This briefing looks at Stages 1 and 2 consideration of the Scottish Civil Justice Council and Criminal Legal Assistance Bill, which was introduced in the Scottish Parliament on 2 May 2012. The Bill seeks to create a Scottish Civil Justice Council to replace the existing bodies responsible for drafting court procedure rules in relation to civil justice matters. It also seeks to introduce a requirement for accused people to make a contribution towards their criminal defence costs where they are assessed as being able to afford to do so.

Key issues during scrutiny of the Bill have been:

- the most appropriate membership and recruitment procedures for the Scottish Civil Justice Council
- the threshold (in relation to disposable income and capital) at which contributions should be sought from accused people towards their defence costs
- the fairness of defence solicitors being required to collect contributions directly from their clients, and the likely impact on other parts of the justice system in terms of delays and adjournments
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INTRODUCTION

The Scottish Government introduced the Scottish Civil Justice Council and Criminal Legal Assistance Bill and accompanying documents in the Scottish Parliament on 2 May 2012. The Bill has two parts. The first part seeks to create a Scottish Civil Justice Council with responsibility for formulating policy and creating draft court procedure rules in relation to civil justice matters. The second part seeks to introduce a requirement that legal aid for those accused of a crime is subject to a financial contribution, where the accused is assessed as being able to afford this. It also introduces a new financial eligibility test which will be applied across different types of criminal legal assistance.

SUMMARY OF PROPOSALS

The creation of a Scottish Civil Justice Council was a key recommendation of the Scottish Civil Courts Review (2009) – also known as the “Gill Review”. It will replace the Sheriff Court Rules Council and the Court of Session Rules Council, which currently have responsibility for drafting civil procedure rules. In addition, it will take on an advisory role in relation to policy which, it is suggested, will enable the civil courts to continue to evolve to meet the needs of users in the future.

The Policy Memorandum to the Bill outlines a key role for the Scottish Civil Justice Council in implementing the Gill Review. The recommendations of the Gill Review were designed to modernise the way justice is delivered in Scotland’s civil courts including, for example, giving judges more powers to set the manner and timescales in which cases are dealt with by the court. The Scottish Civil Justice Council’s main role will be to review and update court procedure rules to support such reforms. As the new practices bed in, the Council will be responsible for keeping the system under review, with a view to drafting new rules as required (or, where appropriate, making policy recommendations to the Lord President or Scottish Ministers).

The Scottish Government consulted (2011a) on its proposals for a Scottish Civil Justice Council in 2011. A consultation report (2012a), summarising responses, has also been published.

The introduction of contributions for criminal legal assistance is part of the Scottish Government’s plan to reduce the legal aid budget to a more sustainable level in the current economic climate. The detailed proposals, which cover both criminal and civil legal assistance, are contained in the Scottish Government publication “A Sustainable Future for Legal Aid” (2011b).

According to the Financial Memorandum published along with the Bill, the proposals will save a maximum of £3.8million from a total legal aid budget of budget of £155.8million (2012-13).

Under the proposals, accused people with disposable incomes of £68 per week or more (and/or disposable capital of £750 or more) would be required to make a contribution to the cost of their defence. The contribution would be calculated as a graduated percentage of weekly income above £68 – for example, 20% of weekly income between £68 and £100 and 40% of weekly income between £100.01 and £130. The percentage, as well as the number of weeks an accused is expected to make contributions for, would vary depending on the seriousness of the crime. For example, someone pleading guilty in a Justice of the Peace Court (for less serious crimes) may be expected to contribute for eight weeks. Someone facing solemn charges (covering the most serious crimes) may be expected to contribute for 52 weeks.

The Lord President is Scotland’s most senior civil judge. He is the head of the judiciary in Scotland and chairs the Scottish Court Service (which has responsibility for managing the buildings, people and technology supporting the courts in Scotland).
The Bill will also introduce a new financial eligibility test covering Assistance By Way of Representation (ABWOR) in summary criminal cases (used for guilty pleas) and Criminal Legal Aid. This will align the separate tests currently used across the different aid types. According to the Scottish Government, this will make administration simpler and remove any perverse incentive to plead not guilty to access more generous legal aid provision. The test will look at disposable income (ie. income after a number of items of essential expenditure have been deducted). It will be based on “undue hardship” – meaning that legal aid will be available if paying defence costs will cause undue hardship to the accused or their dependants.

