SPICe
The Information Centre

SPICe Briefing
Courts Reform (Scotland) Bill

13 March 2014

14/23

Abigail Bremner, Angus Evans and Sarah Harvie-Clark

The Courts Reform (Scotland) Bill proposes a number of reforms to court structure, organisation and procedure, as recommended by Lord Gill's Scottish Civil Courts Review (also known as the Gill Review). Its key proposals are:

- an increase in the jurisdiction of the sheriff courts so that cases with a value of £150,000 or less are heard there rather than in the Court of Session
- the creation of a new judicial tier in the form of the "summary sheriff", who will deal with less serious criminal cases and less complex civil matters
- the creation of a Sheriff Appeal Court to hear appeals from the decisions of sheriffs in civil and summary criminal matters. Permission will be required before appeal to a superior court is possible
- increased sheriff specialisation, both in the form of specialisation by individual sheriffs and specialist courts, such as the proposed specialist personal injury court

The Scottish Parliament
Pàrlamaid na h-Alba

CONTENTS

EXECUTIVE SUMMARY

The Courts Reform (Scotland) Bill was introduced on 6 February 2014 by the Scottish Government. It proposes a number of reforms to court structure, organisation and procedure, as recommended by Lord Gill's Scottish Civil Courts Review (also known as the Gill Review).

The Gill Review made a raft of recommendations designed to improve the efficiency, effectiveness and proportionality of Scotland's civil courts. The Bill takes forward a number of the structural changes recommended by Lord Gill. However, it does not do everything outlined in the review. In some cases, work is being taken forward in other ways. It is expected that the bulk of the changes will be achieved through modernised rules of court, and the Scottish Civil Justice Council is responsible for this work. Projects being taken forward under the Scottish Government's "Making Justice Work" programme will also make significant contributions. However, the Scottish Government has also chosen to deviate from the Gill Review recommendations in some instances.

The Bill is expected to result in cost-savings in the medium term, primarily in relation to judicial salaries as work is shifted from the Court of Session to the sheriff courts and from sheriffs to "summary sheriffs". However, there will be short-term start-up costs. Funding for the structural changes is expected to come, in the main, from the Scottish Court Service through increased court fees. However, most of the cost-savings will accrue to the Scottish Government rather than the Scottish Court Service.

One of the key reforms taken forward by the Bill is a proposal to increase the "exclusive" (or privative) jurisdiction of the sheriff courts so that cases with a value of up to £150,000 must be heard there. The current privative jurisdiction of the sheriff courts is £5,000. It is therefore envisaged that a significant proportion of the business currently carried out in the Court of Session will be transferred to the sheriff courts.

The Bill also proposes to create a new judicial office known as "summary sheriff". It is intended that summary sheriffs will, broadly, be responsible for summary (i.e. less serious) criminal business and civil cases proceeding under the new simple procedure (i.e. lower value cases). Summary sheriffs will also have jurisdiction to deal with other types of cases, including certain procedural matters arising under solemn procedure (for more serious criminal cases), family matters and interim orders in civil cases. Summary sheriffs will share their jurisdiction with sheriffs so that sheriffs will be able to undertake all business in situations where no summary sheriff is available, or in locations where none have been appointed.

The Gill Review envisaged greater specialisation among sheriffs and summary sheriffs. The Bill brings forward proposals that would allow the Lord President (the head of the civil courts in Scotland) to declare certain subject areas as suitable for specialisation. Sheriffs principal would then be able to designate sheriffs to fill these specialist roles. It would be left to the discretion of sheriffs principal as to whether any specialists in a particular area should be designated, in recognition of the fact that business in certain locations may not justify it. It is expected that, in time, every sheriffdom will have sheriffs specialising in personal injury and family cases.

The Bill also contains proposals to enable Scottish Ministers to create specialist sheriff courts with an all-Scotland jurisdiction. These courts will be able to sit anywhere in Scotland. In

practice, these powers will be used to create a specialist personal injury court. It is anticipated that much of the business transferred from the Court of Session to the sheriff courts as a result of the increase in the latter's privative jurisdiction will be personal injury business and will be dealt with by the new specialist court. The proposals will enable civil jury trials (which are currently only available in the Court of Session) to be held in specialist sheriff courts.

The Bill proposes to create a Sheriff Appeal Court to be presided over by sheriff principals and experienced sheriffs. Appeal from a sheriff's judgment will progress first to the Sheriff Appeal Court and only then – if permission is granted – to the Court of Session. Onwards appeal to the UK Supreme Court will also only be possible if permission is granted. Decisions of the Sheriff Appeal Court will be binding on all sheriffs, in contrast to the current position, where decisions of sheriff principals are only binding on the sheriffs sitting in that sheriffdom. It is envisaged that the Sheriff Appeal Court will hear civil appeals sitting in the sheriffdom where the case originated.

The Sheriff Appeal Court will also hear all criminal appeals from cases dealt with under summary criminal procedure. Onwards appeal to the High Court of Justiciary will be subject to permission being granted.

The Bill makes provision in relation to the procedure to be followed in the civil courts, including: mandating the creation of a new "simple procedure" to replace small claims and summary cause procedure; enabling lay representation (representation by someone who is not a lawyer) for certain legal entities; and creating new procedures for dealing with vexatious litigants. It will also give the Court of Session new procedural rule-making powers, which are intended to be wide enough to enable the modernisation of court rules envisaged by the Gill Review to be taken forward. In addition, it proposes changes to judicial review through the introduction of a three month time limit to present a petition (although the court will be able to exercise discretion to allow a petition to be presented outside this timeframe) as well as a "sifting" process under which a judge will consider the merits of a petition before it is allowed to proceed.

Finally, the Bill proposes a merger between the Scottish Court Service and the Scottish Tribunals Service. The Scottish Government states that the purpose of the merger is to protect the independence of the Scottish Tribunals Service rather than to generate cost-savings.

INTRODUCTION

The Courts Reform (Scotland) Bill was introduced in the Scottish Parliament by Kenny MacAskill MSP on 6 February 2014. It proposes a number of reforms to court structure, organisation and procedure, as recommended by Lord Gill's Scottish Civil Courts Review (see below). The Justice Committee has been designated as the lead committee for Stage 1 scrutiny. The Committee issued a call for evidence, seeking views on the proposals contained in the Bill, on 18 February 2014. The deadline for submitting written evidence is 18 March 2014.

THE CIVIL COURT SYSTEM

The civil court system in Scotland is described in the SPICe briefing "The Scottish Civil Court System" (Harvie-Clark 2014), which should be referred to for more detailed information. What follows is a brief overview. The Bill proposes a number of changes to the set-up described below. These are discussed in other parts of this briefing.

The court system is divided into criminal and civil matters, although often the same judicial personnel sit in the same buildings when deciding both criminal and civil cases. The criminal courts deal with the trial and (where found guilty) punishment of those accused of crimes. The civil courts deal with disputes about rights and obligations between people/organisations. Examples of subjects dealt with under the civil law include contracts, personal injury, divorce and housing rights.

Civil matters are dealt with by the sheriff courts and the Court of Session, with a right of appeal to the UK Supreme Court. The sheriff courts have a local presence in Scotland's cities and towns whereas the Court of Session sits only in Edinburgh. Particular cases (usually less complex cases or cases with a low monetary value) are heard for the first time ("at first instance") in the sheriff courts. In most cases there will be a right of appeal to the Court of Session, sometimes via the sheriff principal, who heads up the sheriff courts in a particular area. Some cases (such as judicial review or those with a higher monetary value) must be heard for the first time in the Court of Session. These are heard first by the "Outer House" of the Court of Session, with a right of appeal to the "Inner House" of the Court of Session. In both cases, there is a further right of appeal to the UK Supreme Court.

An individual can represent themselves in any court (in which case, they are known as a "party litigant"). However, in all but the simplest of cases, it is usual to be represented by a solicitor. Where a case is heard by the Court of Session, it is necessary to engage an advocate[1] (also referred to as "counsel") as well as a solicitor to present a case. Advocates specialise in presenting arguments to the Court of Session. Legal aid may be available to those with low and moderate incomes to help with some of the costs of court action.

The costs of engaging lawyers to present a legal case can be significant. In addition, it is usual practice for the losing party in a civil court case to be responsible for paying the wining party's legal expenses in relation to the case. Thus, someone involved in civil court action can be exposed to considerable financial risk.

[1] It is also possible to be represented by a "solicitor-advocate" or one of a limited number of other specialists who have "rights of audience" in the Court of Session.

THE GILL REVIEW

The Scottish Civil Courts Review (or "Gill Review") was initiated in 2007 by the then Scottish Executive under the leadership of Lord Gill. Its remit was to "review the provision of civil justice by the courts in Scotland, including their structure, jurisdiction, procedures and working methods (…)" with a view to improving access to justice in a manner which was effective, efficient and proportionate.

The final report of the Scottish Civil Courts Review (SCCR) was published in 2009. It made a raft of recommendations which deal in detail with the principles, structures and procedures which it argues should underpin the delivery of civil justice in Scotland. The review report covers two volumes. Very generally, its recommendations for civil justice can be summarised as follows:

- changes to the jurisdiction of the sheriff court so that most claims with a monetary value of £150,000 or less must be raised there. This will have the effect of removing lower value cases from the remit of the Court of Session
- the introduction of a third tier of judges to deal with straightforward and low value claims. Cases would be redistributed across the three court tiers on the basis of their complexity and value
- increased powers for judges to fix the manner and timescales in which a case will be dealt with by the court ("case management" powers)
- increased use of IT – such as telephone conference calls and electronic submissions – to improve the efficiency of the courts
- greater specialisation of judges at the sheriff court level, including the creation of a specialist personal injury court and a Sheriff Appeal Court
- increased support for party litigants through simpler court rules, better on-line information, in-court advice services and provision for "lay representation"[2]
- modernisation of court procedure to allow, for example, for multi-party (or "class") actions

The Scottish Government responded (2010) to the Gill Review, broadly accepting its recommendations while noting that financial constraints would limit its ability to deliver on some proposals. This Bill proposes to create the structure envisaged by Lord Gill, including a third tier of summary sheriffs, specialist courts and a re-organisation of court business. It also proposes to create court rule making powers that are sufficiently flexible to allow court procedure to be modernised.

However, the Bill does not seek to implement all the recommendations of the Gill Review, and in some cases is departing from them. It should also be noted that a number of recommendations are being taken forward in other ways, for example, through modernisation of the rules of court by the Scottish Civil Justice Council (discussed in more detail below). Table 1 below tracks some of the key departures and omissions.

[2] Lay representation refers to allowing someone who is not a lawyer to present a case in court for a third party. Lay representatives can be semi-professionals in their field but are more usually friends of the party or representatives of voluntary or advice organisations which the party has consulted.

