there to be two forms, one for vulnerable witnesses, and one for other witnesses. Ruth McQuaid advised that COPFS was actively seeking to improve the letter accompanying witness citation from the Crown. The Chair commented that it would be helpful to have sight of this revised letter before the council makes a final decision. The Chair noted that the Council may well conclude that it is not possible to soften the language in the form in the way suggested.

Members instructed LPPO to prepare draft amendments to the current citation form, taking account of members’ comments for consideration by the Council in due course.

**Item 6: AOCB**

5. No AOCB

**Item 7: Next meeting date**

1. The next meeting is to be arranged in due course.