Currently, ABWOR is available on the basis of a financial assessment and an “interests of justice” test (which the Bill’s proposals do not change). Those with incomes above a certain threshold can be required to make a financial contribution towards their defence costs under ABWOR. Criminal Legal Aid is assessed using an “undue hardship” test (which is different in several technical respects from the test proposed in the Bill). This test is an “all or nothing” test – ie. if someone’s income is below the threshold, they qualify for full Criminal Legal Aid without any form of financial contribution and, if their income is above the threshold, they receive no assistance at all.

PARLIAMENTARY CONSIDERATION

The Justice Committee was designated lead committee for consideration of the Bill. The Committee issued a call for written evidence on 15 May 2012 and heard oral evidence from witnesses on 26 June 2012, 4 September 2012, 11 September 2012 and 18 September 2012.

The Finance Committee took evidence on the assumptions in the Financial Memorandum at its meeting on 5 September 2012. Its findings were summarised in a letter (2012a) to the Justice Committee dated 7 September 2012. In addition, the Subordinate Legislation Committee considered the powers contained in the Bill to bring forward subordinate legislation. Its report (38th Report 2012) laid out its conclusions, including recommendations that some of the discretionary powers contained in the Bill are more clearly defined.

The Justice Committee published its Stage 1 Report on 4 October 2012. Its recommendations and the Scottish Government’s response (2012b) are considered in more detail below. The Stage 1 debate took place on 25 October 2012. The key issues covered were: the appropriate balance between lay members and legal practitioners on the Scottish Civil Justice Council; the appointments procedure for such members; the appropriateness of the income threshold above which contributions would be payable for criminal legal assistance; the treatment of certain social security benefits when assessing income; and whether the requirement that solicitors collect contributions for criminal legal assistance would have knock on effects for the functioning of the justice system. The Cabinet Secretary for Justice agreed to bring forward Stage 2 amendments which would allow a lay member of the Scottish Civil Justice Council to become its deputy chair and which would place on the face of the Bill the requirement for a fair and open recruitment process for those Council members appointed by the Lord President.

Stage 2 consideration took place on 13 November 2012. The Bill as amended at Stage 2 was published on 14 November 2012.

ACTION BY THE LEGAL PROFESSION

Defence solicitors have been campaigning against the criminal legal assistance proposals contained in the Bill. Their key concerns are that the threshold above which a contribution will be collected has been set too low and that the proposal that solicitors should be responsible for collecting any contribution directly from clients is unworkable. These issues are discussed in more detail below, in the “Key Issues” section.
Solicitors campaigned outside the Scottish Parliament on 13 November 2012 (the date of Stage 2 proceedings) calling for the Bill to be amended. The Edinburgh Bar Association then staged a strike on 19 November 2012 to highlight their opposition to the Bill’s proposals (The Firm 2012). The industrial action took the form of refusing to represent accused people appearing in the “custody court” that day. The custody courts deal with people appearing directly from police custody.

Accused people appear in the custody courts to make a plea in relation to the offence(s) they have been charged with. The effect of a lack of legal representation is that such hearings may have to be adjourned (although accused people can also choose to enter a plea without legal representation). In some circumstances, accused may have to be taken back into custody pending the outcome of an adjourned hearing.

Cameron Tait, president of the Edinburgh Bar Association, explained the decision to take strike action thus (Rose 2012):

“No-one takes industrial action lightly, particularly in a recession, but we have been left with little option as our concerns have not been addressed, despite cross-party support from Holyrood’s justice committee. These changes could be disastrous for access to justice in Scotland, and for our profession.”

Strike action affecting the custody courts in Edinburgh, Glasgow and Paisley also took place on 27 November 2012 (BBC 2012). Further strike action, affecting custody courts across the country, took place on 3 December (MacAskill 2012a) and 17 December 2012 (MacAskill 2012b). In addition, several solicitors’ organisations, including the Edinburgh Bar Association, have written to the Scottish Legal Aid Board to indicate that its members will not be taking part in the police station duty scheme (a Board administered scheme which provides access to legal advice for those taken into police custody) in the first quarter of 2013.

**Correspondence with the Justice Committee** from the Cabinet Secretary for Justice, the Law Society for Scotland and the Edinburgh Bar Association outlines each party’s position. The Law Society has accepted Scottish Government proposals which raise the income threshold (above which a contribution will be payable) from £68 to £82 and increase the circumstances in which the Scottish Legal Aid Board will be responsible for collecting contributions (Law Society of Scotland 2013). Nevertheless, solicitors will remain responsible for collecting contributions in most summary cases. The Scottish Government’s proposals have not been accepted by the majority of solicitor organisations.

