

MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 3 JUNE 2013

Present: Lord Justice Clerk (Chair)
Sheriff John Baird
Sheriff William Gilchrist
Murdo Macleod, QC
Keith Stirling, JP
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
Professor James Chalmers, University of Glasgow
Robbie Burnett, Solicitor
Ian Fleming, Solicitor

Secretariat: Elise Traynor, Deputy Legal Secretary to the Lord President
Christopher Nicholson, Deputy Legal Secretary to the Lord President
Ondine Tennant, Deputy Secretary to the Scottish Civil Justice Council (for item 6 only)

Apologies: Lord Justice General (Gill)
Lord Turnbull
Lady Dorrian
Sheriff Crowe
Frances McMenamin QC
Jennifer Harrower, head of High Court Division, COPFS
Jim Andrews, Victim Support Scotland
Ian Dickson, SLAB

Item 1: welcome, apologies and introductions

1. The Lord Justice Clerk welcomed members and noted apologies.
2. It was noted that there were two new members of the Council present. The Council welcomed Elspeth MacDonald, who was the new Scottish Government member (replacing Don McGillivray) and Murdo Macleod QC, who had replaced Jamie Gilchrist QC as one of the Faculty members.

Item 2: minutes and matters arising

3. The minutes of the meeting of 11 February 2013 were approved.

4. In terms of matters arising, item 4 of the previous minutes (at paragraph 10) indicated that the Scottish Government was likely to seek changes to the Criminal Procedure Rules in consequence of the passage of the Victims and Witnesses Bill. It was noted that this matter appeared at item 4 on the agenda for the present meeting.

5. Also under item 4 of the previous minutes (at paragraph 12) were Sheriff Gilchrist's comments in relation to a paper that he had previously submitted for consideration. It was noted that the paper was item 5 on the agenda.

Item 3: update on Acts of Adjournal

6. Since the last meeting of the Council, one Act of Adjournal had been made. Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013 came into force on 22 April 2013. It was noted that Paragraph 2 of the instrument amended Form 9A.4 (Form of written record of state of preparation) by way of substitution. Paragraph 3 amended Chapter 23A and related Form 23A.1-A to extend the application of that Chapter to evidence given by television link from within the United Kingdom. Paragraph 4 amended, by way of substitution, Chapter 40 in consequence of the coming into force of Part 4 of the Scotland Act 2012 in relation to compatibility issues and devolution issues. The Council noted that the Act of Adjournal had been made.

7. Since the last meeting of the Council, it had been brought to the attention of the private office that there may be a gap in new Chapter 40 of the rules. The Council considered a draft Act of Adjournal which had been prepared by the private office which sought to address this.

8. The gap arose in a narrow category of cases, namely where an appeal under the Extradition Act 2003 had been refused, but a devolution issue raised under the Scotland Act 1998 in the context of those proceedings was the subject of onward appeal to the Supreme Court. In the previous version of the Rules, the Court was empowered to consider making such orders as it thought appropriate in those cases where an appeal to the Supreme Court was involved. The new Chapter 40 retained provision in relation to references to the Supreme Court, but provision for appeals had fallen out of the new Chapter 40. The draft Act of Adjournal sought to re-introduce this.

9. The draft Act of Adjournal made a number of other minor changes to the Rules, mainly in relation to the correction of errors. The Council was content with the draft and recommended that the Act of Adjournal be made in due course.

Item 4: Scottish Government Update

10. Elspeth MacDonald updated the Council in relation to those aspects of the Scottish Government's ongoing work that was of interest to the Council.

11. The Scottish Government was currently working on a Criminal Justice (Scotland) Bill, which seeks to implement the Carloway Review and Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure. The Bill would be introduced before the end of this session. Two relevant consultations had recently closed: one in relation to Sheriff Principal Bowen's review; the other in relation to potential additional safeguards which may be required if the corroboration rule were to be abolished. The Government was in the process of analysing these and results would be published in this session of parliament. There would be a further update in relation to Rules at the next meeting of the Council.

12. The Victims and Witnesses Bill remained at stage 1 of the parliamentary process; oral evidence had been given in April and May and the stage 1 debate was

scheduled to take place on 19 June 2013. It was likely that the Bill would reach stage 3 by the end of the year. In relation to court reforms, a consultation had taken place and closed on Friday 31 May; analysis was underway and results were likely to be published in July 2013.

13. Ms MacDonald moved on to deal with paper 4A, which was a policy paper seeking changes to be made to the Criminal Procedure Rules as a consequence of the Victims and Witnesses Bill. Changes were likely to be required by spring 2014. Private office confirmed that it would endeavour to have rules drafted in time for the meeting of the Council in October 2013.

14. Members discussed again the point which had been raised by Lord Turnbull at the meeting in February in relation to the scope of the Victims and Witnesses Bill in terms of its application to the accused in the course of proceedings. It was noted that the new provisions had the potential to create a huge number of extra notices and objections, not least because of the extension of the definition of 'child' to include those aged 16-18. This could potentially bring a large number of accused persons within the scope of automatic special measures. It was also pointed out that, where an accused was 'vulnerable' in terms of the Bill, then support would be provided when that person was giving evidence, but not necessarily for other parts of the proceedings. It was agreed that these issues merited further discussion and should be placed on the agenda for the next meeting of the Council.

15. Ms MacDonald referred, finally, to Paper 4B, which was a paper seeking urgent changes to Form 20.3A-B in consequence of the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013. The changes were likely to be required by around 8-15th July 2013. The private office confirmed that a draft Act of Adjournal was being prepared and would be circulated to members by email as soon as possible.

Item 5: Transferring summary cases for sentencing

16. The Council considered a paper which had been submitted by Sheriff Gilchrist which contained proposals 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 should be simplified in the case of an accused person being transferred for sentencing. The proposals would require Section 137B to be amended to remove the requirement for a Sheriff in a receiving jurisdiction to consent to the transfer.

17. It was noted that members were generally in favour of the proposals and that they would require substantive amendments to be made to the primary legislation. Ms MacDonald confirmed that there was no scope for these amendments being included in the current Criminal Justice Bill. The Council agreed that the paper should be passed to the Scottish Government for possible inclusion in future legislation.

Item 6: Freedom of Information

18. Members noted that the Council had been added to the list of Scottish Public Authorities to which the Freedom of Information (Scotland) Act 2002 applies, with effect from 28 May 2013. As a result of that, the Council required to produce and maintain a publication scheme. Ms Tennant introduced paper 6C, which was a draft publication scheme and guide to information. Members were content to adopt the draft scheme.

19. In response to a question from Ms Dalrymple, it was confirmed that the Secretariat to the Council would, in the first instance, consider FOI requests and the application of any exemptions which might apply. It was noted that Susan Gray from OSIC would be providing training at a seminar to be held on 10 June 2010. Members were invited to attend.

Item 7: any other competent business

20. The Lord Justice Clerk indicated that, going forward, the Council might wish to take a more proactive approach. Proposals for changes to the Rules, whether contained (or not contained) in the 1996 Act of Adjournal or the 1995 Act should be passed to the Secretariat for consideration at meetings of the Council. Proposals for changes to the 1995 Act would, of course, require to be passed on to the Scottish Government for consideration.

21. Members discussed the scope of section 305 of the 1995 Act which enabled the High Court to make Acts of Adjournal. It was noted that the section included a power to amend primary legislation, including, in some circumstances, the 1995 Act itself. Members agreed that it would be useful to consider the scope of the power at the next meeting and that private office should prepare a paper on the matter.

22. The next meeting is on Monday 21 October 2013 at 10.30 am.