

MINUTES OF THE MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 10 JULY 2006.

Present: Lord Justice General
Lord Nimmo Smith
Sheriff J. Douglas Allan
Sheriff Fiona L. Reith Q.C.
Mr G.C Bell Q.C
Professor Pamela Ferguson, University of Dundee
Mr John Logue, Crown Office
Mr Frank Mulholland Q.C., Crown Office
Mr David Shand, PCJ
Mr Frank Shannly, DPCJ
Mr James Keegan, Law Society of Scotland
Mr David Lynn, Scottish Court Service
Mrs Wilma Dickson, Scottish Executive

In Attendance: Mr Ruaraidh Macniven, Legal Secretary to the Lord Justice General
Mrs Valerie Montgomery, Deputy Legal Secretary to the Lord Justice General

Apologies: Lord Justice Clerk
Sheriff Nigel Morrison Q.C.
Prof. Fiona Raitt, University of Dundee
Mr Peter Watson, Law Society of Scotland

Introduction, welcome and apologies

1. Members were welcomed and apologies tendered on behalf of absent members.

Minutes

2. The minutes of the meeting of 17th October 2005 were approved.

Update on Acts of Adjournal

3. The Council considered the paper giving details of the four Acts of Adjournal that had been made since the last meeting as well as a

draft Act of Adjournal on which the Lord President's Private Office were currently consulting.

Crown Office submission

4. It was noted that insufficient time had been given to comment on the matters raised by the Crown Office. It was agreed that the Council would note the matters requiring further consideration.

Item 4.1 – lodging of transcripts in criminal proceedings

5. It was explained that the proposal and the draft rule sought by the Crown Office were designed to rectify a defect noted in a recent solemn appeal in which transcripts relied on by the appellant had not been lodged.
 6. It was noted that, if the Council considered rule changes to be appropriate, it should agree in principle to those changes being made. The drafting of the final version of the rule change should be a matter for the Private Office in consultation with the Crown Office.
 7. There was some discussion of what the appropriate trigger date should be.
- **The Council agreed that an appropriate rule change in relation to the lodging of transcripts should be brought forward by the Lord President's Private Office in consultation with the Crown Office.**

Item 4.2 – appeals under Part VI of the Criminal Procedure (Scotland) Act 1995

8. The Council considered the absence of rules in relation to appeals in mental health cases under Part VI of the 1995 Act. The question of the form of report that should be provided by the sheriff in respect of the appeal was discussed.
- **The Council agreed that the Lord President's Private Office should consult on appropriate rule changes in this regard.**

Item 4.3 – additional or amended grounds of appeal

9. The Crown Office paper had noted that the Rules did not set down a procedure with regard to seeking leave to lodge additional grounds

of appeal. The Crown was not normally given sight of the additional grounds. It was explained on behalf of the Crown Office that this affected the time available to prepare for an appeal and it was proposed that the Council should seek to regulate the matter in Rules.

10. It was noted that amendments could be made to rule 15.15 in order to require applications for leave to lodge additional grounds of appeal and for the additional grounds to be intimated to the Crown.
 11. The Council considered that it would be helpful to have statistics as to why additional grounds of appeal were put forward at a late stage. It was thought that the last opportunity for adding to or removing grounds of appeal should be at the procedural hearing.
- **The Council agreed that Crown Office would report back to the Rules Council on this matter.**

Item 4.4 – lists of jurors

12. The background to the case of *Brown* was explained and the Council was referred to the concerns expressed by the High Court in paragraph 26 of the opinion with respect to the insufficient number of jurors for the ballot. It was noted, however, that the matter was set down in primary legislation and was therefore a matter for the Scottish Executive.
13. It was noted that it would perhaps be possible for provision to be made in the Rules requiring the clerk of court always to state the reason for excluding a juror. Any further regulation, for example in relation to the grounds for excusal was, however, a matter for the Scottish Executive.
14. The Council was advised that officials within the Executive were separately looking at what needed to be done in the light of the *Brown* case and would be progressing work over the summer. It was suggested that the Council might prefer to look at the whole context before deciding where the Rules would fit in and that the Council could be given an update at its next meeting on any proposals for primary legislation in this area.