Table 1: Key Gill Review recommendations where the Scottish Government approach departs from the recommendation

Topic	What the Gill Review recommended	The Scottish Government's approach
Part-time judicial resources	Elimination or substantial reduction in part-time/ temporary judicial resources (recs 1 and 2).	Continued role for part-time sheriffs; section 8 removes the existing limit on the number of part-time sheriffs.
Jurisdiction of summary sheriffs	Actions for £5,000 or less, housing actions, family actions and appeals/referrals from children's hearings (recs 39 and 40).	Broader in some respects (e.g. adoption proceedings added), narrower in others (e.g. private rented sector housing actions will now go to a new tribunal) (section 43 and schedule 1).
Sheriff Appeal Court	Appeal Court to hear civil appeals locally (rec 13); Only sheriff principals to be Appeal Sheriffs (rec 9); Bench of three for civil appeals (rec 12).	The Bill is flexible on the number of judges who will hear a case (section 97) and location for civil appeals (section 55). Sheriffs are eligible to be Appeal Sheriffs (sections 49).
Access to publicly funded support services	Enhanced access to justice for party litigants through various means (e.g in-court advisers) (chapter 11); greater role for mediation and other forms of ADR (chapter 7; recs 77 and 78).	Some relevant work ongoing via the "Making Justice Work" programme, but subject to significant budgetary constraints.
Protective expenses orders	Express powers to be conferred on the court to make orders restricting liability for the other side's expenses in public interest litigation (rec 155 and 156).	New rules of court address this issue in relation to specific EU Directives. Taylor Review argues for judicial discretion, except if prescribed by court rules for specific cases (rec 37).
Bar reporters and related appointments	Reform of the regulation of the system of bar reporters (and similar appointments) in family cases (rec 74).	Children's Hearings (Scotland) Act 2011 applies to safeguarders. Working Group set up for bar reporters and other appointments but no publicly available timescale for this work.
Simple procedure	Simplified procedure to replace current small claims and summary cause procedures (rec 79); should apply to all housing cases (rec 88); legal aid to be available regardless of value (rec 203)	Higher value housing cases will be excluded; legal aid excluded for cases worth £3,000 or less.

SCOTTISH CIVIL JUSTICE COUNCIL

A previous piece of Scottish Parliament legislation – the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 – created the Scottish Civil Justice Council (SCJC). The creation of such a body was recommended by Lord Gill, and it is tasked with (and is indeed in the process of) creating the new court rules which will underpin the modernisation of the civil court system. Many of the changes envisaged by Lord Gill will, in practice, be delivered by changes in court practices and procedures flowing from modernised court rules, rather than by the structural changes proposed in the current Bill. The work of the SCJC is therefore key to the reform process.

The SCJC replaced the Sheriff Court and Court of Session Rules Councils. Those bodies had a membership which was largely drawn from the legal profession. The SCJC has an expanded

membership which provides the opportunity to include a wider range of interests such as academics, particular interest groups and those involved in the litigation process outwith the legal sphere, such as insurance companies.

According to the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, the SCJC has the following functions:

- to keep the civil justice system under review
- to review the practice and procedure followed in proceedings in the Court of Session and in civil proceedings in the sheriff court
- to prepare and submit to the Court of Session draft civil procedure rules
- to provide advice and make recommendations to the Lord President on the development of, and changes to, the civil justice system
- to provide such advice on any matter relating to the civil justice system as may be requested by the Lord President

It is argued that this remit is wide enough to ensure not only that the Gill Review changes can be implemented but that civil court procedure continues to be kept up-to-date through an ongoing process of review and reform.

The SCJC has published a programme of work for 2013/14 (2013). Its priority areas for work include: the implementation of major justice system reforms (such as the current Bill); implementation of other Bills currently going through the legislative process; re-writing the current civil court rules to modernise and simplify court procedure; and taking forward other improvements to court procedures which would not require legislative authority. The Financial Memorandum which accompanies the current Bill (paragraph 159) estimates that developing the court rules to implement these reforms will make up 80% of the SCJC's workload in 2014-15 and 2015-16.

ACTIVE CASE MANAGEMENT

A big part of the vision laid out in the Gill Review was a move from what is, broadly speaking, current court practice in Scotland, where the parties set the pace of litigation, to what is known as "active case management". In the past, it was generally considered to be properly up to the parties to decide how a case should progress. If they wished to delay before progressing to the next stage of court action, or devote their attention to preparing a case in a particular way, then that was up to them. The judge's role was considered to be akin to that of a referee – essentially to ensure that neither side broke the rules rather than directing them on how to play the game. However, it is now recognised that parties' decisions on how to take forward litigation impact not just on their own case but on the resources of the court, including the resources the court has to take forward other cases.

Under active case management, the judge takes an active role in managing the progress of litigation through the courts. This will usually involve holding case management conferences with the parties before the first court hearing and at stages during any litigation which may follow. The judge's role is to focus the parties' attention onto what s/he considers the key issues to be, on what procedures would be appropriate for taking these forward and what evidence may be sufficient to deal with the matters raised. The judge will usually also set a timetable, with the expectation that the parties will do the necessary preparation to meet the deadlines set. There are sanctions available against parties (and their solicitors) who fail to meet agreed requirements.

It is argued that active case management results in more efficient use of court resources, as well as delivering quicker decisions. This is because a judge is taking a role in directing what issues the court wishes to deal with, thus preventing the parties becoming distracted by side issues and using up court time on matters which do not, ultimately, progress the resolution of their case. An example of how litigation can progress in an unhelpful manner might be a situation where there are protracted arguments over conflicting expert evidence which does not result in the court having a greater understanding of the issues involved in the case.

It is also necessary to differentiate between active case management and "case flow management". Case flow management is a different way to process court cases and is considered suitable for areas of large volume, routine work. It involves the setting of a timetable for the case to proceed (with sanctions for non-compliance), standard procedural features, and limited judicial involvement except at the request of the parties. Chapter 43 of the Rules of the Court of Session, which cover personal injury cases, exemplifies case flow management. It is intended that personal injury actions will continue to be dealt with in this manner after the court rules have been modernised. The equivalent procedure in the sheriff court (Ordinary Cause Rules, Chapter 36) will be used for cases dealt with by the proposed specialist personal injury court (discussed below).

The Bill contains powers to allow the Court of Session to make the necessary court rules to implement active case management. However, the work of transforming the way litigation takes place will be carried out by the Scottish Civil Justice Council. It will be responsible for recommending court rules which modernise all aspects of court procedure. Thus, the implementation of Gill's vision will be dependent, not only on the passage of the current Bill, but on on-going work to re-write court rules.

MAKING JUSTICE WORK

"Making Justice Work" is an overarching Scottish Government work programme bringing together various justice-related projects. It includes projects dealing with both criminal and civil justice. It is intended to enable a co-ordinated approach, both in relation to a number of large-scale reforms and between a variety of organisations working in the justice sphere. Those involved include the police, the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board, the judiciary, the Scottish Tribunals Service and the Scottish Court Service.

The project structure is an explicit recognition that the interests of justice organisations are linked so that a change made by one organisation may impact on another. For example, changes to legal aid eligibility may affect the number of cases dealt with by the Scottish Court Service.

There are six overarching themes (each comprising a number of different projects). Implementation of the Gill Review is covered under several strands. For example, the SCJC is represented on the project board overseeing the delivery of efficient and effective court structures as civil court reform is key to this work (SCJC 2013, paragraphs 27-28). The "Making Justice Work" themes are as follows:

- **delivering efficient and effective court structures** – creating a proportionate court structure (covering both civil and criminal cases) to ensure that cases are heard in the most appropriate court given their complexity and value

- **improving court procedures** – modernising court procedures and introducing effective case management (where judges set the processes and timescales under which a case will be progressed) to provide for efficient use of court time

- **widening access to justice** – this covers, among other things, providing support and advice to citizens to deal with legal problems and enabling alternative dispute resolution mechanisms

- **digital strategy** – using information and communications technology to allow quick, easy and efficient access to justice for court users

- **tribunal reform** – establishing a Scottish Tribunals Service by merging the administrations of a number of existing tribunals

- **parole change project** – reform of the parole service

TAYLOR REVIEW

The Gill Review contained a recommendation (SCCR 2009, chapter 14) that a working group should be established to look at the cost and funding of litigation. There were concerns that the overall cost of litigation was acting as a barrier to access to justice, as was the fact that only a proportion of the actual legal expenses incurred by the successful party in a court action were recoverable from the losing party. A review in England and Wales had resulted in significant changes to legal costs policies there. The working group was specifically tasked with looking at alternative options, such as an expansion of "no win, no fee" arrangements and reconsideration of the rule that the losing party should pay the winning party's legal expenses in all circumstances.

The Scottish Government appointed Sheriff Principal Taylor to undertake the review in 2011. His remit was "to review the costs and funding of civil litigation in the Court of Session and Sheriff Court in the context of the recommendations of the Scottish Civil Courts Review, and the response of the Scottish Government to that review [. . .]". Sheriff Principal Taylor consulted widely with interested parties during the course of his deliberations. The final report ("Review of Expenses and Funding of Civil Litigation in Scotland") was issued in 2013.

The Taylor Review is an in-depth discussion of issues around legal expenses in Scotland, covering a variety of technical areas. Its main recommendations are as follows:

- that solicitors in Scotland should be able to enter into "damages-based agreements" (also known as "contingency fees") allowing them to take a percentage of a client's damages award should the case be won (on the basis that no fee would be charged should the case be lost)[3]

- that "one way costs shifting" should operate in most circumstances in personal injury cases (including clinical negligence), meaning that the pursuer (usually an individual) would not be responsible for paying the defender's legal costs should the pursuer lose but that the defender would remain liable for the pursuer's legal costs should the defender lose

- that it should remain possible for solicitors in Scotland to pay referral fees to third parties for the referral of business (subject to regulation). This practice has been banned in England and Wales

- that claims management companies operating in Scotland should be regulated

[3] Note that solicitors in Scotland can currently enter into "speculative fee arrangements" which allow no fee to be charged if the case is lost and a success premium of a maximum of 100% of the fee to be charged if the case is won.

- that pilot schemes should be established to allow for the quicker and more realistic assessment of legal expenses in commercial cases and that judges' proposed case management powers should be used to actively manage expenses at each stage of an action

- that a system of fixed fees (where the legal expenses that are recoverable are set at a fixed amount depending on the value of the claim) should be introduced for the new "simplified" procedure[4] recommended by Lord Gill

- that "protective expenses orders" (limiting a person or group's liability for the other party's legal expenses to a specific figure) should be available in cases raising a matter of public interest. It should be up to the court to set the cap except if specific court rules or obligations (such as the Aarhus Convention dealing with access to justice on environmental matters discussed below) require otherwise

The Scottish Government is not expected to respond to the recommendations made in Sheriff Principal Taylor's review until mid-2014 (Scottish Government 2014a). It is therefore unclear whether his proposals will be adopted and what timescales may be involved.

SANCTION FOR COUNSEL

Following the recommendations of the Gill Review, the Bill contains provisions (principally section 39 and Parts 2 and 4 of the Bill) which, if enacted, will result in a significant transfer of the types of cases currently heard by the Court of Session to the sheriff courts, with a particular effect on personal injury cases.

The individual provisions of the Bill are discussed in more detail below. However, it is worth highlighting at this stage that a recurrent theme of some of the respondents to the Scottish Government's (2013a) consultation on the Bill was concern at the loss of the right to be represented by advocates ("counsel") if a case was heard in the sheriff court rather than the Court of Session.