**KEY ISSUES AT STAGE 1 AND STAGE 2**

The table below (Table 1: key issues at Stage 1 and Stage 2) outlines the Justice Committee’s recommendations on the Bill at Stage 1, the Scottish Government response and how the issue was addressed at Stage 2. It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far. It is not a comprehensive discussion of all the concerns raised.
### Table 1: key issues at Stage 1 and Stage 2

<table>
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<th>Issue</th>
<th>Stage 1 Report and Scottish Government Response</th>
<th>Action at Stage 2</th>
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<td><strong>PART 1 – SCOTTISH CIVIL JUSTICE COUNCIL (SCJC)</strong></td>
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<td><strong>Status of the SCJC</strong></td>
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<td>It was argued by some stakeholders that the SCJC should be a non-departmental public body (NDPB), on the basis that this would enhance transparency and accountability in relation to its operations. The Bill designates it as a “statutory body”</td>
<td>The Committee was satisfied with the Cabinet Secretary for Justice’s explanation that, as a body intended to be accountable to the Lord President rather than Scottish Ministers, it was not appropriate that the SCJC should be an NDPB.</td>
<td>No action.</td>
</tr>
<tr>
<td><strong>Functions of the SCJC</strong></td>
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<tr>
<td>Stakeholders raised concerns about the mix of powers given to the SCJC. There was argument over whether the provision of advice to Scottish Ministers should be a “power” or a “function”. The same was true over whether keeping the justice system fair, accessible and efficient should be a “principle” or a “function”. There were also calls for the SCJC to have a specific power to carry out research and to have an obligation to consult in all circumstances.</td>
<td>The Committee was satisfied that the SCJC had the right mix of powers to allow it to do its job flexibly.</td>
<td>Amendments 25, 26, 27, 29 and 30, in the name of Jenny Marra MSP, sought to rearrange the SCJC’s powers and responsibilities. In particular, they specified that the Council’s functions included giving advice and recommendations to Scottish Ministers and that it must consult before preparing draft rules of court. These amendments were disagreed to. Amendment 28 in the name of Jenny Marra MSP, giving the SCJC a power to make proposals for research, was agreed to.</td>
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<td>Some stakeholders called for the Court of Session’s power to reject or amend draft court procedure rules prepared by the SCJC to be limited. It was argued that the Court of</td>
<td>The Committee accepted assurances from the Lord President that it was extremely unlikely that the Court of Session would reject rules drawn up by the SCJC.</td>
<td>No action.</td>
</tr>
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Session should at least give reasons to the Council where it rejected or amended draft rules.

The SCJC’s so-called “policy remit” – its power to keep the civil justice system under review and to advise the Lord President and Scottish Ministers in relation to its future development – was welcomed by stakeholders. However, some felt that the boundaries between what it was appropriate for the SCJC to do and what was within the jurisdiction of Scottish Ministers and the Scottish Parliament was unclear.

The Committee stated that it was “largely reassured” that the SCJC’s policy remit in relation to the functioning of the civil justice system was predominately advisory, allowing the major decisions to continue to be taken by Scottish Ministers and the Scottish Parliament.

The Scottish Government response noted that the SCJC’s remit should be seen in the context of the role of the Lord President, to whom it would be offering advice. According to the Judiciary and Courts (Scotland) Act 2008, the Lord President has a duty “for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts”.

Amendment 25 was disagreed to.

Amendment 12, brought forward by Margaret Mitchell MSP, sought to ensure that the SCJC did not become a “statutory consultee”, whereby Scottish Ministers would be required to consult it when taking forward civil justice issues. Amendment 12 was withdrawn.

## Composition of the SCJC

The biggest area of concern for stakeholders was the composition of the SCJC, with most wanting better representation for their sector. There was consensus among non-lawyer stakeholders that the Council should have a 50/50 split between lawyers and lay-persons in order to ensure the interests of those outside the legal profession were adequately represented.

The Committee concluded that the SCJC’s job would at first be dominated by writing court rules, which justified the heavy membership from the legal profession. However, it expected that membership would adjust over time to reflect the changing remit of the Council. It also welcomed the Lord President’s assurances that he would reflect a wide range of interests when choosing the six “Lord President members”.

Amendments 31 to 34, in the name of Jenny Marra MSP, proposed to change the balance between legal and lay members of the SCJC. They limited the number of legal professionals in various categories and increased the number of “Lord President members” from six to eight (with a maximum of 10). The amendments were disagreed to.
range of people to have an input. The Scottish Government noted that the SCJC's rules-drafting function meant the technical expertise of lawyers was necessary. It also acknowledged that it may be appropriate to adjust the Council's membership after the programme of civil courts reform had been implemented.

