

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

PARLIAMENT HOUSE, MONDAY 15 OCTOBER 2007

Present: Lord Justice General
Lord Nimmo Smith
Sheriff J. Douglas Allan
Mr. G.C Bell Q.C
David Burns Q.C.
Ms. Phyllis Hands, North Lanarkshire Council
Mr. John Logue, Crown Office
Ms. Roma Menlowe, Scottish Government
Sheriff Nigel Morrison Q.C.
Sheriff Fiona L. Reith Q.C.
Mr. David Shand, Scottish Court Service
Mr. Frank Shannly, DPCJ
Ms. Lesley Thomson, Procurator Fiscal Service
Mr. Peter Watson, Law Society of Scotland

In Attendance: Mr. Michael Anderson, Legal Secretary to the Lord Justice
General
Ms. Carolyn Breeds, Deputy Legal Secretary to the Lord Justice
General

Apologies: Lord Justice Clerk
Professor Pamela Ferguson, University of Dundee
Mr. James Keegan, Law Society of Scotland
Mr. Graeme Marwick, PCJ
Professor Fiona Raitt, University of Dundee

Introduction, welcome and apologies

1. Members were welcomed and apologies tendered on behalf of absent members. Welcomes were extended to new members Ms. Lesley Thomson and Mr. David Shand. It was noted that Ms. Thomson had replaced Mr. Mulholland as Procurator Fiscal Service representative and Mr. Shand had replaced Mr. Lynn as Scottish Court Service representative.

Item 2: Minutes and matters arising

2. The minutes of the meeting of 23 April 2007 were approved. There were no matters arising.

Item 3: Update on Acts of Adjournal

3.1 The Council considered the paper which had been circulated to members giving details of the Act of Adjournal that had been made since the last meeting (Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Devolution Issues) 2007 (SSI 2007/361)). There were no matters arising from the update.

3.2 The Council considered two draft Acts of Adjournal and the accompanying paper.

(a) It was explained that Act of Adjournal (Criminal Procedure Rules Amendment No.) (Vulnerable Witnesses (Scotland) Act 2004) 2008 gave effect to the latest implementation stage of the Vulnerable Witnesses (Scotland) Act 2004, introducing changes to summary procedure in the Sheriff Court. It was suggested that paragraph 2(2) was not necessary as the wording of the Criminal Procedure Rules was already sufficient to cover adult vulnerable witnesses in summary proceedings. It was not necessary to make provision applying the Rules to that matter. It was agreed that further thought should be given to this point.

(b) It was explained that Act of Adjournal (Criminal Procedure Rules Amendment No.) (Miscellaneous) 2007 made minor amendments to the Criminal Procedure Rules. It also introduced a new Chapter 52, "Investigation of Revenue and Customs Offences". There were no matters arising from this draft instrument.

Item 4: Criminal Proceedings etc. (Reform) (Scotland) Act 2007

4.1 The Council considered the paper on commencement of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (the "2007 Act") which had been prepared by the Scottish Government. Ms. Menlowe explained that there was to be a staged implementation of the Act to ensure that the various IT systems work well and collectively. The Scottish Government was working closely with the Lord President's Private Office on arrangements for implementation. The Legal Secretary is also a member of the Scottish Government's 2007 Act Implementation Group.

4.2 The Council considered the two draft Acts of Adjournal that had been prepared in response to the changes introduced by the 2007 Act.

(a) The aim was that the first draft would come into force in December 2007 to coordinate with the commencement of various sections of the 2007 Act. Various changes were proposed to summary and solemn procedure. The Council had no comments to make on this draft instrument.

(b) The second draft Act of Adjournal was to be coordinated with the commencement of many of the remaining sections of the 2007 Act in March 2008. The draft included changes to solemn and summary procedure, included new rules concerning the enforcement of fines and made provision in consequence of the replacement of district courts with JP courts.

(c) The Council discussed Form 16.1-D (Means Form), to which changes were proposed. The changes were to be made at the same time as the other 2008 changes and had initially been included in the draft instrument. The Council considered that the term "head of the household" which was referred to in the original form was an outdated concept, the meaning of which was not clear. It was also thought that if the question about marital status was to be retained it should be updated to include a reference to civil partnerships and might also include a reference to cohabitation, depending on the purpose of the question. It was suggested that the form requested a lot of information and was difficult to read. The Council considered that it was unlikely that all the information requested would be provided in the majority of cases but it was also noted that if the information was not requested, it would not be provided. The Council discussed whether the form should be returned to the relevant court or to the prosecutor in a pre-paid envelope. It was agreed that there would be further discussion on this point between Scottish Court Service and Procurator Fiscal Service.

- **SCS to consider the changes to the form further and to consider the issue of return of the form in conjunction with COPFS**

4.3 The Council discussed the paper on recovery of documents. The 2007 Act provides that petitions for commission and diligence for the recovery of documents and for orders for production of documents can now be made directly to the sheriff court from proceedings in the lower courts. It was thought that if rules were to be introduced, it would be preferable for them to apply to all criminal courts. However, Judiciary Office was opposed to the introduction of court rules for the High Court, where the procedure for such petitions worked well. In light of this view, and having regard to the low number of petitions that were lodged, it was suggested that rules should not be made at present for any of the criminal courts and the situation should be monitored. If any problems were identified in practice, rules could subsequently be made. The view was expressed that, as the sheriff courts had

never operated the High Court procedure for recovery of documents, rules should be introduced. However, the Council decided that rules should not be made at present but that guidance would be provided to clerks and sheriffs setting out the procedure to be followed. That procedure would mirror the procedure followed in the High Court as far as possible. If any problems arose in practice, rules could be included in the second 2007 Act instrument, which would come into force in March 2008.

- **Justiciary Office will prepare the necessary guidance and will liaise with the Lord President's Private Office.**

Item 5: Lists of Jurors

5. The Council was advised that the Cabinet Secretary for Justice was keen to promote general and wide-ranging criminal procedure legislation. He has mentioned publicly that he wants to bring changes into force in 2008 and any such legislation could be a suitable vehicle for reform of the juror list system. However, nothing has been decided by the Cabinet yet. A consultation would be held as a precursor to any changes, during which matters such as changes to the lists of jurors would be fully explored, including issues such as imbalances between male and female jurors and the numbers of jurors available to ballot. It was agreed that, as policy decisions required to be taken by the Scottish Government in relation to this issue, it would be removed from the agenda.

Item 6: Crown Office submission

6. Mr. Logue introduced the Crown Office's paper on procedures for lodging and service of bills of suspension and advocacy and petitions to the *nobile officium*. As a result of changes made by the 2007 Act the exhibition of the principal petition or bill to the lower court by the respondent was no longer required. The Clerk of Justiciary in practice sends a courtesy copy of the bill or petition to the lower court for papers and requests a report and the relevant papers. There are no court rules setting out this procedure, however, exhibition of the principal is required as a matter of practice. Crown Office proposed that rules of court should be introduced to make it clear that the respondent no longer had to exhibit the principal bill or petition to the lower courts. It was confirmed that this would require Justiciary Office to continue the practice of passing a courtesy copy of the bill or petition to the lower court. The Council was advised that Justiciary Office did not have any objections to the proposals that rules be drafted on that basis. It was agreed that draft rules would be prepared for consideration at the next meeting of the Council.

- **Lord President's Private Office to prepare draft rules for consideration at next meeting.**

A.O.B

7. There was no other business.
8. It was agreed that the next meeting of the Council would take place on 7 July 2008 at 10.30 a.m.