As stated above, solicitors generally represent litigants in the sheriff courts. However, a sheriff court will sanction the use of counsel in individual cases where it is appropriate by reasons of circumstances of difficulty or complexity or the importance or value of the claim (Review of Expenses and Funding of Litigation in Scotland 2013, chapter 3, paragraph 6). In litigation, the general principle is that "expenses follow success", i.e. the losing party pays the winning party's legal expenses. Broadly speaking, without sanction for counsel's fees from the court, it is not possible for a successful litigant to claim recovery of his or her counsel's fees in accordance with this principle.

Some respondents to the Taylor Review argued that the current court test for sanction for counsel is too wide and often leads to the sanctioning of counsel automatically (Review of Expenses and Funding of Litigation in Scotland 2013, chapter 3, paragraph 6).On the other hand, the Scottish Government's consultation (2013b, paragraph 42) makes reference to sanction for counsel only being available in the sheriff courts "exceptionally" if the Bill is enacted. This attracted the attention of a number of respondents to that consultation (e.g. Thompsons 2013; Faculty of Advocates 2013).

The Taylor Review has since made recommendations that the existing test for sanction for counsel should not be altered significantly, other than by the addition of a general test of reasonableness and, perhaps more importantly, by the addition of the need to have regard to

[4] The "simplified" procedure is for simpler, lower value claims. It is envisaged that this will cover those cases dealt with under small claims or summary cause procedure at the moment. It is called "simple procedure" in the Bill.

the resources deployed by the other party to the case (the so-called “equality of arms” factor) (Review of Expenses and Funding of Litigation in Scotland 2013, chapter 3, paragraphs 8 and 9). This would be likely to be of benefit to pursuers in the situation, for example, where a defender is backed by a large insurance company which has chosen to employ counsel.

There is also a relationship between this recommendation of the Taylor Review and another recommendation of the same review, namely, for “one way cost shifting” in most circumstances in personal injury litigation (discussed above). If implemented, this would remove the risk that pursuers in personal injury actions would ever have to meet defenders’ legal expenses, other than in exceptional cases (Review of Expenses and Funding of Litigation in Scotland 2013, chapter 8). This would represent a major change from the status quo favourable to pursuers and would, on one view, reduce the significance for such pursuers as to the stringency (or otherwise) of the test the sheriff court employs to decide on sanction for counsel. However, this latter change is only proposed for personal injury litigation. Also, as mentioned above, the Scottish Government has, as yet, made no public statement regarding its plans in relation to the implementation of any of the recommendations of the Taylor Review.

Finally, it should be noted that there is a similar, but distinct, test to the one the courts use to determine whether counsel’s fees should be met by the unsuccessful party where the issue is whether counsel’s fees should be met out of the legal aid budget when the unsuccessful party is funded by legal aid (Legal Aid (Scotland) Act 1986 (c 47), section 19). The two tests should not be confused. Neither the Gill Review, nor the Taylor Review, propose any alteration to the legal aid test. The vast majority of personal injury litigation is conducted on a “no win, no fee” basis and therefore does not require support from the legal aid budget.

ACCESS TO JUSTICE

The Bill’s key aim is to modernise the civil justice system in Scotland, with the potential to influence how justice is delivered well into the future. On this basis, it is important to consider whether the Bill does indeed meet Scotland’s current and future civil justice needs in a sustainable way (looking at economic and social sustainability as well as environmental). The leading definition of sustainable development is as follows (World Commission on Environment and Development 1987, page 43):

> “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Potential tensions in this respect can be identified in the Bill’s policy objectives: for example, in relation to improving access to justice while at the same time generating cost-savings, or increasing judicial specialisation while maintaining local court services. The way these issues are balanced will determine whether the provisions in the Bill contribute to the development of the civil justice system in a way which meets sustainability criteria.

The Scottish Government makes a statement in the Policy Memorandum accompanying the Bill (see paragraphs 314 and 315) about the Bill’s impact on sustainable development. It concludes (on the basis of “pre-screening” for environmental issues) that there will be no negative impact. However, how social and economic sustainability have been assessed is unclear. In addition, the Policy Memorandum does not include any statement as to whether the Bill is likely to have any impacts which support sustainable development.

BUDGETARY IMPLICATIONS OF THE BILL

The Scottish Court Service, among several other justice organisations, is currently dealing with significant reductions in its budget. The figures in Table 2 below show the Scottish

Government's most up-to-date spending plans for the Scottish Court Service as presented in the draft Budget 2014-15 (2013c, Table 6.14). The Scottish Court Service is facing a real terms reduction in operating costs of 5.3% between 2013-14 and 2015-16. The real terms reduction in relation to capital expenditure (covering things like buildings maintenance and IT investment) is 45.6%.

Table 2: Scottish Court Service: draft budget 2014-15 in real terms[5] based on 2013-14 prices

	2013-14 Budget £m	2014-15 Draft Budget £m	2015-16 Plans £m
Operating Expenditure	67.7	64.0	64.1
Capital	12.5	6.9	6.8
Total	80.2	70.9	70.9

Source: Draft Budget 2014-15 (Scottish Government 2013)

The Financial Memorandum to the Bill envisages that, while there will be start-up costs associated with its proposals, the cost-savings generated will outweigh these in the medium term. Savings will mainly be generated by reduced judicial salaries. This is because more sheriff court work will be carried out by summary sheriffs (on a lower salary), combined with a shift of business from the Court of Session (with higher salary and running costs) to the sheriff courts. In particular, the bulk of personal injury business will shift to the sheriff court (usually to the newly created specialist personal injury court) and appeals from both summary criminal business and sheriff court civil business will be dealt with by a new Sheriff Appeal Court, rather than proceeding directly to the Court of Session/High Court of Justiciary.

There are also projected to be modest savings to the legal aid budget, because fewer legally-aided cases will need to be represented by advocates and because court fees will be lower.

The Financial Memorandum expresses the savings to judicial salaries at the Court of Session level in cash terms. However, it is not the Scottish Government's intention to make any Court of Session judges redundant. Therefore, these savings will actually be in the form of more efficient justice as Court of Session judges become able to devote more time to dealing with a reduced case load. The potential to realise cash savings will only arise as Court of Session judges retire. This makes the business case for the introduction of the specialist personal injury court and the Sheriff Appeal Court less clear in the short to medium term.

It should also be noted that judicial salaries are not paid by the Scottish Court Service (instead they are paid directly out of the Scottish Consolidated Fund[6]). Thus, while most of the costs generated by the Bill's proposals fall on the Scottish Court Service, the majority of savings will not accrue to them. The Scottish Court Service will therefore be responsible for funding the start-up costs without additional resources or the promise of longer-term savings. Its plans for doing this are discussed below.

Sheriff court

The Bill's proposals will result in an increase of business in the sheriff courts (as cases which would previously have been within the exclusive jurisdiction of the Court of Session will now be dealt with at sheriff court level). The Financial Memorandum (see Table 11 and paragraphs 72 and 73) estimates that around 2,700 cases will shift from the Court of Session to the sheriff courts. This represents 57% of Court of Session business but only 3% of the current case load of the sheriff courts. Given that the vast majority of these cases are expected to be dealt with by

[5] Real terms figures are calculated using Her Majesty's Treasury deflators published in December 2013.
[6] This is the "bank account" of the Scottish Government, containing the funding it receives from the UK Government.

the specialist personal injury court, the Scottish Government estimates that the impact of the extra work on the local sheriff court network will be minimal.

Other costs

The Bill's proposals will generate short-term costs in the following areas:

- project management costs to implement the new structures
- costs relating to changing IT systems and procedures to accommodate the new arrangements
- increased salaries for stipendiary magistrates (judges who deal with certain summary criminal business in Glasgow). The small number of existing stipendiary magistrates will automatically become summary sheriffs, earning an increased salary. However, this cost will be offset against a general reduction in judicial salaries as discussed above

Scottish Civil Justice Council

There will also be costs associated with the work of the Scottish Civil Justice Council in drafting new court rules. The Scottish Government estimates that the costs associated specifically with modernising court rules (i.e. separate from the other activities carried out by the SCJC) will amount to around £2million over ten years. These costs relate almost exclusively to additional staffing to cover the work. Specifically, it is estimated that court rule modernisation will cost £427,000 per year in 2014-15 and 2015-16. The SCJC's costs are met out of the Scottish Court Service's budget.

Merger between Scottish Court Service and Scottish Tribunals Service

There will be costs associated with the Bill's proposals to merge the Scottish Court Service and the Scottish Tribunals Service. It is not expected that the merger will increase the ongoing running costs of either organisation. However, there will be start-up costs in relation to IT, human resources, rebranding and finance systems. It has also been identified that there will be staffing costs associated with implementing the proposal (described as "project management" costs), although it may be possible to meet these from existing resources.

The Financial Memorandum (Table 25 and paragraph 177) estimates that these costs will be within the range of £0.7million to £1.2million, spread over the current financial year and 2014-15. It is envisaged that they will be met using resources from the current Scottish Tribunals Service budget as well as the wider justice budgets. It should be noted that the merger of the Scottish Court Service and the Scottish Tribunals Service is not motivated by a desire to save money. The Financial Memorandum states (paragraph 185):

> "This project has been primarily driven by a desire for operational independence, it is not cost-driven. However, it is acknowledged that in time, and through sharing of good practice and some back-office functions, some efficiencies could be delivered."

Scottish Court Service

As noted above, the Bill's proposals generate short-term start-up costs which predominately fall on the budget of the Scottish Court Service (with the exception of the costs around the merger with the Scottish Tribunals Service, which fall on wider justice budgets). The Financial Memorandum does not suggest that the Scottish Court Service will receive extra resources to cover these costs: indeed, its budget is expected to reduce over the next two years.

Instead, it is expected that the Scottish Court Service will meet the increased costs out of its existing resources, primarily through income generated by court fees (Financial Memorandum, paragraphs 26 to 32). The most recent subordinate legislation setting court fees allowed for an above inflation increase in fees in order to enable investment in this reform programme.

There is a risk that the general trend of reducing demand for civil court time will impact on the Scottish Court Service's ability to generate income from court fees, leaving a funding gap. However, the Financial Memorandum notes (paragraph 31):

> "The [Scottish Court Service] has confirmed that the current fee income is on track to ensure that the costs of the reforms can be met."

COURT CLOSURES

The Scottish Court Service is currently in the process of closing a number of sheriff and Justice of the Peace courts. The Sheriff Court Districts Amendment Order 2013, which provided the legal authority for the sheriff court closures, was debated and approved by the Justice Committee at its meeting on 11 June 2013. The timetable for the closures is as follows.

- Arbroath – 31 May 2014
- Cupar – 31 May 2014
- Dingwall – 31 January 2015
- Dornoch – 30 November 2013
- Duns – 31 January 2015
- Haddington – 31 January 2015
- Kirkcudbright – 30 November 2013
- Peebles – 31 January 2015
- Rothesay – 30 November 2013
- Stonehaven – 31 May 2014

PART 1 – SHERIFF COURTS

Part 1 of the Bill gives effect to the recommendations of the Gill Review in relation to the creation of a new judicial tier of "summary sheriffs", sheriff specialisation and the jurisdiction of the sheriff court (and the jurisdictions of sheriffs and summary sheriffs within that). It also reproduces, with certain changes, provisions in the Sheriff Courts (Scotland) Acts of 1907 and 1971 relating to the employment and deployment of sheriffs/summary sheriffs and the organisation of sheriff court work. As the provisions in the Sheriff Courts (Scotland) Acts are largely technical in nature, this section will focus on the main recommendations related to the Gill Review.

