

MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 12 JULY 2010

- Present:** Lord Justice General (Hamilton)
 Lord Matthews
 Sheriff Nigel Morrison QC
 Sheriff Fiona Reith QC
 Sheriff Frank Crowe
 Frances McMenamin QC
 Iain Fleming, Solicitor
 Gillian Prentice, Deputy Principal Clerk of Justiciary
 David Shand, Sheriffdom Business Manager
 James Chalmers, Edinburgh University
 John Logue, Crown Office
 Don McGillivray, Scottish Government
- In attendance:** Lord Carloway (*in relation to Item 8*)
- Secretariat:** Michael Anderson, Legal Secretary to the Lord President
 Christopher Nicholson, Deputy Legal Secretary to the Lord President
- Apologies:** Lord Justice Clerk (Gill)
 Jamie Gilchrist QC
 James Keegan QC
 Morag McLaughlin, Procurator Fiscal Service
 Graeme Marwick, Principal Clerk of Session and Justiciary
 Professor Fiona Raitt, University of Dundee
 David Kemp, Sheriffdom Legal Adviser

Item 1: welcome, apologies and introductions

1. The Lord Justice General welcomed members and noted apologies.

Item 2: minutes and matters arising

2. The minutes of the meeting of 1 March were approved. The only matter which was not otherwise dealt with was the issue of *ex-parte* hearings under the Regulation of Investigatory Powers Act 2000. The Lord Justice General informed the

Council that he was considering the matter and had invited the views of the administrative judges for criminal business. He would thereafter seek the views of Lord Matthews who had previously reported to the Council in his role as chair of the sub-group.

Item 3: update on Acts of Adjournal

3. The Council noted that since the last meeting one Act of Adjournal had been made; namely Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2010 (SSI 2010/184). The Council had no observations to make on this instrument.

Item 4: Scottish Government Update

4. The Council was updated on the position regarding the Criminal Justice and Licensing (Scotland) Bill and Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedures.

5. The Bill passed Stage 3 of its scrutiny on 30 June. Royal Assent was expected towards the end of July with the earliest commencement of any of the provisions being in November. It was anticipated that Scottish Government would have prepared by late September a list of expected rules and timings arising from the implementation of the Bill.

6. Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure had been published on 11 June 2010. It made 34 recommendations. The Scottish Government was now considering its response.

Item 5: section 300A (excusal of procedural irregularities): lodging of appeals

7. The Council was updated on the position regarding the amendment of the time limits in relation to solemn appeals (preliminary diets) and summary appeals (preliminary pleas) contained at sections 74 and 174 of the Act of 1995 respectively. Contrary to the understanding of members at the last meeting the amendments had in fact been contained within the Criminal Justice and Licensing (Scotland) Bill as introduced. It had not, however, been possible to make further amendments as suggested at the last meeting of the Council. The Council noted the position.

Item 6: Protection of Vulnerable Groups (Scotland) Act 2007

8. The Council considered a draft rule which would implement the Vulnerable Groups (Scotland) Act 2007 in so far as it related to the provision of prescribed information by the court to the Scottish Ministers. The proposal for the rule had been considered and approved at the last meeting. Some minor changes to the draft form were agreed but the Council was otherwise content that the rule should be made.

Item 7: Proposed amendment of the Criminal Procedure (Scotland) Act 1995 section 137 (and 75A)

9. The Council considered a paper prepared by Mr. Shand proposing that the proposal made by the Deputy Principal Clerk of Justiciary in relation to the acceleration or adjournment of a solemn diet on the initiative of the court, which was approved at the last meeting of the Council, be applied to summary proceedings. The Council discussed whether provision ought to be made for an exception where an accused person was unrepresented. The Council agreed that the proposal should indeed be extended to summary proceedings. However, it felt that it was unnecessary to create an exception where the accused was unrepresented. This could be left to the good sense of the court.

Item 8: Written submissions in appeals against conviction

10. The Council considered a paper prepared and presented by Lord Carloway in his role as administrative judge for criminal appeals business. Lord Carloway explained how a number of factors currently contribute to delays in appeals business and how he hoped to improve the current timescales. Lord Carloway went on to suggest that the benefits of the proposals previously before the Council would be significantly enhanced if the written submissions required to be lodged within a date relative to the grant of leave of appeal rather than the appeal hearing itself. This would allow the court to make a series of management decisions (not least of which being the allocation of a diet of a suitable length) on an informed basis.

11. The Lord Justice General suggested that there should be included in the rules some means by which the appellant could estimate how long they anticipated the hearing might require to be. Lord Carloway suggested that this could be included in the written submission themselves. The Lord Justice General agreed. The Lord Justice General also suggested that the arrangements regarding authorities be left to be made by way of direction as in the current draft; the Council agreed.

12. One member expressed strong concerns regarding the proposals to bring forward the requirement to lodge the submissions. The member was of the view that preparing written submissions within 28 days after the grant of leave to appeal was not feasible given the difficulties already faced in presenting appeals. These included the obtaining of the trial transcripts, the requesting and funding of expert reports and the onerous demands upon those presenting “defective representation” appeals. The member also expressed concerns regarding the proposed power of the Court to guillotine submissions and co-operation with the Crown in order to meet time limits.

13. The member argued that the lodging of written submissions should remain, as currently proposed, relative to the date of the appeal hearing. The Council noted that guillotining of submissions occurred in Europe and the Supreme Court. In response to a comment made by the member Lord Carloway explained that should additional grounds of appeal be discovered after leave had been granted or after

written submissions had been lodged then there was a mechanism whereby these could still be considered as set out the most recent practice note. The member once again expressed concerns regarding obtaining sanction from SLAB in order to fund certain items of work.

14. Mr. Logue sought clarification that the requirement for the Crown to lodge written submissions if ordered to do so by the Court was to remain at 14 days after the lodging of the appellant's submissions; the Council agreed it was. Mr. Logue expressed the view that this was manageable to the Crown but that it would be important for a discussion to follow on the timetable for implementation. This was noted by the Council.

15. The Lord Justice General was of the view that Lord Carloway's proposals went in the right direction; they provided structure and discipline and would secure that appeals are dealt with efficiently. It was agreed that the time limit for the lodging of written submissions be extended from 28 to 42 days after the grant of leave in order to ease concerns. The Council approved Lord Carloway's proposals subject to this change.

Item 9: Interruption of Proceedings for the tendering of pleas

16. The Council considered a paper prepared and presented by Sheriff Crowe proposing that the Criminal Procedure Rules be amended to allow the interruption of solemn proceedings for the tendering of pleas. The Council suggested that consideration be given to the possibility of an accused being involved in more than two proceedings but were otherwise content that the Rule should be made.

Item 10: any other competent business

17. The Lord Justice General made two proposals to the Council regarding the workings of the Council.

18. The Lord Justice General proposed that, in recognition of the work Lords Carloway and Bracadale do as judges with responsibility for the administration of criminal business, appeals and first instance respectively, they should be accorded “observer” status at future meetings of the Council. This would help inform their work and that of the Council. The Council agreed.

19. The Lord Justice General proposed that future meetings be fixed. This would allow for better planning. The Council agreed.

20. Therefore the next meeting(s) would be fixed in due course with the first likely to be in February 2011. This was subject to any need for an earlier meeting arising from the current work being done by the Scottish Government to scope out implementation of the Criminal Justice and Licensing (Scotland) Bill.