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MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 28 MAY 2012

Present: Lord Justice General (Hamilton)
Lord Carloway
Sheriff John Baird
Sheriff Frank Crowe
Frances McMenamin QC
Iain Fleming, Solicitor
Joe Moyes, Deputy Principal Clerk of Justiciary (*in place of the Principal Clerk*)
David Shand, Sheriff Clerk
Michelle Macleod, Crown Office
Jennifer Harrower, Procurator Fiscal
Gerry Bonnar, Scottish Government (*in place of Don McGillivray*)
Christopher Crowther, Scottish Government

Secretariat: Kathryn MacGregor, Legal Secretary to the Lord President
Christopher Nicholson, Deputy Legal Secretary to the Lord President

Apologies: Lord Justice Clerk (Gill)
Lord Bracadale
Sheriff William Gilchrist
Jamie Gilchrist QC
Robert Burnett, Solicitor
James Chalmers, University of Edinburgh
Keith Stirling JP
Jim Andrews, Victim Support Scotland

Item 1: welcome, apologies and introductions

1. The Lord Justice General welcomed members and noted apologies. The Lord Justice General introduced Mr Gerry Bonnar and Mr Christopher Crowther from the Scottish Government; Mr Bonnar was attending in place of Mr McGillivray.

Item 2: minutes and matters arising

2. The minutes of the meeting of 14 February 2012 were approved.

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3. In terms of matters arising, the Lord Justice General had asked the DPCJ to look into the practicalities of granting bail to a person detained in relation to an alleged contempt of court; the DPCJ confirmed that this was not a problem, they could be granted bail.

4. The Lord Justice General then referred members to paragraph 13 of the minutes and Sheriff Baird's observation regarding the definition of "relevant person". This had been considered by the Private Office but the phrasing was concluded to be appropriate as it was consistent with subordinate legislation drafting practice.

Item 3: update on Acts of Adjournal

5. Since the last meeting one Act of Adjournal had been made, namely, Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2012 (SSI 2012/125). The Council had no comment on the instrument.

Item 4: Scottish Government Update

6. Mr Bonnar updated the Council in relation to those aspects of the Scottish Government's ongoing work that was of interest to the Council.

7. In relation to the Carloway Review, the Scottish Government had broadly welcomed its recommendations and it was their intention to issue a (policy) consultation paper during the summer.

8. In relation to Sheriff Principal Bowen's Review of Sheriff and Jury Procedure, the Scottish Government had published its response to the review and were due to consult on draft provisions later in the summer.

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9. The Scottish Government were seeking to identify the next suitable legislative vehicle to address a number of miscellaneous matters; primary legislation may not, however, be required for all of the changes and some changes may be usefully be made by way of rule changes.

10. The Scottish Government had recently published a consultation paper entitled "Making Justice Work for Victims and Witnesses: Victims and Witnesses Bill – A Consultation Paper". The proposed Bill would create a number of new rights for victims and witnesses and place new duties on the court; responses were due by 20 July 2012.

11. The Criminal Cases (Punishment and Review) (Scotland) Bill was currently at Stage 3 in the Scottish Parliament and was expected to be passed in the later half of June. The Lord Justice General enquired if part of the Bill would legislate in relation to the issues raised in the case of *Petch & Foye –v- HMA (2011) HCJAC 20*; Mr Bonnar replied that it would.

12. The Scottish Government had recently made a Commencement Order (SSI 2012/160). The provisions contained in Part 7 (mental disorder and unfitness for trial) of the Criminal Justice and Licensing (Scotland) Act 2010 would come into force on 25 June 2012; a circular had been issued which most members would have received.

Item 5: Draft Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2011

13. The Council considered a draft of an Act of Adjournal prepared by the Private Office containing rule changes which had been proposed by the DPCJ and Lord Carloway since the last meeting. In relation to the former the DPCJ informed members that the court wished to be able to fix hearings in appeals against sentence within one month, accordingly the period of notice for a hearing and the time limit for lodging a written case and argument required to be shortened. In relation to the

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latter Lord Carloway informed members that an anomaly existed in relation to cases on reference from the Scottish Criminal Cases Review Commission. One interpretation of the Act of 1995, which was being followed by some practitioners, was that the note of appeal required to be lodged within 8 weeks of a case being referred to the High Court; this was notwithstanding that any application for additional grounds of appeal to be allowed required to be lodged within 21 days of the reference being sent. Accordingly, Chapter 19B of the Rules required to be amended to specify the time for lodging the note of appeal. A time limit of 21 days was proposed. This would allow the court to have the (main) grounds of appeal before it when considering an application for additional grounds. Ms McMenamin was concerned that 21 days may not be sufficient in relation to more complex cases. Members discussed and agreed that the court had the power to extend the time limit. The Council agreed the Act of Adjournment should be made.

Item 6: Submission of a written narration by the Crown following a plea of guilty in solemn cases

14. The Council considered a paper submitted by Sheriff Crowe which proposed that the rules be amended to provide that, where a plea of guilty is tendered, a copy of the (agreed) Crown narrative is passed to the presiding judge or sheriff; this could in turn be passed to social workers etc.

15. Members agreed that the provision of Crown narratives in the High Court was a matter of good practice which served numerous purposes. Members agreed that where possible this should be adopted in relation to Sheriff and Jury cases but agreed that to introduce a requirement to do so would give rise to a number of practical difficulties. Ms Macleod informed members that Sheriff Principal Bowen's review of Sheriff and Jury procedure had also reached this conclusion. Mr Bonnar informed members that the Scottish Government's consultation on draft provisions arising from that review did not, as currently drafted, address the issue though he

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agreed that it usefully could and he would look into this. The Lord Justice General suggested that this was the best course of action and the Council agreed.

Item 7: Scotland Act 2012

16. The Lord Justice General informed members that it was the UK Government's intention to bring those provisions of the Scotland Act 2012 (sections 34-38) that relate to compatibility and devolution issues into force by the end of year. Accordingly, a draft Act of Adjournal amending Chapter 40 of the Criminal Procedure Rules (devolution issues) required to be drafted before the next meeting of the Council in October. The draft Act of Adjournal would be circulated amongst members and relevant stakeholders in advance of that meeting.

Item 8: Freedom of Information

17. Members were informed that following the last meeting of the Council the Lord Justice General had written to the Minister for Parliamentary Business and Chief Whip, Brian Adam MSP; the Minister had replied on 22 March 2012. The Scottish Government were still minded to add the Rules Council to the list of Scottish Public Authorities to whom the Freedom of Information (Scotland) Act 2002 applied and were of the view that the exemptions as currently provided for in the 2002 Act were sufficient. The Lord Justice General was of the view that the reply was disappointing as it did not properly recognise the court as an arm of government; that being said, it may be a case that the Council would just have to accept the situation. The Council discussed the issue and were content that the Council be added to the list.

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Item 9: AOCB

18. On behalf of the Council Lord Carloway thanked the Lord Justice General for his Leadership of the Council over the past 6 years and wished him all the best for his retirement; the Council agreed and applauded.

19. The next meeting is on Monday 8 October 2012 at 10.30 am.