JURISDICTION OF THE SHERIFF COURT AND THE COURT OF SESSION (SECTIONS 38 AND 39)

Current rules

In Scotland, rules exist giving courts jurisdiction (i.e. the right) to hear certain cases. Under these rules, certain matters are reserved to the Court of Session and cannot be brought in other courts. This is known as the exclusive jurisdiction of the Court of Session and includes actions in relation to: judicial review, devolution issues under the Scotland Act 1998; patents, trusts,

proving the tenor of documents (i.e. the terms of a lost/destroyed legal document); reduction (i.e. setting aside legal documents/decisions) and a number of other legal actions[7].

The sheriff court also has its own exclusive first instance[8] jurisdiction over certain limited matters, including what is known as the "privative jurisdiction" over actions with a value not exceeding £5,000. Such actions cannot be brought in the Court of Session[9].

However, other than these exceptions, much of the jurisdictions of the Court of Session and the sheriff court overlap (i.e. there is what is known as "concurrent jurisdiction"). This means that, for many types of civil action with a value of more than £5,000, pursuers can choose whether to raise a case in either the sheriff court or the Court of Session. In addition, most family law matters can be brought in either court irrespective of the value of any claim.

Although there is a large overlap between the jurisdictions of the Court of Session and sheriff court, in practice certain types of cases are raised more frequently in certain courts. For example, according to the Scottish Government's Civil Law Statistics in Scotland 2011–2012 (see page 5), only one per cent of all family law cases were raised in the Court of Session in 2011–2012. In contrast, during 2011–2012, 33 per cent of all civil personal injury cases were raised in the Court of Session. The reasons why individuals choose to sue in a particular court vary from case to case, but can include: the potential convenience of suing in a particular court (in particular a local one); the likely expertise of the court in question; the likely time-frames; and the legal costs involved in bringing a case. The Taylor Review noted that the business model favoured by a party's legal representatives played a significant role (Review of Expenses and Funding of Litigation in Scotland 2013, chapter 3, paragraph 17).

Proposals for change

The consultation leading up to the Gill Review (SCCR 2007) identified the overlapping jurisdictions of the Court of Session and the sheriff court as a key issue, noting that the question was (paragraph 4.40):

> "whether the current allocation of business between the two courts best serves the public in terms of providing access to justice at a level appropriate to the dispute in question, and at a reasonable cost both to the litigant and to the public purse."

In essence, the review was interested in two issues: (1) the extent to which low value claims are currently being litigated in the Court of Session and (2) what the relative legal costs are of litigating in the Court of Session and the sheriff court (SCCR 2009, chapter 4, paragraphs 101–116).

Value of claims

As regards the value of claims, the Gill Review noted that, "there is little in the way of published research as to the monetary value of cases litigated" and that the court's case management system does not currently record the value of claims. It also indicated that, while the value of the actual judicial awards is recorded, the majority of actions in the Court of Session settle out of court and that the value of these settlements is not publicly available.

The review, therefore, carried out its own analysis of the possible value of claims by means of an audit of actions in the General Department of the Court of Session (i.e. the court's main

[7] For further details see SCCR 2007, page 90.
[8] First instance means a case held for the first time – i.e. not an appeal
[9] See Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2007 (SI 2007 No. 507), which increased the privative jurisdiction of the sheriff court from £1,500 to £5,000 with effect from 14 January 2008

department) [10] and actions raised under commercial procedure. The review concluded that almost half (49%) of all commercial actions involved a sum sued for of more than £150,000, compared with 23% in the general audit.

The review also referred to anecdotal evidence (and some Scottish Executive research) which suggests that the sum sued for in the Court of Session is much higher than the value of a subsequent settlement, the implication being that the sum sued for overstates the actual value of a claim. In this respect, the review referred to data from 93 personal injury actions which it had received from a respondent which appeared to support this view, concluding that (SCCR 2009, chapter 4, paragraph 107):

> "Except in cases where £150,000 or more is sought, the value of settlements in personal injury actions initiated in the Court of Session is on average between 21% and 28% of the sum sought."

Costs of litigating in the sheriff court and Court of Session

The review noted that, "there is little in the way of published research on the cost of litigation in Scotland" and, in analysing this issue, relied primarily on data provided by respondents in response to the consultation (in particular the 93 Court of Session cases mentioned above).

As regards these 93 personal injury cases, the review first compared average total legal expenses (i.e. for both the pursuer and defender)[11] with average damages awarded or negotiated. In addition to average (or "mean") values, median values were also used on the basis that a few high value claims could distort the mean. The findings were as follows:

1. The mean average of total expenses was £18,561 compared to mean damages of £79, 692 – i.e. expenses were 23 per cent of the mean damages awarded

2. The median value of total expenses was £15,697 compared with median damages of £11,500 – i.e. when using a median, figure expenses were 36 per cent **more** than the median damages awarded

[10] The General Department of the Court of Session deals with the majority of the court's first instance work, including ordinary, personal injury, family and commercial actions, but not administrative law cases (i.e. judicial review). For more details see the website of the Scottish Court Service

[11] For the figures used see SCCR 2009, chapter 4, paragraph 111

The review also analysed the ratio of damages to legal expenses for a range of "value bands". Its findings in relation to the average sum settled for and total expenses were as follows:

Table 3: average legal expenses as a percentage of average settlement value for a selection of Court of Session personal injury cases, banded by ranges of sum sued for

Sum sued for	Average value of settlement	Average total expenses	Ratio of total expenses to value of settlement
> £150k (33 cases)	£178,090	£27,292	15%
£100k - £149k (12 cases)	£21,457	£19,739	92%
£50k - £99k (13 cases)	£14,961	£16,606	111%
£20k - £49k (29 cases)	£7,624	£12,117	159%
< £20k (6 cases)	£3,275	£7,276	222%

Source: SCCR 2009 Annex C, Table 4b

According to the review, comparable sheriff court figures based on data from a group of 94 sheriff court actions[12] were as follows:

Table 4: average legal expenses as a percentage of average settlement value for a selection of sheriff court personal injury actions, banded by ranges of sum sued for

Sum sued for	Average value of settlement	Average total expenses	Ratio of total expenses to value of settlement
> £150k (5 cases)	£61,640	£14,967	24%
£100k - £149k (6 cases)	£34,625	£16,676	48%
£50k - £99k (14 cases)	£19,797	£12,821	65%
£20k - £49k (25 cases)	£7,356	£7,421	101%
< £20k (44 cases)	£3,017	£6,080	202%

Source: SCCR 2009, Annex C, Table 5b

Based on this analysis, the review therefore found that (paragraph 115):

> "While the level of expenses increases proportionately as the value of settlement decreases in the sheriff court as well as in the Court of Session … the cost of litigating lower value actions in the Court of Session is substantially higher than the cost of litigating actions of a similar value in the sheriff court."

Gill Review conclusions

The Gill Review's conclusion was that, "there is a significant volume of relatively low value cases … in the Court of Session" and argued that, given the higher costs involved, this was not in the public interest. In terms of limiting the number of lower value claims dealt with by the court of Session, it concluded that, "a monetary threshold is the simplest mechanism to administer and apply" and therefore recommended a "significant increase" to the privative jurisdiction of the sheriff court. It argued that an increase to £150,000 was needed since:

- this would ensure that a significant number of lower value actions would be transferred to the sheriff court[13]

[12] The data was provided by the same respondent as the 93 personal injury actions

- the relationship between the sum sued for and the value of settlements is much closer in actions for £150,000 and over, compared to lower value actions

- setting the threshold at a high level would reduce the risk of parties suing for sums which bear no relationship to the value of the claim

The review did, however, recommend that sheriffs be given powers to remit actions below the privative limit to the Court of Session in exceptional cases. It also recommended that the Court of Session's exclusive jurisdiction should largely remain unchanged and that the concurrent jurisdiction of the Court of Session and sheriff court over family matters should remain.

Statistics

As outlined above, to a degree the Gill Review's assessment of the value of claims and the cost of litigation in the Court of Session was based on an analysis of data from 93 Court of Session personal injury cases and 94 sheriff court cases provided by a respondent. Although the review indicates that the cases were, "drawn essentially randomly from databases in relation to reparation cases on behalf of insurers resolved within the last three years" the exact nature of the cases or the methodology used in choosing them is not clear and the review points out that the data should be treated with care, noting that (SCCR 2009, chapter 4, paragraph 107, footnote 19):

> "Though cases might have been scrupulously selected according to principles of scientific random sampling, there is no guarantee that the cases handled by this respondent's firm are representative of the general population of personal injury actions proceeding in the Court of Session or the sheriff court."

In drawing up this briefing, SPICe asked the Scottish Government if it could provide more details on the data in question, including the source. However, the Scottish Government indicated that the data was supplied to the Gill Review (a forum independent of the Scottish Government) by solicitors on a confidential basis (Scottish Government 2014b). It is therefore unclear how robust the data in question is and the degree to which it can be considered as a representative or reliable sample of cases in the Court of Session/sheriff court.

Scottish Government consultation

The Scottish Government's consultation paper on the draft Courts Reform (Scotland) Bill (2013b) put forward a £150,000 threshold, with powers to remit cases to the Court of Session. The consultation received a large number of responses from stakeholders. The Scottish Government's analysis of these responses (2013a) summarised them as follows (page 20):

> "There were high levels of support that the provisions in the Bill raising the exclusive competence and providing powers of remit will help achieve the aim of ensuring that cases are heard at the appropriate level. In addition, many more respondents agreed than disagreed that the Court of Session should retain concurrent jurisdiction for all family cases …
>
> "Common themes amongst comments … were that value does not necessarily equate to either the complexity or importance of cases and that access to specialists is important. The difficulties in assessing the value of certain cases was also commonly cited and whilst there was common agreement that it is appropriate to raise the exclusive competence of the sheriff court there was limited consensus as to whether £150,000 was an appropriate level.

[13] The estimate is that actions initiated at the Court of Session's General Department would be reduced by 64%; and commercial actions by around 26%

"For all these reasons, the possibility for remit from sheriff court to Court of Session and vice-versa was highlighted as being extremely important.

"The other consistent theme emerging in this chapter related to the potential impact on the independent bar in Scotland if the anticipated volume of cases moves to the sheriff court and there is no access to automatic sanction for counsel."[14]

Northern Ireland and England and Wales

As a point of comparison, the legal systems in Northern Ireland and England and Wales also have financial limits on courts' jurisdictions. In Northern Ireland, county courts have jurisdiction to hear cases with a value of up to £30,000, with cases with a value of more than £30,000 being dealt with by the High Court sitting in Belfast (Northern Ireland Executive 2013). This limit appears to have been raised from £15,000 in February 2013 following a consultation process (Northern Ireland Court Service 2010). In England and Wales, proceedings (whether for damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £25,000, or £50,000 in the case of personal injury (Ministry of Justice Online a).

