

**MINUTES OF MEETING OF THE CRIMINAL COURTS RULES COUNCIL
IN PERSON AND VIA WEBEX TUESDAY 15 MAY 2024**

Present: Lord Justice Clerk (Chair)
Sheriff Paul Brown
Dr Gabrielle Watson
Frances McMenamin KC
Michael Meehan KC
Stuart Fair JP
Kate Wallace, Victim Support
Wendy Robertson, SCTS
Anna Donald, Scottish Government
Michael Gallen
Laura Buchan, COPFS

In Attendance: Ross Martin (Depute Clerk of Justiciary)
Katy Kelman (LPPO)- Observer
Laura Tait (LPPO)- Observer
Jonathan Hodges (LPPO)- Observer
Andrew Campbell (LPPO)- Observer

Secretariat: Lori Pidgeon Deputy Legal Secretary to the Lord President

Apologies: Lord Matthews
Lord Mulholland
Sheriff Cruickshank
Ian Dickson, Scottish Legal Aid Board
Stuart Munro

Item 1: Welcome and apologies

The Chair welcomed members, noting apologies.

Michael Gallen was welcomed as the new solicitor member to the Council.

Item 2: Minutes and matters arising [Paper 1]

1. The minutes of the previous meeting on 13 February 2024 were approved and it was agreed papers 2- 19 were to be treated as private.

[These minutes are being submitted to members so they can consider whether the discussion accurately reflects the discussion for the internal record. As papers for items 3-9 were considered in private, these discussions will not be publicised on the website and for external purposes, the minutes will simply refer to discussions having taken place].

I. Bail Appeals and CPOs in the Sheriff Appeal Court

Sheriff Principal Anwar emailed LPPO on 14 May providing further information. The Chair asked that this matter be placed on the agenda for the next meeting with the email to be circulated to members in advance for consideration.

Kate Wallace advised she would like to consider the request and provide a view from Victim Support Scotland.

Item 3: Scottish Government update [Paper 2- private]

2. Anna Donald wished to draw members' attention to two items in the update. The first was the matter of jurors affirming. This was an item discussed at the previous meeting of the Council. The matter is now actively being considered by Scottish Government.
3. The other point highlighted was the Children (Care and Justice) (Scotland) Bill has been amended at stage 3. The amendment addresses the issue in the UNCRC (Scotland) Act 2024, regarding judicial remedies in relation to incompatibility issues, which was discussed at the previous meeting.

Item 4: United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act [Papers 3-9]

4. The Chair drew members' attention to paragraph 7 on paper 9 which contains points for the Council's consideration.
5. The Council agreed with the recommendation of LPP0 on point a).
6. Point b) was considered in detail. There was discussion surrounding whether a provision should be included in Chapter 6 that, in respect of things not specified there, the court must adopt a procedure compatible with the UNCRC requirements. It was thought there should be something in the rules to this effect and it should include a reference to the age and level of understanding of the child. Kate Wallace raised the point that care needs to be taken to ensure that child witnesses are provided for in addition to child accused. The Chair did not think the proposed wording would pose any problem in that respect. The Chair requested LPP0 look into the definition of "child" and any proposals on this point could be dealt with by correspondence.
7. Point c) was addressed by the amendments made to the Children (Care and Justice) (Scotland) Bill.
8. In respect of point d) members discussed the issue of the Act not providing any mechanism for the intimation of UNCRC compatibility issues on intervenors. The Children and Young People's Commissioner wrote to the Council suggesting that rules should provide for intimation. The Chair noted that draft rule 40.8A (in paper 8), in its current form, does not include any provision for intimation. She was of the view however that sections 6 and 27 of the Act do not prevent the Council from making provisions regarding intimation.
9. Members discussed whether the 2-step process for intervenors in draft rule 40.8A is required. It was agreed it should be amended to a 1-step process. The intervention by written submissions should be no longer than 2000 words, unless the court authorises otherwise, and the rule should provide that submissions should be succinct and lodged with the court 48 hours before the preliminary hearing.
10. In respect of points e) and f) members agreed with the approach outlined in paper 9, paragraph 18, and were content that the forms be amended.

11. Laura Buchan raised an issue which had been brought to her attention by the Appeals Unit within COPFS. Rule 40.2(4) currently stipulates, “where the issue is being raised for the first time”. The Crown has encountered instances of compatibility issues not being raised at first instance and instead being argued at common law. If the domestic argument is repelled and the accused is convicted the compatibility issue is thereafter raised at the appeals stage- effectively allowing the same argument to be made twice. It was suggested that rule 40.2(4) is amended to include the words “and could not have competently been raised at any other stage of proceedings”. Laura Buchan will follow this up in more detail with Andrew Campbell.
12. It was agreed that Laura Buchan should follow this up with Andrew Campbell for further consideration.

Item 5: Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Mutual Legal Assistance) 2024 [Papers 10 & 11 – private].

13. Members approved the instrument

Item 6: Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Proceeds of Crime Information Orders) 2024 [Papers 12, 13 & 14 – private].

14. The Chair advised an email from the UK Government was received on 13 May, which requires consideration. Amendments to the draft instrument may be required if additional requests are forthcoming and as such there was no merit in considering an instrument which may be incomplete. The Council would have been in a position to consider the draft instrument however had it not been for the late notice correspondence from the UK Government.

Item 7: Rules Request: Retained EU Law [Papers 15 & 16 – private].

15. The Council agreed with the recommendation from LPP0 that rules are not required.

Item 8: Rules Request: National Security Act 2023 [Papers 17 & 18 – private].

16. Members agreed with the recommendation from LPPO that rules should be drafted. The view was taken the measures in the Act are designed to be temporary.
17. It was also agreed that similar rules should be drafted in respect of the Terrorism Act 2000.

Item 9: Simplified Vulnerable Witness Notification [Paper 19- private]

18. The Chair confirmed the Council was seeking an update. The principal issue is whether the automatic transfer of data from COPFS to SCTS constitutes a “notice” for the purposes of the Act.
19. Laura Buchan advised the position of the Crown is that a formal notice is not required. The key aspect is about intimation, not the form that intimation takes.
20. The Chair expressed the view that the requirements of the Act could be met if there was something in writing which was lodged with the court- specified forms are not always required. The procedure must be guided by the legislation though and so the position a notice is not required could not be supported.
21. The Chair advised it would be helpful if members could see how the system operated in practice.
22. Laura Buchan explained she would speak to IT and ascertain whether a notice could be generated. If not she would require to speak to Scottish Government. She also confirmed that the procedure would not change the relationship between COPFS and VSS. Kate Wallace said it would be helpful if the process could be extended to cover VSS.
23. Sheriff Brown and Stuart Fair queried the impact of the new process on SCTS and unrepresented accused persons.
24. Laura Buchan offered to provide an update by correspondence.

Item 10: AOB

25. There was no AOB

Item 11: Date of next meeting

26. The next meeting is due to take place on 16 October 2024