- **The Council agreed that it would come back to this matter at the next meeting and a report would be provided on any proposals from the Scottish Executive at that time.**

Item 4.5 – Bills of suspension and advocacy/petitions to the nobile officium

15. The Council considered the issues raised in the Crown Office paper regarding the requirement for the principal Bill of Suspension to be exhibited to the clerk of the lower court and the difficulties in relation to service of the Bill on the respondent. The Crown Office were seeking to bring the practice into line with the service of any other documents in criminal proceedings, in particular, service of a copy of a Bill through the respondent's nominated solicitor.
 16. It was noted that it might be possible to include a rule requiring the clerk of justiciary to exhibit the Bill to the clerk of the lower court. So far as service of the Bill on the respondent was concerned, section 192(5) of the Criminal Procedure (Scotland) Act 1995 provided that "any officer of law may serve any bill of suspension or any other document relating to an appeal". Any amendment in relation to service of Bills therefore appeared to be a matter for primary legislation.
 17. It was suggested that the Executive could consider the proposal with a view to legislating in the Criminal Proceedings etc. (Reform) (Scotland) Bill, if time allowed.
- **The Council noted that the Scottish Executive would consider making the amendment sought in the Criminal Proceedings etc. (Reform) (Scotland) Bill.**

Item 4.6 – Electronic Evidence

18. The Council considered the matters raised by the Crown Office regarding the need to regulate the use of electronic evidence in court. The Council was advised that the current 1995 Act procedures did not support the use of electronic evidence and that the Law Society had set up an Electronic Court Users Forum to agree common standards.
19. It was noted that there had already been significant use of electronic evidence in the Scottish Courts. However, it was recognised that the current rules may limit the use of electronic evidence and that there

may be a need for changes to the rules in order to facilitate its use. If the Council thought further regulation of this matter to be desirable, it was suggested that the Private Office could seek the assistance of the Court User's Forum and the Crown Office in identifying the areas in which rule changes would be needed.

20. It was noted that the Criminal Proceedings etc. Bill would make some provision regarding electronic criminal proceedings and suggested that the Executive should be kept informed of proposals.

- **The Council agreed that consideration of the rules required in relation to electronic evidence would be taken forward by the Lord President's Private Office in consultation with the Electronic Court User's Forum and keeping the Scottish Executive informed.**

Item 4.7 – postal service of police interview transcripts

21. It was advised that the Crown Office wished to withdraw this part of their submission.

- **The Council noted that item 4.7 had been withdrawn.**

Item 4.8 – time limits for appeals in extradition cases

22. The Council considered the proposal of the Crown Office for amendment of the Rules with regard to the time period within which the High Court must begin to hear an extradition appeal, in particular in relation to the point from which that period is calculated. It was agreed that the current Rules reflected the terms of the Extradition Act 2003 and that the proposed Rule changes were not appropriate.

23. It was noted that there had been a suggestion that the 40 day period for bringing an appeal could perhaps be extended. It was explained, however, that the 40 day period had been fixed in consultation with the Crown Office and the Scottish Executive and that it reflected the position in England and Wales. The Framework Decision on the European Arrest Warrant required that the final decision on a person's extradition was taken within 60 days of arrest and so the 40 day period was fixed with that in mind.

- **The Council noted any changes to the 40 day time limit would require amendment of the primary legislation which was a matter for the UK government.**

Criminal Proceedings etc. (Reform) (Scotland) Bill

24. The Council considered the paper on this matter which was intended to draw the Council's attention to the provisions of the Bill and to highlight areas which may result in changes to the Rules. The Council was advised that the Private Office had considered the Bill as introduced but that it was likely to be amended during its Parliamentary stages over the coming months. It was suggested that the Private Office would bring forward a draft Act of Adjournal for the next meeting of the Council.

- **The Council noted that the Lord President's Private Office would bring forward a draft Act of Adjournal in relation to the Criminal Proceedings etc. (Reform) (Scotland) Bill for the next meeting.**

A.O.C.B.

25. There was no other business.

26. It was agreed that the next meeting would take place in the first week of the summer term in April 2007.