The Bill's provisions on jurisdiction

The Bill follows the recommendations of the Gill Review. They key provisions are as follows:

- the sheriff court would be granted exclusive jurisdiction over civil proceedings which a sheriff is competent to hear where: (i) an order of value is sought and (ii) the value of the order exclusive of interest and expenses is £150,000 or less – i.e. such cases **could not** be brought in the Court of Session (sections 39(1) and(2))

- an "order of a value" includes (i) an "order for payment of money" and (ii) an "order determining rights in relation to property" (section 39(6))

- the precise value of an order for the purposes of the Bill will be determined by an Act of Sederunt made by the Court of Session (i.e. secondary legislation) which may make different provisions for different purposes (sections 39(7) and (8)). This will cover, for example, claims for periodic payment

- the rules on exclusive jurisdiction do not apply to family law matters unless the only order sought is an order for payment of aliment, i.e. a maintenance payment (section 39(3))

- In situations where the court has exclusive jurisdiction, the parties may still apply to the sheriff to request the case to be remitted to the Court of Session. The rules in this regard are as follows:

    - the sheriff is permitted to make such a request if he/she considers that there are "exceptional circumstances justifying such a remit" (section 88(4))

    - in considering such a request the Court of Session may take into account its business and other operational needs (section 88(6))

    - if the Court of Session agrees to the request the sheriff is to remit the case (section 88(7))

[14] For the individual responses see: http://www.scotland.gov.uk/Publications/2013/06/2336/downloads

- there is no appeal against decisions of the sheriff/Court of Session re applications for remittal due to "exceptional circumstances" (sections 88(10) and (11))

- most of the existing exclusive jurisdiction of the Court of Session will remain unchanged. However, the sheriff court will be granted concurrent jurisdiction over actions for proving the tenor of documents and reduction (other than reducing court decrees) (section 38)

The Policy Memorandum notes that raising the privative jurisdiction of the sheriff court to £150,000 is in many ways "the critical reform" recommended by the Gill Review (paragraph 79). Broadly speaking, its arguments for a £150,000 threshold follow those in the Gill Review.

The Policy Memorandum also attempts to address respondents' arguments that raising the privative jurisdiction of the sheriff court will deny many people access to justice since there is no automatic right to counsel in the sheriff court (see paragraphs 91–96). In this regard, the Policy Memorandum refers to the Taylor Review's recommendation on granting sanction for counsel (see above). It also argues that, as up to 98% of personal injury cases settle before a hearing in the Court of Session, the advocacy skills of counsel are rarely deployed and that, "experienced solicitors are likely to be equally capable of conducting negotiations leading to a settlement as counsel". According to the Scottish Government, "parties will still be able to instruct counsel in the sheriff court if they wish to do so", noting that the issue is whether it is appropriate that a successful party should be able to recover the higher fees charged by counsel from the unsuccessful party in the form of legal expenses in all cases. In this regard the Scottish Government argues that (paragraph 95):

> "it is right that the most complex cases which are raised in the sheriff court should benefit from the expertise of counsel, and that counsel's fees should be recoverable by a successful party in those cases. But it cannot be right that the costs of employing counsel are recoverable in all cases, including even low value or straightforward claims in the sheriff court."

SUMMARY SHERIFFS (SECTIONS 43 AND 44 AND PART 1, CHAPTER 2)

Another of the main recommendations of the Gill Review was that a new lower level of judicial office, which the Scottish Government has termed the "summary sheriff", should be created to deal with summary criminal business (i.e. less serious cases where trial is without a jury) and low value civil claims currently dealt with by sheriffs (SCCR 2009, chapter 4, paragraphs 173–216). According to the Gill Review, the creation of this office would allow sheriffs to concentrate on more complex civil work and more serious crimes, as well as reducing delays in civil business caused by summary criminal work. The Bill follows this approach, although it refers to such judges as "summary sheriffs" (section 5).

Qualifications and appointments

The rules on qualifications and appointments are the same as those for sheriffs – i.e.

- candidates must be legally qualified for 10 years (section 14)

- appointment is by Her Majesty on the recommendation of the First Minister after consultation with the Lord President (section 5). The First Minister may, however, only put forward an individual recommended for appointment by the Judicial Appointments Board for Scotland (section 11 of the Judiciary and Courts (Scotland) Act 2008)

Civil jurisdiction

Under section 43, summary sheriffs will only have jurisdiction over the civil matters listed in schedule 1, i.e.:

- proceedings under the new simple procedure (discussed below)
- family proceedings
- children's hearing proceedings
- forced marriage proceedings
- certain domestic abuse proceedings
- adoption proceedings
- warrants of citation (to appear in court) and interim orders
- certain diligence proceedings (action taken to enforce the payment of debts)
- proceedings in relation to time to pay directions/orders under sections 1 and 5 of the Debtors (Scotland) Act 1987 (allowing extra time to pay off a debt)

The Policy Memorandum notes that it will take considerable time to deploy summary sheriffs widely and that, in some remote areas, there may never be enough work for them (paragraph 108). For these reasons sheriffs will still be able to deal with the above matters – i.e. the jurisdiction of sheriffs and summary sheriffs over these matters will be concurrent.

Sheriffs principal will be given the role of allocating cases, with the aim that straightforward cases are dealt with by summary sheriffs and more complex ones by the sheriff (Policy Memorandum, paragraph 111). In addition, court rules will be drawn up under the powers in sections 96 and 97 of the Bill to allow for the transfer of cases between summary sheriffs and sheriffs, for example where a case turns out to be more complex than it first appears (Policy Memorandum, paragraph 112).

Criminal jurisdiction

The policy of the Bill is that summary sheriffs will have jurisdiction to deal with less serious criminal matters (those heard without a jury under summary criminal procedure). It is estimated that this will make up 70 per cent of their work (Policy Memorandum, paragraph 114). The Policy Memorandum indicates, however, that sheriffs will also have to retain the power to hear summary cases since there may not be many summary sheriffs at first and there may be areas where they are never deployed – i.e. the new jurisdiction will be a concurrent one (paragraph 114).

Although the focus of summary sheriffs' business will be on summary crime, the Policy Memorandum indicates that they should also have limited jurisdiction over procedural matters in solemn cases up to the first trial hearing, e.g. the granting of warrants for arrest and production of documents; custody hearings (including bail and bail review hearings); and powers to grant orders in relation to mental disorders (paragraph 116). The rationale is that this will facilitate the handling of solemn business, and reduce the potential for delays, particularly in courts where there may be no sheriff (paragraph 115). According to the Policy Memorandum, "the intention is, therefore, that the sheriff should have exclusive competence in solemn proceedings before a sheriff court to hear a trial and to sentence a person. Summary sheriffs will only be able to

conduct summary trials and to sentence in summary proceedings" (paragraph 118)[15]. Section 44 of the Bill provides rules which put this policy into effect.

The Financial Memorandum indicates that the current assumption is that summary sheriffs will be introduced in a phased manner over 10 years, with summary sheriffs replacing sheriffs on a one to one basis as they retire, at a rate of six appointments per year. Based on that assumption, and a total requirement of 60 summary sheriffs, the potential savings to the judicial salaries budget would increase by approximately £200,000 per year[16] reaching £2 million by year ten (Financial Memorandum, paragraph 42).

SHERIFF SPECIALISATION (SECTIONS 34 TO 37 AND SECTION 41)

The existing position

At present there is a limited degree of specialisation in the sheriff courts and the Court of Session. With some exceptions, sheriffs and Court of Session judges do not specialise in particular types of civil case or even between civil and criminal cases.

One of the main examples of specialisation in both the Court of Session and the sheriff courts is associated with the special procedure for commercial actions, where the proceedings are heard before a nominated commercial judge or sheriff (Court of Session Rules, chapter 47; Ordinary Cause Rules, chapter 40)[17]. In the Court of Session (Court of Session Rules, chapter 43) and the sheriff courts (Ordinary Cause Rules, chapter 36) there is also special court procedure associated with personal injury actions, designed to allow a case to be disposed of quickly, although this does not require the hearing of the case by a nominated specialist sheriff or judge.

Glasgow Sheriff Court and Edinburgh Sheriff Court, because they serve large population centres, provide the main examples of sheriff court business in particular geographical areas being of sufficient volume to be organised in such a way so that certain days (or half days) are set aside for particular types of business and, in practice, sheriffs become specialists to some extent in specific areas of legal practice. This applies to family actions (both courts), personal injuries actions (Edinburgh) and actions relating to adults with incapacity (Glasgow).

The main recommendations of the Gill Review and the Bill

Specialist sheriffs and summary sheriffs (sections 34–37 of the Bill)

The Gill Review, whilst not proposing a strict demarcation of civil and criminal business in the sheriff court, did propose the introduction of a system whereby a number of sheriffs in each sheriffdom would be designated as specialists in particular areas of practice. Lord Gill envisaged that the categories of specialisation should include at least solemn criminal (i.e. serious criminal cases), general civil, personal injury, family and commercial cases (SCCR 2009, recommendations 4–7). For summary sheriffs (discussed above), the review envisaged that specialisation in "some courts or sheriffdoms" would be possible (SCCR 2009, para 177).

Giving effect to Gill's recommendations, section 34 of the Bill makes provision for the Lord President of the Court of Session to have power to designate categories of case suitable for specialisation. Furthermore, section 35 gives the sheriff principal for each sheriffdom the role of designating individual specialists in a particular sheriffdom. The provisions apply to sheriffs, summary sheriffs and part-time holders of both these posts.

---

[15] Summary sheriffs will, however, have the right to adjourn a solemn hearing.
[16] I.e. 6 x 205 x 163 (6 summary sheriffs per year, 205 sitting days per year and savings of £163 per day).
[17] However, in relation to the sheriff courts, the procedure is only currently available at seven sheriff courts.

Acknowledging that in some geographical areas there will be insufficient cases falling in the designated specialised areas, the Policy Memorandum to the Bill notes (at paragraph 70) that there is no requirement on a sheriff principal to designate a sheriff or summary sheriff as a specialist in every specialist area nominated by the Lord President. However, the Policy Memorandum also notes (at paragraph 70) that it is expected that, in each sheriffdom, there will be a specialist sheriff in the categories of personal injury and family cases.

Specialist personal injury court (and other specialist courts) (section 41)

Anticipating the transfer of a significant part of the Court of Session's current personal injury business to the sheriff courts, the Gill Review (SCCR 2009, recommendations 32 and 33) also recommended the creation of a specialist personal injury court for Scotland based at Edinburgh Sheriff Court. This would use the personal injury procedure now in existence for personal injury actions in the sheriff courts (Ordinary Cause Rules, chapter 43).

Section 41 of the Bill makes provision for Scottish Ministers, by secondary legislation, to give effect to this recommendation. However, section 41 is drafted in such a way as to allow for the establishment of a specialist personal injury court in Edinburgh and/or other locations. It also allows for other types of specialist court to be created.