### Appointment

Another key area for stakeholders was the process to be used to appoint SCJC members. The Bill requires the Lord President to publish a “statement of appointment practice”.

Most stakeholders called for an open and transparent recruitment process which reflects the principles laid out by the Office of the Commissioner for Public Appointments in Scotland. This, it was argued, would ensure that the best qualified people from a wide range of backgrounds are recruited to fill the posts.

During his evidence to the Committee, the Lord President gave his assurance that his statement of appointment practice would reflect the principles of the Public Appointments Commissioner.

The Committee welcomed the Lord President’s assurances. However, it invited the Scottish Government to consider whether such appointment principles should be embedded in legislation.

The Scottish Government noted that the guidance issued by the Public Appointments Commissioner was non-statutory and changed from time to time. It did not consider it appropriate to bind the Lord President in primary legislation to something changeable and not designed for the same purpose (the Public Appointments Commissioner regulates appointments by Scottish Ministers only).

The Scottish Government also noted that the Lord President must consult Scottish Ministers before appointing or removing consumer or “Lord President” members. The Law Society or Faculty of Advocates must be consulted regarding the appointment of solicitors or advocates.

Amendment 35 from Jenny Marra MSP sought to ensure gender parity on the SCJC by requiring that at least 40% of members were women and 40% men. It was disagreed to.

Government amendment 5 sought to put on the face of the Bill the requirement that the appointment process be fair, open and accessible. Amendment 13 in the name of Margaret Mitchell MSP explicitly required the statement of appointment practice to reflect Public Appointments Commissioner principles and for consultation with the Public Appointments Commissioner to take place. The Committee agreed to Government amendment 5 and disagreed to amendment 13.

### Chairing meetings

There was a view that the deputy chair of the SCJC should be capable of being a lay-

The Committee recommended that it should be up to the SCJC to choose its deputy chair, Scottish Government amendment 9 removed the requirement for a judicial member to be
person, with some stakeholders calling for the chair to be a lay-person. The Bill as introduced required that judges held both positions. but that it should be possible for the individual to be a lay-person. The Scottish Government agreed and stated its intention to bring forward an amendment to remove the requirement for the deputy chair to be a member of the judiciary. the deputy chair. Amendment 9 was agreed to.

**Administrative justice**

The Policy Memorandum to the Bill envisaged that the SCJC could, in the future, take administrative justice (including tribunals) into its remit. This was motivated, at least in part, by the UK Government’s decision to abolish the Administrative Justice and Tribunals Council, which currently has an oversight role in this area.

The Bill makes no provision for the SCJC to have an administrative justice role. It remains unclear what, if any, aspects of administrative justice may come under the Council’s remit in the future.

The Committee noted that the tribunal reform agenda in Scotland created uncertainty about the best model for future oversight of administrative justice, meaning that it was not necessarily appropriate for the SCJC to take on a role at this point. It further noted that the Scottish Government intended to create a non-statutory advisory committee to provide input on administrative justice while longer-term solutions were considered.

The Committee proposed that it would keep a watching brief on this issue.

No action.

**PART 2 – CRIMINAL LEGAL ASSISTANCE**

“Scheme of eligibility” for summary criminal Assistance By Way of Representation (ABWOR)

Section 18 of the Bill allows the Scottish Legal Aid Board (SLAB) to draw up a “scheme of eligibility” setting out who may qualify for ABWOR under the new “undue hardship” test. The Subordinate Legislation Committee called this a “significant power” The Justice Committee agreed with the Subordinate Legislation Committee’s conclusion.

The Scottish Government noted that the guidance covered by the scheme would develop and change over time, and it may be

The Subordinate Legislation Committee considered the Scottish Government’s response at its meeting on 23 October 2013 (without sight of the draft scheme of eligibility). It decided to take no further action.

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2 Administrative justice covers a wide range of dispute resolution methods, including tribunals, ombudsmen and public sector complaints procedures. It predominately deals with disputes between citizen and state (such as social security benefit decisions). However, there are some notable exceptions, for example, employment tribunals and the Private Rented Housing Panel.
and recommended that it be exercised using subordinate legislation. necessary to change it quickly in response to emerging issues. The scheme would not be able to achieve this level of flexibility if changes had to be brought forward through subordinate legislation.

