

# MINUTES OF THE MEETING OF THE CRIMINAL COURTS RULES COUNCIL

PARLIAMENT HOUSE, MONDAY 23RD APRIL 2007

Present: Lord Justice General  
Lord Nimmo Smith  
Sheriff J. Douglas Allan  
Sheriff Fiona L. Reith Q.C.  
David Burns Q.C.  
Professor Pamela Ferguson, University of Dundee  
Professor Fiona Raitt, University of Dundee  
Mr. Frank Mulholland Q.C., Crown Office  
Mr. John Logue, Crown Office  
Mr. Graeme Marwick, PCJ  
Mr. Frank Shannly, DPCJ  
Ms. Roma Menlowe, Scottish Executive

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

Apologies: Lord Justice Clerk  
Sheriff Nigel Morrison Q.C.  
Mr. G.C Bell Q.C  
Ms. Phyllis Hands, North Lanarkshire Council  
Mr. James Keegan, Law Society of Scotland  
Mr. David Lynn, Scottish Court Service  
Mr. Peter Watson, Law Society of Scotland

## **Introduction, welcome and apologies**

1. Members were welcomed and apologies tendered on behalf of absent members. It was noted that Ms. Menlowe had replaced Mrs. Wilma Dickson as a member of the Council.

## **Item 2: Minutes and matters arising**

2. The minutes of the meeting of 10th July 2006 were approved.
3. The following matters arose from the previous meeting and were discussed:

*Item 4.1 – lodging of transcripts in criminal proceedings*

It was explained that the Private Office are in the advanced stages of consulting with Crown Office about the wording of the draft rule. The wording had been agreed in principle.

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

It was noted that the required rule change had been made and can be found in Act of Adjournment (Criminal Procedure Rules Amendment No.3) (Miscellaneous) 2007.

*Item 4.3 – additional or amended grounds of appeal*

The Council was advised that a monitoring exercise was conducted by Crown Office in March to scope the extent of the problem. The figures showed that the situation had improved. However, Crown Office would continue to monitor this and would raise it with the Council again if further problems arose.

*Item 4.4 – lists of jurors*

The Council was advised that, due to the focus being on the Criminal Proceedings etc (Reform) Scotland Act 2007, this matter had not been progressed by the Scottish Executive. It was important to get the scope of any change right and ensure that all of the issues around jurors are considered. If there are any other matters which members consider to be relevant, they will be given consideration by the Scottish Executive. It was thought that the guidance issued to clerks should minimise the re-occurrence of the issues that arose in the case of *Brown*.

The Council was advised that Crown Office had met with the Scottish Executive to discuss this and that the Lord Advocate was aware of the wider issues.

It was confirmed that the guidance issued to clerks covered both the Sheriff Court and the High Court. The Guidance prescribes that the number of jurors cited should be not less than 60 and, if the number of excusals would bring the number of jurors cited below 35, only excusals "as of right" should be accepted.

The approach taken to excusals was discussed and it was suggested that jurors appear to be too readily excused. However, it was noted that the reasons for excusals and the test to be applied were set out in statute and was not a matter for the Rules Council.

It was considered that the recording of reasons for excusal would be important and would provide some discipline to the whole exercise.

- **A copy of the guidance is to be forwarded to the Sheriff Court for circulation to sheriffs and sheriff clerks.**
- **It was agreed that members should consider this issue further and it would be added to the agenda for discussion at the next meeting.**

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

It was noted that section 38 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 should address this issue. If any issues remain, then the Council would let the Scottish Executive know.

*Item 4.6 – Electronic Evidence*

It was explained that the Private Office has been in discussion with Crown Office and members of the Court Technology Forum. In addition, there has been discussion with Lord Carloway, who is of the view that Crown Office's proposals have implications for the substantive law of evidence and that the rules of court themselves are not necessarily the problem. Considerable further thought has to be given to the problems highlighted by Lord Carloway and to practical issues before rule changes could usefully be considered. The Private Office is in the process of setting up a meeting with Crown Office to explore the issues further. The Council will be provided with an update on progress at the next meeting. It was noted that other Commonwealth and foreign jurisdictions have detailed rules which might assist consideration of this issue.