Section 41(4) is also drafted in such a way as to allow the pursuer in any action to choose to raise an action locally, rather than at the specialist sheriff court specified by secondary legislation. This is intended to give litigants a choice as to whether they would like to benefit from a local service or the specialist service available at a more central location. As discussed above, a sheriff court in each sheriffdom is likely to have a specialist personal injury sheriff in any event, by virtue of sections 34–37 of the Bill.

Responses to the Scottish Government consultation paper

Judicial specialisation

The Scottish Government did not consult specifically on the issue of increased specialisation of individual sheriffs in the sheriff courts, although Lord Gill (2007, paras 4.28–4.38) had previously consulted on this topic in 2007[18]. In addition, some respondents did take the opportunity to comment on the issue in response to the Scottish Government consultation. For example, the Law Society of Scotland (2013) recommended that designated specialist sheriffs should deal with adults with incapacity (under the Adults with Incapacity (Scotland) Act 2000) and the Family Law Association (2013) also encouraged the Government to prioritise specialist family law sheriffs (and specialist family law courts).

Specialist personal injury court

Many more respondents to the Scottish Government consultation question on the topic of a specialist personal injury court were supportive of the establishment of a specialist personal injury court than not (Scottish Government 2013a, paragraph 6.5 and Table 6.1). However, some respondents who expressed support for the proposal (e.g. the Law Society of Scotland (2013)) seemed to regard it as a necessary consequence of raising of the privative limit of the sheriff courts to £150,000 (discussed above), whilst not actually supporting the raising of the limit to that level. Other respondents qualified their support in other ways.

The support for the creation of the specialist personal injury court was on the basis that: it would give this specialist area more focus; that specialisation would improve the quality and consistency of judicial decision making; and that centralisation would make the processes

[18] The responses to this consultation are not now publicly available, although the ones relevant to this policy issue are referred to in a section of the final report of the Gill Review (2009) at paragraphs 48–58.

associated with personal injury litigation more efficient (with a likely reduction in costs and more prompt resolution of cases) (Scottish Government 2013a, paragraphs 6.7–6.8 and 6.29).

A key concern for some respondents (e.g. Thompsons (2013)) was again the loss of automatic access to counsel, with the potential for the loss of equal access to justice. There were requests for automatic sanction for counsel in all cases (Scottish Government 2013a, paragraphs 6.14 and 6.30–6.32). Issues around sanction for counsel are discussed in more detail above.

The location of the specialist court attracted attention, with a number of respondents suggesting there was a need for a specialist personal injury court in Glasgow, as well as in Edinburgh. Some respondents saw the need for multiple specialist personal injury courts across major Scottish cities (Scottish Government 2013a, paragraph 6.9).

The resourcing of the court was a matter of comment, with respondents arguing the workload of the court would be considerable and there was a need for sufficient number of specialist sheriffs to deal with the anticipated level of business. A number of respondents highlighted that the IT and administrative support associated with personal injury litigation in the Court of Session works well and needs to be replicated in the new specialist court (Scottish Government 2013a, paragraphs 6.11 and 6.12).

Those opposed to the creation of the new specialist court (e.g. the Faculty of Advocates (2013)) argued that the existing system works well and that the Court of Session has the experience and expertise to deal with personal injury cases (Scottish Government 2013a, paragraph 6.15).

PART 2 – THE SHERIFF APPEAL COURT

Part 2 of the Bill deals with the establishment, administration and staffing of the proposed Sheriff Appeal Court. As the policy issues surrounding the establishment of the Sheriff Appeal Court are closely related to the way appeals to and from it will operate, these issues are discussed here along with the civil and criminal appeal routes proposed in Parts 4 and 5 of the Bill.

THE NEW SHERIFF APPEAL COURT AND THE APPEALS SYSTEM (PARTS 2, 4 AND 5)

The existing position – court structure and appeals

Civil cases

As discussed above, currently a civil case in the sheriff courts can be heard under “ordinary cause procedure”, “summary application procedure”, “summary cause procedure” or “small claims procedure”.

At present, civil appeals from sheriffs under ordinary cause procedure go to: a) the sheriff principal and then to the Inner House of the Court of Session in Edinburgh; or b) from the sheriff directly to the Inner House of the Court of Session. An onwards appeal can be made to the UK Supreme Court on a point of law only, as opposed to a question of fact. The appeal route in summary application varies according to the particular piece of legislation creating the remedy[19].

In summary cause actions, appeal is to the sheriff principal on a point of law only and then to the Inner House of the Court of Session on a point of law, if the sheriff certifies the cause as

[19] Where a sheriff is dealing with a summary application under his/her common law jurisdiction, it would appear that an appeal to the sheriff principal and/or to the Court of Session is competent (Macphail 2006, paragraph 26.29).

suitable for such an appeal, and then finally to the UK Supreme Court. In small claims appeal is to the sheriff principal only, on a point of law.

Significantly, a decision of a sheriff principal in relation to an appeal on the application or interpretation of law binds only sheriffs in future cases in the sheriffdom in which the appeal is heard.

Criminal cases

Criminal cases can be prosecuted under solemn procedure, which is used for the most serious criminal offences, and summary procedure, the procedure used for less serious offences (not to be confused with summary cause procedure in civil cases).

Criminal cases prosecuted under the solemn procedure are heard in either a) the sheriff court, with the possibility of an appeal to the High Court of Justiciary; or b) the High Court of Justiciary. A jury sits with the judge in such cases. Criminal cases prosecuted under the summary procedure are heard in either the lay justice of the peace courts or the sheriff courts, with the possibility of an appeal to the High Court of Justiciary. The hearings involve a judge only.

The main recommendations of the Gill Review and the Bill

The Sheriff Appeal Court

The Gill Review (SCCR 2009, recommendations 8–18) recommended the creation of a Sheriff Appeal Court to hear all civil appeals from sheriffs and summary sheriffs and all criminal appeals from prosecutions under summary procedure, whether emanating from the sheriff court or the justice of the peace court, as well as all bail appeals.

The Bill gives effect to these recommendations, with Part 2 of the Bill (sections 45–60) making provision for the establishment of a national Sheriff Appeal Court, as well as arrangements for the Court's membership, its clerking arrangements and rules of court etc.

Section 47 makes provision for the decision of the Sheriff Appeal Court on the application or interpretation of law to be binding on sheriffs and justices of the peace throughout Scotland (regardless of where in Scotland the decision is taken).

Civil appeals

Section 103 of the Bill abolishes the right of appeal from the sheriff to the sheriff principal (whilst preserving the possibility of appeal from tribunals and other bodies to sheriffs principal) and sections 104–105 provide for a general right of appeal in civil cases from the sheriff to the Sheriff Appeal Court. However, provision is made for parties to be able to seek "permission" for the appeal to be "remitted" (i.e. immediately transferred) from the Sheriff Appeal Court to the Inner House of the Court of Session, if the appeal raises complex or novel points of law (section 106).

Section 107 of the Bill makes provision for a limited right of appeal from a decision of the Sheriff Appeal Court to the Court of Session in civil cases but only with leave of the Sheriff Appeal Court, or, if it refuses, the Court of Session itself.

The Gill Review did not make recommendations on civil appeals from the Court of Session to the Supreme Court. However, following a separate Scottish Government consultation on the topic (2013d), section 111 of the Bill provides that it will be competent to appeal against a judgment of the Court of Session only with the permission of the Inner House or, failing such permission, with the permission of the Supreme Court. Under section 111, the Inner House or the Supreme Court may only grant permission if the court considers that the appeal raises

arguable points of law that are of general public importance which ought to be heard by the Supreme Court. Under the current system there is no requirement to seek such permission; instead an appeal must be certified by two counsel as "reasonable" before it can be heard in the Supreme Court (Court of Session Act 1988, section 40, as amended by the Constitutional Reform Act 2005).

Criminal appeals

Section 112 of the Bill transfers the existing powers of the High Court of Justiciary in relation to criminal appeals under the summary procedure to the new Sheriff Appeal Court. Section 116 makes equivalent provision in relation to bail appeals.

The Gill Review supported an existing recommendation regarding permission to appeal to the High Court of Justiciary (SCCR, chapter 4, paragraph 92). The Scottish Government (2013d) consulted on this issue and section 113 gives effect to those proposals; providing that such appeals should be on a point of law only and with the leave of the Sheriff Appeal Court, or if it refuses, the leave of the High Court of Justiciary itself.

Responses to the Scottish Government consultation paper

The principle of a Sheriff Appeal Court

On consultation, respondents were not asked to comment specifically on the general principle of having a Sheriff Appeal Court, at least in relation to civil appeals. However, some respondents choose to address the latter issue in any event, for example, when describing the anticipated impact of the reforms on their organisation (Scottish Government 2013b, p 27; Scottish Government 2013a, paragraph 5.36).

The main advantage of a Sheriff Appeal Court cited by respondents was the anticipated greater consistency of judicial decision-making than is afforded by the current system of sheriff principals (Scottish Government 2013a, paragraph 5.36). For those opposed to the court a key concern was again a loss of automatic access to counsel (the issues around sanction for counsel are discussed in more detail above) leading to outcomes including "inequality of arms" and loss of livelihood for advocates (Scottish Government 2013a, paragraph 5.37).

Some respondents also argued that, with personal injury cases, the existence of the new specialist personal injury court negated the need for a (generalist) Sheriff Appeal Court and such appeals should go directly to the Inner House of the Court of Session (Scottish Government 2013a, paragraphs 5.12 and 5.39).

Location of the Sheriff Appeal Court

Section 55 of the Bill has been drafted in such a way as to allow a great deal of flexibility as to the location of the Sheriff Appeal Court. However, in its consultation paper the Scottish Government (2013b, paragraph 89) agreed with Lord Gill (SCCR 2009, recommendation 10) that, for criminal appeals, the Appeal Court should be based in a central location. On the other hand, it was "open-minded" about Lord Gill's recommendation (SCCR 2009, recommendation 13) that the Appeal Court should hear civil appeals in the sheriffdom in which they originate (Scottish Government 2013b, paragraph 89).

When the issue of the Court's location was consulted on, there was majority support for a central Sheriff Appeal Court for criminal appeals, as an efficient and economical choice providing the advantage of a single source of guidance and interpretation (Scottish Government 2013a, paragraphs 5.8–5.9). The minority in opposition to the proposal appeared opposed to the Appeal Court in principle (rather than its location) arguing it provided an extra layer of

bureaucracy to the High Court of Justiciary (which would still hear criminal appeals on points of law) (Scottish Government 2013a, paragraph 5.12).

There was also majority support for the Appeal Court to sit in locations across Scotland when hearing civil appeals, with respondents citing the need for local access to justice, particularly for children and other vulnerable groups (Scottish Government 2013a, paragraph 5.20). Insurers (and groups representing insurers) provided the main opposition to this aspect of the proposal, arguing for the efficiency savings and consistency of decision-making thought to be associated with a central location (Scottish Government 2013a, paragraph 5.23).