The Scottish Government undertook to provide a draft scheme in advance of Stage 2 and invited the Subordinate Legislation Committee to reconsider the matter then.

<table>
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<th>Fairness of principle of requiring contributions to criminal legal assistance</th>
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<td>A number of stakeholders, including the Law Society, accepted in principle that it was fair to expect those who could afford to to make a contribution to their legal aid defence costs. Others, including the Edinburgh and Glasgow Bar Associations (representing criminal defence solicitors) did not. The Justice Committee accepted that, in principle, requiring contributions was fair. However, it noted that the system must be “proportionate to the means of the individual and […] sufficiently flexible to take into account particular personal circumstances.”</td>
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| Some stakeholders, most notably the Faculty of Advocates, called for any contribution to be refunded if an accused person was acquitted. This allowed the accused, as far as possible, to be restored to the position they were in before the prosecution. The Faculty of Advocates argued that no system of contributions could be fair unless this safeguard was in place. The Committee noted that people pursuing or defending civil court action could expect to recover their expenses if they were successful. It called on the Scottish Government to reconsider whether the recovery of contributions in certain situations where an accused had been acquitted might be appropriate. The Scottish Government stated that the refund of defence costs had never been a feature in Scots criminal law. Instead, prosecutions were considered to be brought in the public interest. It also considered that the issue of refunding costs where the defence was privately funded would have to be addressed as part of any solution. The | Amendment 45, from Graeme Pearson MSP, proposed that a contribution towards criminal legal assistance would be refunded where a person was acquitted and where the court considered it in the interests of justice to do so. Amendment 45 was withdrawn. Amendment 23, in the name of Margaret Mitchell MSP, sought to allow a refund of contributions in all cases where a person was not found guilty (including where an accused was acquitted, the case was not proven or where the case was not taken forward for other reasons). Amendment 23 was also disagreed to. The Cabinet Secretary agreed to discuss the matter of refunding defence costs further with |
Scottish Government considered that such provision would be beyond the scope of the current Bill. The Scottish Government argued that if, as proposed by the Committee, defence costs were only refunded in some cases, this may be perceived by the public as an indication that a not guilty verdict had more weight where someone received a refund than where they did not.

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<th>Contribution levels</th>
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<td>The Bill sets a disposable income threshold of £68 and a disposable capital threshold of £750. A contribution towards defence costs has to be made where the accused has disposable income or capital above these levels. Actual contribution levels vary depending on the level of disposable income and the seriousness of the offence. Many stakeholders argued that the threshold for contributions had been set too low, requiring people who could not afford it to make a contribution.</td>
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<td>The Committee considered it was important that thresholds should be reviewed regularly to ensure that an ever increasing number of people were not required to pay contributions. It noted that the Cabinet Secretary had committed to regular reviews.</td>
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<td>Amendments 19 and 20, from Margaret Mitchell MSP, would require the Scottish Government to define what constituted “disposable” income and capital in regulations. The Cabinet Secretary for Justice argued that disposable income and capital already required to be defined in detail in regulations and therefore the amendments were unnecessary. Amendments 19 and 20 were disagreed to.</td>
</tr>
<tr>
<td>Amendments 41 to 44, in the name of Jenny Marra MSP, sought to remove the £68 and £750 thresholds from the face of the Bill, allowing for the threshold to be set in regulations instead. Amendments 41 to 44 were disagreed to.</td>
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The Cabinet Secretary agreed to enter into discussions with the Law Society regarding options for raising the disposable income threshold. The results of negotiations are discussed above in the “Action by the Legal Profession” section.

Amendments 41 to 44, in the name of Jenny Marra MSP, sought to remove the £68 and £750 thresholds from the face of the Bill, allowing for the threshold to be set in regulations instead. Amendments 41 to 44 were disagreed to.

The Cabinet Secretary agreed to enter into discussions with the Law Society regarding options for raising the disposable income threshold. The results of negotiations are discussed above in the “Action by the Legal Profession” section.

Amendments 19 and 20, from Margaret Mitchell MSP, would require the Scottish Government to define what constituted “disposable” income and capital in regulations. The Cabinet Secretary for Justice argued that disposable income and capital already required to be defined in detail in regulations and therefore the amendments were unnecessary. Amendments 19 and 20 were disagreed to. |
The Scottish Human Rights Commission noted that, in principle, the Bill could be human rights compliant. However, whether it was in practice would depend on whether those being required to make a contribution could genuinely afford to do so.

