

MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 21 OCTOBER 2013

Present: Lord Justice Clerk (Chair)
Sheriff John Baird
Sheriff William Gilchrist
Sheriff Frank Crowe
Frances McMenamin QC
Murdo Macleod QC
Joe Moyes, Deputy Principal Clerk of Justiciary (*in place of the Principal Clerk*)
David Shand, Sheriff Clerk
Elspeth MacDonald, Scottish Government
Catriona Dalrymple, Crown Office
Jennifer Harrower, Head of High Court Division, COPFS
Professor James Chalmers, University of Glasgow
Ian Dickson, Scottish Legal Aid Board

Secretariat: Christopher Nicholson, Deputy Legal Secretary to the Lord President
Lisa Gamble, Policy Officer, Scottish Civil Justice Council

Apologies: Lord Justice General (Gill)
Lord Turnbull
Lady Dorrian
Robbie Burnett, Solicitor
Ian Fleming, Solicitor
Jim Andrews, Victim Support Scotland
Keith Stirling, JP

Item 1: welcome, apologies and introductions

1. The Lord Justice Clerk welcomed members and noted apologies.
2. It was noted that Mr Iain Dickson of the Scottish Legal Aid Board was in attendance as an observer, it was his first meeting.

Item 2: minutes and matters arising

3. The minutes of the meeting of 3 June 2013 were approved subject to the correction of a typographical error in paragraph 19; namely the substitution of “2013” for “2010”.

4. In terms of matters arising, item 4 of the previous minutes (at paragraph 13) related to the Victims and Witnesses Bill. It was noted that this matter appeared at item 5 on the agenda for the present meeting. Under item 7 of the previous minutes (at paragraph 21) a paper on the rule making power in section 305 of the Act of 1995 had been prepared by the Private Office. It was noted that this matter appeared on item 6 of the agenda for the present meeting.

Item 3: update on Acts of Adjournal

5. Since the last meeting of the Council, two Acts of Adjournal had been made. Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Sexual Offences Act 2003) (Notification Requirements) 2013 was made on 13 June 2013 and came into force in accordance with the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013. Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Miscellaneous) 2013 was made on 13 June and came into force on 24 June 2013. The Council noted that the Acts of Adjournal had been made.

Item 4: Scottish Government Update

6. Elspeth MacDonald updated the Council in relation to those aspects of the Scottish Government’s ongoing work that was of interest to the Council. The Scottish Government had now introduced the Criminal Justice (Scotland) Bill into the Scottish Parliament. The Bill, which seeks to implement the Carloway Review and Sheriff Principal Bowen’s Independent Review of Sheriff and Jury Procedure, was currently at Stage 1 of the parliamentary process. The Bill also seeks to address a

number of miscellaneous matters including: increasing the maximum term for offensive weapons, the introduction of an aggravated human trafficking offence and ending automatic early release for dangerous offenders.

7. The Victims and Witnesses Bill was currently at stage 1 of the parliamentary process.

Item 5: Scottish Government Update

8. Ms MacDonald moved on to deal with paper 5A, which was a policy paper regarding possible changes to be made to the Criminal Procedure Rules as a consequence of the Victims and Witnesses Bill. The Council was asked to defer consideration of the matter until its meeting in February when the Scottish Government hoped to have settled some outstanding policy matters. The Council agreed.

9. Members discussed how a number of matters relevant to the Bill, including the opportunity to object to an application for special measures were being dealt with in the (sheriff) court in the interim. The Intermediate Diet provided a useful opportunity to deal with such matters and members noted that contentious applications were likely to feature in cases where evidence on commission was sought or where an accused was unrepresented.

Item 6: Paper on the rule making power contained in section 305 of the Act of 1995

10. The Council considered a paper prepared by the Private Office on the rule making power contained in section 305 of the Criminal Procedure (Scotland) Act 1995. The Council discussed the paper and the scope of the power. The paper recommended that a cautious approach be taken when considering using the power to amend Primary legislation, in particular the Act of 1995. The change would have

to be squarely a matter of procedure rather than a matter of substance. The Council agreed with this approach.

11. In the context of the discussion Members recalled Sheriff Gilchrist's proposal that the procedure set down in sections 137A and 137B of the Criminal Procedure (Scotland) Act 1995 for transferring summary cases from one court to another be simplified in the case of an accused person being transferred for sentencing. The proposal, which would require Section 137B to be amended to remove the requirement for a Sheriff in a receiving jurisdiction to consent to the transfer, had been considered at the last meeting of the Council. Members had been in favour of the change and the Scottish Government had been informed accordingly. There was, however, no scope for the amendments being included in the current Criminal Justice Bill. The Council were disappointed and agreed that the matter be put on the agenda for the next meeting of the Council with a view to discussing whether it could be dealt with by way of Act of Adjournal. A draft Act of Adjournal should be prepared and submitted to the next meeting of the Council to assist with this discussion.

Item 7: Paper on the necessity of personal appearance of the accused at certain diets

12. The Council considered a paper prepared by the Private Office on the necessity of personal appearance of the accused at certain diets. The Council found the paper helpful with the exception of two references in the part of the paper that dealt with petition procedure. The two references would be corrected in due course. In relation to the changes proposed to petition procedure by the Criminal Justice (Scotland) Bill, Sheriff Baird questioned the need to remove an accused's opportunity to make a declaration. Ms MacDonald agreed to respond to Sheriff Baird's comments in due course.

13. Members then discussed the usefulness of Intermediate Diets in the sheriff court with reference to a paper that had been submitted by Sheriff McCulloch. There were a range of views amongst members. It was certainly the case that the more prepared parties were for trial the greater the usefulness of the Intermediate Diet. Most members were of the view that parties were not well prepared. Sheriffs were unable to make effective case management decisions and this was particularly true when the volume of cases was high. That being said members recognised the usefulness of the Intermediate Diet in terms of an accused's contact with their solicitor and the opportunity it afforded the court in taking steps to ensure the accused's attendance at trial. Members agreed that where there was to be an Intermediate Diet then the accused required to be present.

14. Members then discussed the circumstances in which the accused did not require to be present i.e. in exceptional circumstances. Members discussed the relevant legislation and concluded that an "on cause shown" test would be preferable. The Private Office would communicate this to the Scottish Government in due course for their views. Ms McMenamain suggested that, in relation to preliminary hearings, excusal, which was already 'on cause shown', should be capable of being dealt with on an administrative basis in advance of the hearing. The Council agreed.

Item 8: Reporting restrictions consultation carried out by the Scottish Civil Justice Council (SCJC)

15. The Council considered a paper regarding a consultation exercise that was being undertaken by the SCJC in relation to the rules of court that govern reporting restrictions. In terms of consistency, it was likely that amendments would be required to be made to the Criminal Procedure Rules though the detail of those would be a matter for the Council. The Council noted the position.

Item 9: Information on Requesting Court Rules for Policy Teams

16. The Council considered and approved a paper prepared by the SCJC on information for Government officials (policy teams) when requesting changes to court rules.

Item 10: any other competent business

17. Sheriff Crowe mentioned the use of referring witnesses to a prior statements, in particular police statements. It was helpful for the bench to be provided a copy of the statement though practices varied. It was agreed that the matter would be best addressed by means of a Practice Note and the Private Office would look into this.

18. The next meeting is on Monday 10 February 2014 at 10.30 am.