Appeal Sheriffs

In staffing the Sheriff Appeal Court, the Gill Review considered the use of experienced sheriffs, as well as existing sheriffs principal, to hear appeals. However, Lord Gill felt that sheriffs acting as Appeal Sheriffs might be reluctant to hear appeals of colleague's decisions in their own sheriffdom (SCCR 2009, paragraphs 81–83; recommendation 9). On the other hand, the Scottish Government (2013b, paragraph 92) thought the sensitivities round this "may be overstated" and the Bill provides for existing sheriffs principal to be Appeal Sheriffs (section 48) but also for sheriffs of at least five years' standing to be eligible for appointment as Appeal Sheriffs (section 49). There was a high level of support for this on consultation (Scottish Government 2013a, paragraph 5.27 and Table 5.3).

Composition of the Sheriff Appeal Court for civil appeals

The Gill Review recommended that civil cases in the Sheriff Appeal Court should generally be heard by three judges sitting together (SCCR 2009, recommendation 12). However, the Scottish Government (2013b, paragraphs 94–96) felt that circumstances had changed since the Gill Review reported[20]. Accordingly, section 97(2)(p) allows court rules to be made on the number of judges required to hear an appeal in particular circumstances. This was described in the Scottish Government consultation paper as "permitting maximum flexibility" which would, in turn, ensure a proportionate use of judicial resources (Scottish Government 2013b, paragraphs 96 and 98). The Financial Memorandum assumes that 95% of appeals will proceed to a hearing in front of one Appeal Sheriff, with only 5% of cases requiring a bench of three (paragraph 116).

Respondents were not asked about this issue directly. However, some suggested that, given that the Sheriff Appeal Court will bind all sheriff courts in Scotland, and given that its decisions will only be appealable with leave of the court, decisions must be well-reasoned and of the highest possible quality. Furthermore, it was suggested, that a minimum of three decision-makers was necessary to ensure this (Scottish Government 2013a, paragraphs 5.31–5.32).

Civil appeals to the Supreme Court

From the small number of organisations responding to the relevant consultation (Scottish Government 2013d), there was majority support for the introduction of a leave to appeal stage (Scottish Government 2013e, page 2). Arguments in support of the proposals included the perceived inconsistency of the current approach by counsel in judging which cases to certify and the resulting harmonisation with other jurisdictions in the UK stemming from the proposed approach. Arguments against the proposals included that they represent a barrier to access to justice and that the Court of Session has been inconsistent in the past in applying a public interest test (Scottish Government 2013e, page 2). In this regard, the issue of "standing" in judicial review cases is discussed further below.

[20] Specifically, the Scottish Government (2013b, paragraphs 94–96) believes that the issues raised on appeal are now often of minor importance and complexity.

PART 3 – CIVIL PROCEDURE

Part 3 deals with civil (and to a certain extent criminal) court procedure. This section looks at proposals in relation to civil jury trials, judicial review and changes to the procedural rules. The Bill also proposes changes to sheriffs' order-making powers, jury service and justice of the peace courts. This briefing does not comment further on these matters. Part 3 also deals with the remit (transfer) of cases between courts. This is explored further under the sections dealing with jurisdiction, summary sheriffs and the Sheriff Appeal Court.

CIVIL JURY TRIALS (SECTIONS 61 TO 69)

It is possible for certain civil cases to be heard by a jury rather than a judge sitting alone. As with criminal trials, the judge is responsible for directing the jury in matters of law and the jury is responsible for deciding matters of fact, including the level of damages to be awarded. Currently, civil jury trials are only possible in cases raised in the Court of Session. In addition, the case must fall under one of the headings listed in section 11 of the Court of Session Act 1988[21]. In practical terms, such cases usually relate to personal injury.

Under the proposal to raise the exclusive jurisdiction of the sheriff courts to £150,000 (discussed above), many cases which could currently by tried by a jury would lose that right if alternative provision were not put in place. The Gill Review considered this issue (SCCR 2009, chapter 4, paragraphs 157 to 163). It concluded that the right to a jury trial in specific cases should continue. This was because damages awarded in legal systems where a judge alone made the decision tended to follow awards made in previous cases and, over time, fell below what was considered reasonable by the general public. Thus, Gill argued, civil jury trials performed an important role in ensuring that damages awards kept up with public expectations. However, the contrary view, which was that damages awards by juries were unpredictable, leading to a lack of certainty and transparency in the law, was also noted. Gill recommended that civil jury trials should be available in the specialist personal injury court on the same terms that they were currently available in the Court of Session.

Those responding to the Scottish Government's consultation on the Bill agreed (although not by a significant majority) with its proposals. The views of respondents tended to reflect those noted by Gill (2013a, paragraphs 6.17 to 7.27). Those whose interests aligned with pursuers tended to welcome the continuation of civil jury trials on the basis that damages awards were kept reasonable. Those whose interests aligned with defenders tended to emphasise the unpredictability they created. In addition, the administrative burden on the courts of organising civil jury trials was noted. Some respondents put forward additional arguments for requiring counsel to represent the parties in civil jury trials on the basis that solicitors have no experience of dealing with these. Some respondents also suggested that a financial threshold in relation to damages claimed should be put in place so that the costs of a jury trial remained proportionate.

The Bill proposes to allow jury trials (in the types of cases specified in the Court of Session Act 1988) in any sheriff court which is designated with an all-Scotland jurisdiction (ie. a specialist jurisdiction). In practical terms, this is likely to mean the specialist personal injury court in the foreseeable future. In such cases, evidence must be led before a jury unless the parties agree otherwise or "special cause" is shown. "Special cause" has no specific meaning but has been the subject of previous judicial consideration in cases before the Court of Session. It can, very broadly, be defined as applying to cases of unusual complexity.

[21] These are cases relating to personal injury; defamation; delinquency or quasi-delinquency where damages are the only remedy sought; and reduction (usually of a will or contract) on the basis of essential error, incapacity or force and fear.

It will continue to be possible to raise personal injury cases in local sheriff courts (and it is expected that sheriffs specialising in personal injury will, in many cases, be able to deal with them). However, it will only be possible to access a civil jury trial if the case is raised in the specialist personal injury court.

The Bill also proposes to re-enact the current provisions used in the Court of Session regarding the procedural aspects of civil jury trials. The proposals envisage a jury of 12 selected by ballot. A majority verdict is sufficient. It would be possible to have the verdict of a civil jury trial set aside on various grounds, including that the judge misdirected the jury; the verdict was contrary to the evidence; or that damages awarded were excessive or inadequate. In most cases, the Sheriff Appeal Court, where it agreed, would be required to order a re-trial. However, provision is made for the Sheriff Appeal Court to substitute its views for those of the jury in certain circumstances. Section 68(7) of the Bill would specifically require that the Sheriff Appeal Court only grants a new trial on the basis of a majority view: where the judges' opinions were equally divided, a new trial would be refused.

JUDICIAL REVIEW (SECTION 85)

Overview

Judicial review is a type of court action which allows parties to challenge the exercise of power by UK and Scottish Ministers, UK and Scottish government departments and agencies, local authorities and other official decision makers. Judicial review is primarily concerned with the process or legality of official decision making, rather than the merits of the decisions themselves.

Actions for judicial review in Scottish cases can only be raised in the Outer House of the Court of Session in Edinburgh[22]. They can be appealed to the Inner House of the Court of Session and thereafter to the UK Supreme Court. The individual or body raising the action is known as "the petitioner" and the individual or body defending the action is known as "the respondent".

A key issue, previously, in relation to judicial review was whether the petitioner has "standing" in relation to the case – i.e. whether they are an appropriate person to raise the action. The previous law in Scotland was considered to be overly restrictive and the Gill Review recommended that it was relaxed (SCCR 2009, recommendation 150). Before this recommendation could be implemented, the UK Supreme Court took the opportunity in the case of AXA General Insurance Ltd and Others v The Lord Advocate and Others ([2011] UKSC 46; [2012] 1 AC 868) to reform the law of standing along the lines suggested by the Gill Review and, accordingly, the Bill makes no provision on this topic.

Time limit

The existing law

At present there are no time limits within which an application for judicial review must be brought. However, a petitioner who delays in bringing an application may be met with a challenge of "mora, taciturnity and acquiescence" by the respondents. Broadly speaking, these three elements combine to describe excessive or unreasonable delay to speak out in respect of a known right or claim in circumstances likely to be relied upon by the respondent. However,

[22] Under section 20 of the Tribunals, Courts and Enforcement Act 2007 (c 15) the Court of Session may in some cases, and must in others, transfer certain categories of judicial review petitions to the UK Upper Tribunal. Section 52 of the Tribunals (Scotland) Bill contains a similar provision allowing transfer from the Court of Session to the new Scottish Upper Tribunal, although there are no circumstances in which transfer to the Scottish Upper Tribunal is mandatory.

there is some uncertainty in the case law as to whether actual reliance (to the financial or other detriment of the respondent) on the petitioner's failure to take action is required by the respondent for the challenge to be upheld (SCCR 2009, chapter 12, paragraphs 28–29 and 31).

The Gill Review recommendation and the Bill

The Gill Review (SCCR 2009, recommendation 151) recommended that the general rule should be that petitions should be brought "promptly" and, in any event, within a period of three months, subject to the exercise of the court's discretion to permit a petition to be presented outwith that period.
The Bill makes provision for a three month time limit in bringing a judicial review action, with a judicial discretion to depart from this limit where it would be "equitable" to do so (section 85 inserting section 27A into the Court of Session Act 1988 (c 36)). The suggested requirement to bring a judicial review action "promptly" has been omitted from the Bill, as a similar rule applicable to England and Wales has been held unenforceable by the courts for being too uncertain in scope (Scottish Government 2013b, paragraph 127).

Responses to the Scottish Government consultation paper

On consultation, responses to the proposal to introduce the three month time limit were mixed, although more respondents supported it than opposed it (Scottish Government 2013a, paragraphs 7.4–7.5 and Table 7.1). Support came from respondents including from the Senators of the College of Justice (2013) (i.e. the Court of Session judges), the Scottish Legal Aid Board (2013) and various local authorities (Scottish Government 2013a, paragraph 7.5). On the other hand, solicitors and advocates (including the various groups representing them), as well as advocacy and advice organisations, were more opposed to the proposal than in support of it (Scottish Government 2013a, paragraph 7.5). The Law Society of Scotland (2013), Shelter Scotland (2013) and Friends of the Earth Scotland (2013) were amongst those who opposed the three month limit.

Those supporting the proposed time limit thought it provided greater certainty, with related benefits including greater cost effectiveness in providing public services. A key theme from those opposed is that the three month period is too short to resolve issues, including applying for legal aid where required, and to explore alternative options to a court action. Some respondents noted specific areas where they felt a longer timescale was required, including housing and welfare cases and immigration and asylum cases. Others expressed the view that there was no current issue with delay in judicial review actions (Scottish Government 2013a, paragraphs 7.7–7.10).

A small number of businesses suggested even shorter time periods (thirty days for procurement decisions and six weeks for planning decisions[23]) but most respondents suggesting alternatives suggested longer time periods, including six months (e.g. Law Society of Scotland 2013) and one year (e.g. Friends of the Earth Scotland 2013) (Scottish Government 2013a, paragraph 7.11).

Leave/permission to seek judicial review

The existing law, what the Gill Review recommended and the provisions of the Bill

At present, there is no requirement to ask the permission of the court ("leave of the court") before an application for judicial review can proceed and the Gill Review proposed the introduction of such a requirement (SCCR 2009, recommendations 152–153).