- **The Lord President's Private Office to take matters forward in conjunction with Crown Office and provide a progress report to the Council at the next meeting.**

**Item 3: Update on Acts of Adjournal**

4. The Council considered the paper which had been circulated to members giving details of the four Acts of Adjournal that had been made since the last meeting. There were no matters arising from the update.

**Item 4: Crown Office submission**

5. The Council considered the paper submitted by Crown Office on this item. It was explained that, where there are intercepts of communications which the Crown have been made aware of, whilst such information may not

be admissible as evidence in proceedings, it might be appropriate to place it before the judge, where it is in the interests of justice. The Criminal Procedure Rules do not make provision for the court procedures and mechanisms to be used in such a situation and the Crown Office would like to see such procedure put in place.

6. It was noted that the court rules in England and Wales might be of assistance and Crown Office agreed to provide the Private Office with copies of the relevant rules and the Attorney General's guidance, which was mentioned in the paper.

- **Crown Office will provide the Lord President's Private Office with copies of the English Court rules and the Attorney General's guidance. The Private Office will attend to the drafting of the necessary rules in consultation with Crown Office.**

#### **Item 5.1: Criminal Proceedings etc. (Reform) (Scotland) Act 2007**

7. The Council considered the paper that had been circulated on this matter. The paper provided a reminder of the main provisions of the Act and noted changes that had been made since it was last considered by the Council. It was explained that the Scottish Executive had set up a "CPR Implementation Board" to oversee and coordinate implementation. The Private Office is to be involved with this, in order to coordinate the necessary changes to the Court rules. The first meeting is to be held in the afternoon of 23 April. It was agreed that the Private Office would bring forward a draft Act of Adjournal for approval at the next meeting of the Council. As the majority of provisions are to come into force in December 2007 it was agreed that the Council would meet again in October 2007.

- **The Council agreed that the Lord President's Private Office would prepare a draft Act of Adjournal for consideration at the next meeting which would be brought forward to October 2007.**

#### **Item 5.2: Criminal Proceedings etc. (Reform) (Scotland) Act 2007 Fines Enforcement Officers etc**

8. The Council considered the paper which had been circulated to members. The paper summarises the new provisions in the Act for the enforcement of fines. It was explained that a number of forms and applications are required by the new provisions, however, it is only in relation to warrants for civil diligence that the Act specifies the form, which is to be prescribed by Act of Adjournal. However, the Private Office has

identified other provisions where it seems that regulation of court procedure by Act of Adjournal may be necessary to prescribe the manner of the various applications and the forms to be used. It was explained that the Scottish Executive is of the view that it may not be necessary for all the forms and applications required by the Act to be set out in the rules of Court. It would be the Scottish Executive's preference to have the necessary forms and applications set out in a manual which would then be published and accessible on the internet. However, the Private Office is of the view that these forms and applications should be set out in an Act of Adjournal and published in the usual way. The purpose of raising this issue with the Council is to seek members' views and support for this position.

9. The Council was of the view that the manner of these applications and the forms to be used should be set out in an Act of Adjournal. It was noted that there was nothing to stop the Scottish Executive from also advertising the applications and forms. The Council was advised that the Scottish Executive considered that there was an issue of transparency and that, even if the forms and applications were contained within an Act of Adjournal, the Scottish Executive would want to seek additional means to publicise. The Council considered that publication in an Act of Adjournal and publication through additional means by the Scottish Executive could complement each other usefully.

- **The Council agreed that this area should be regulated by court procedure and that Lord President's Private Office should draft the necessary Act of Adjournal.**

#### **A.O.C.B**

10. There was no other business.

11. It was agreed that the next meeting of the Council would take place on 15th October 2007 at 10.30 a.m.