The Commission argued that more information about the evidence considered by the Scottish Government when setting the threshold was necessary to properly scrutinise the human right implications of the Bill.

The Committee asked the Scottish Government for more information on the evidence used to inform threshold levels.

The Scottish Government stated that the £68 threshold was broadly based on the personal allowance for income support (a means-tested social security benefit), and this was reflected across other forms of legal aid. In addition, it had wished to avoid sharp differentials, where a small increase in income or capital resulted in a large increase in contribution. This had been achieved by graduating contributions in income bands – for example 20% of income between £68 and £100.

See above.

The Policy Memorandum proposed that non-income-based social security benefits would be considered as part of the income calculation. The Scottish Government subsequently agreed that Disability Living Allowance and (during the Stage 1 debate) war pensions would be disregarded.

In its response, the Scottish Government renewed its commitment to disregard Disability Living Allowance. On top of this, any additional disability-related costs (not covered by Disability Living Allowance) would also be considered in the calculation for disposable income.

No action.

Collection of contributions

The biggest issue for solicitors was the Bill’s proposal that they should collect contributions from clients in summary criminal cases. They argued that:

- they had no powers to recover contributions from clients. In effect, the proposals were a cut in fees as they would

The Committee asked the Scottish Government to reflect further on the proposal that the Scottish Legal Aid Board, rather than solicitors, collect contributions (although it noted that there would be significant resource implications for the Board).

The Scottish Government reasserted its view

Amendments 14 to 18 and 21 and 22, in the name of Margaret Mitchell MSP, sought to require the Scottish Legal Aid Board to assess and collect contributions towards criminal defence costs, thus removing this burden from solicitors. The amendments were disagreed to. However, the Cabinet Secretary for Justice agreed to discuss further the

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3 Social security benefits other than income-based jobseeker’s allowance, income support and income-related employment and support allowance.

4 Summary procedure is used for less serious criminal cases. The vast majority of most solicitors’ work relates to summary criminal cases.
be forced to write contributions off
- requiring payment of contributions would cause a breakdown in the relationship of trust between a solicitor and their client meaning, for example, that it would be more difficult for a solicitor to persuade someone that it was in their best interests to plead guilty
- solicitors would have no choice but to withdraw services from clients who did not pay. This would result in unnecessary and expensive delays in other parts of the justice system

that solicitors were likely to have procedures in place already to collect fees from clients and that their direct relationship with their client would expedite this process. It noted that, in its view, if the Scottish Legal Aid Board were to collect contributions, this did not mean that solicitors would be paid upfront. Instead, solicitors would have to wait until the contribution had actually been recovered from the client

The Scottish Government further noted that 82% of clients were not expected to have to make a contribution. Where a contribution was required, it would, in most cases be low.

issues around collection of contributions with the Law Society for Scotland.

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<th>Impact on the wider criminal justice system</th>
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<tr>
<td>Following on from concerns about the practicalities of collecting contributions, solicitors argued that the proposals as they stood would impact negatively on other parts of the justice system. Solicitors foresaw more adjournments because an agent had withdrawn from representing a client, or had not completed pre-trial work due to not having been paid. They also predicted that more accused people would represent themselves, raising issues around the right to a fair trial as well as causing delays in the justice system. Delays and adjournments would impact on police and witnesses, who would have to attend at court more often. They would also generate additional costs in judges' and court time.</td>
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<tr>
<td>The Committee noted that it was important for any savings made to legal aid not to be cancelled out by increased costs in other parts of the justice system. It called for the changes to be carefully monitored and for Scottish Ministers to report to the Scottish Parliament three years after the proposals take effect. That report should look at the functioning of the summary criminal justice system and access to justice (for example in rural areas).</td>
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<tr>
<td>The Scottish Government committed to reporting on the implementation of the Bill. The Scottish Government considered it unlikely that courts would be prepared to adjourn because a solicitor had not been paid. It noted that the introduction of contributions in England had not caused an increase in unrepresented accused people.</td>
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<tr>
<td>Amendment 24, in the name of Margaret Mitchell MSP, sought to formally include a review clause in the Bill requiring Scottish Ministers to lay a report before the Scottish Parliament within three years of Part 2 of the Bill coming into force. The report would include information about the impact of the legislation on the functioning of the justice system and access to justice. Amendment 24 was disagreed to.</td>
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SOURCES


RELATED BRIEFINGS

SB 12-36 Scottish Civil Justice Council and Criminal Legal Assistance Bill (634KB pdf)
SB 11-58 Legal Aid (707KB pdf)

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