[23] These proposed time limits appeared in the Ministry of Justice's consultation in relation to England and Wales: Judicial Review: Proposals for Reform (Ministry of Justice 2012).

The Bill provides that the court may grant permission where a) the applicant can demonstrate "sufficient interest" in the subject matter of the application (this reflects the test for standing proposed by Gill); and b) the application has a real prospect of success (section 85 of the Bill inserting sections 27B–27D into the Court of Session Act 1988 (c 36)).

Lord Gill's intention was that the initial decision relating to leave would not require an oral hearing, although this would be possible if the judge considered it necessary. However, the Review recommended that if leave was refused (or granted only on certain grounds or subject to conditions), the petitioner should be entitled to request an oral hearing before another judge and that there should also be a further right of appeal to the Inner House of the Court of Session (SCCR 2009, recommendation 152). The Bill gives effect to these recommendations (section 85 of the Bill inserting sections 27C–27D into the Court of Session Act 1988 (c 36)).

Responses to the Scottish Government consultation paper

Of those responding to the relevant question in the Scottish Government's consultation paper, there was a high level of support for this proposal (Scottish Government 2013a, paragraph 7.16 and Table 7.2).

Respondents agreeing thought that it would help filter out unmeritorious cases and that the safeguards put in place (the right to an oral hearing and further appeal) were sufficient. For those respondents opposed, the key concern was that there was no hard evidence that the Court was burdened with large numbers of unmeritorious cases. A couple of respondents also raised concerns that it would introduce delay and greater costs to proceedings (Scottish Government 2013a, paragraphs 7.18 and 7.20–7.21).

Several respondents (Scottish Government 2013a, paragraph 7.20) drew attention to developments south of the border as informative. In this regard, the Ministry of Justice (Online b) has stated its intention to charge an additional fee in respect of any oral hearing (following refusal of leave) and to remove the right to an oral hearing where a judge assesses the claim as totally without merit after consideration of the relevant papers. The policy intention behind these changes is to reduce delays which are occurring in the current leave process in England.

Access to justice and the Aarhus Convention

When asked whether the proposals to amend the judicial review procedure will maintain access to justice in Scotland, there was strong support for this statement amongst respondents (Scottish Government 2013a, paragraph 7.26 and Table 7.3). However, support was not universal. For example, RSPB Scotland (2013) and Friends of the Earth Scotland (2013) highlighted the requirements the Aarhus Convention. The UK is a party to the Aarhus Convention (or UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters). Article 9 provides that members of the public must have access to court procedures to challenge decisions relating to the natural environment that are fair, equitable and timely and which are not prohibitively expensive. Friends of the Earth Scotland (2013), in particular, questioned whether the proposals in the Bill on judicial review went far enough to ensure compliance with the access to justice requirements of article 9. The need for substantive review (as opposed to the mainly procedural review offered by judicial review) was referred to, as well as the cost of environmental litigation[24].

[24] In relation to costs, as noted above, the Taylor Review (2013) has since made recommendations on "protective expenses orders" in public interest cases (such orders limit a person or group's liability for the other party's legal expenses to a specific figure). However, when responding to the Scottish Government consultation paper prior to the publication of the Taylor report, Friends of the Earth Scotland (2013, page 3, footnote 13) expressed concern

COURT PROCEDURE (PART 3, CHAPTERS 4, 6 AND 7)

A key theme to the Gill Review was that civil procedure (court rules governing how a case is handled) should be subject to a radical overhaul to make it simpler and more efficient. The Scottish Government is clear that this is mainly a matter for the courts themselves to take forward, primarily through the Scottish Civil Justice Council discussed above. It states (2013b, paragraph 137):

> "The Scottish Government's preferred approach is to leave much of the detail in these areas to be developed by the Scottish Civil Justice Council through court rules. The Court of Session will be able to go into greater detail and provide more flexibility for the judiciary in court rules than would be possible for Parliament through primary legislation."

However, the Bill does deal with reform of some aspects of civil procedure. These are discussed below.

Rule-making powers (sections 96 and 97)

The Court of Session has general powers to make rules governing the procedures to be followed in Scotland's civil courts. Rules are formally made by Acts of Sederunt (a form of delegated legislation): however, they will usually have been formulated, and perhaps consulted on, by the Scottish Civil Justice Council before this. In order to ensure that the Court of Session's rule-making powers are sufficiently wide to take forward all of Gill's recommendations in relation to the modernising of court procedures, the Bill proposes to replace its existing powers with a general enabling power. The existing powers are to be found in sections 5 and 5A of the Court of Session Act 1988 and section 32 of the Sheriff Courts (Scotland) Act 1971.

A majority of respondents to the Scottish Government's consultation on the Bill were in favour of the new rule-making powers (2013a, paragraphs 8.1 to 8.29). Comments from those who objected included concerns that a power that was too broad might result in the Court of Session moving into areas which were properly the domain of primary legislation.

It is proposed that section 96 of the Bill will replace sections 5 and 5A of the 1988 Act. It creates a general rule-making power and goes on to give specific examples of how this might be exercised. It makes it clear that the Court of Session has the power to encourage the use of alternative dispute resolution and to regulate action which must be taken before a case comes to court (sometimes referred to as "pre-action protocols"). Section 97 of the Bill details the Court of Session's powers to regulate procedure in the sheriff courts (including the new Sheriff Appeal Court). It requires that, before making an Act of Sederunt relating to procedure in the sheriff court, the Court of Session must consult the Scottish Civil Justice Council (unless the draft rules have been submitted by the Council). It also makes clear that nothing in an Act of Sederunt may conflict with the provisions relating to simple procedure set out in sections 70 to 79 of the Bill.

Simple procedure (sections 70 to 79)

The Gill Review recommended the creation of a new type of court procedure for low value claims. It is the Scottish Government's intention that "simple procedure" will replace the current small claims and summary cause procedures. The Scottish Government also states that summary application and ordinary cause procedures will be replaced with a new, combined procedure (Scottish Government 2010, paragraph 55).

The Gill Review recommended that legal aid should be available in all simple procedure cases, regardless of their value (SCCR 2009, recommendation 203). However, the Scottish

---

as to whether the Taylor Review recommendations would go far enough in this regard to ensure compliance with Aarhus.

Government proposes to restrict legal aid to those cases with a monetary value of more than £3,000 (Scottish Government, 2014a). This reflects the current pattern of legal aid availability, where legal aid is available for summary cause cases but not those raised under small claims procedure.

It is envisaged that rules of court under simple procedure will enable a judge to take an "interventionalist" approach – ie. to help parties who may lack the legal knowledge necessary to adequately present their case by taking steps such as identifying the key issues and/or setting out what evidence should be presented (Policy Memorandum, paragraph 157). Claims relating to personal injury, aliment (family support) and defamation – which are currently excluded from the small claims procedure – will be competent under simple procedure where they come within the relevant financial limits (Policy Memorandum, paragraph 153). Once they are in place, it is intended that summary sheriffs will be allocated cases to be heard under simple procedure.

The proposals in the Bill will put cases containing a monetary claim not exceeding £5,000 (excluding interest and expenses) under the jurisdiction of simple procedure. This includes claims where the pursuer asks for some positive action on behalf of the defender but includes an alternative claim for a sum of money, as well as housing actions involving repossession (section 70). Claims for aliment with a value of £35 or less per week in relation to a child, or £70 or less per week in relation to an adult, may also be brought under simple procedure (section 71). In both cases, Scottish Ministers can change the maximum sum covered under simple procedure by order.

Section 72 proposes to enable an interventionalist approach from judges (discussed above) by making it clear that the sheriff is able to: identify the issues in dispute; negotiate with the parties or otherwise help them to reach a settlement; and adopt an approach which is appropriate to the particular circumstances of the case. Section 74 proposes to ensure that rules relating to the admissibility of evidence do not apply in simple procedure cases.

It will be possible for a case to transfer into simple procedure (i.e. from a more complex type of procedure) on joint application by both parties, even where its monetary value is higher than the £5,000 limit. The sheriff in this situation will be required to transfer the case (section 75). It will also be possible for a party to request that a case is transferred out of simple procedure (i.e. to a more complicated procedure). The sheriff will have discretion in relation to granting such a request (section 76).

It is proposed that, in most cases, the sheriff's decision in a simple procedure case will be final. Appeal to the Sheriff Appeal Court is available on a point of law (as opposed to a disagreement over the sheriff's interpretation of the facts) only (section 78).

Lay representation (sections 91 to 94)

It is already possible, in certain circumstances, for a party litigant (an individual representing themselves in court action) to use the services of a "lay representative" – a person who is not a solicitor/advocate and is not otherwise authorised to appear in court on a party's behalf. However, it is not currently possible for a legal entity, such as a company or partnership, to be represented by anyone other than a lawyer (or other person authorised to appear in court). This is because litigation on behalf of a legal entity may need to take into consideration a variety of potentially competing interests (eg. shareholders, employees, other partners), and it is therefore difficult to be confident that one person (operating without the benefit of legal training) can do this. Nevertheless, the current prohibition puts legal entities at a disadvantage because, if they cannot afford to pay for legal representation, they cannot make their case.

The Bill brings forward proposals which will enable certain legal entities to be represented by a lay representative in particular circumstances. It aims to balance access to lay representation with the need to ensure that the representative takes forward the proper interests of the entity.

The proposals apply to companies, partnerships (including limited liability partnerships) and unincorporated associations. An individual will be able to represent the legal entity if they hold a "relevant position" - ie: a company director or secretary; a member or partner in a partnership; an office holder of an association; or an employee of the legal entity.

Section 92 deals with cases under simple procedure. In this situation, a lay representative will be able to appear for one of the above mentioned legal entities if:

- the representative holds a "relevant position"
- the representative's position does not mainly require them to conduct legal proceedings on behalf of the legal entity
- the representative is authorised by the legal entity to conduct the proceedings on its behalf
- the representative does not have a personal interest in the case (other than an interest which any office bearer in the same position would have), and
- the representative is not subject to any court restrictions relating to their representative capacity

Section 93 deals with lay representation of legal entities outside simple procedure. The same requirements apply to lay representatives. However, the court has greater discretion as to whether to grant the request. The court may grant permission if it is satisfied that: the legal entity is unable to pay for legal representation in relation to the proceedings; the lay representative is a suitable person, and it is "in the interests of justice" to grant the request (including consideration of the likely success of the case and its complexity).

In both situations, the Court of Session is empowered to make further provision in relation to lay representation via rules of court.

Vexatious Litigants (sections 100 to 102)

Those who persist in bringing legal action without good reason are currently dealt with under the Vexatious Actions (Scotland) Act 1898. This enables the Lord Advocate to apply to the Inner House of the Court of Session for an order declaring the person to be a "vexatious litigant". While this is in place, the person cannot take further court action without the permission of a judge of the Outer House of the Court of Session.

The Bill proposes to repeal the 1898 Act and replace its procedures with procedures to institute a "vexatious litigation order". This extends the process so that it is clear that someone who makes vexatious applications to the court in the course of legal proceedings is covered and that the court can consider proceedings instituted outside Scotland in coming to a decision regarding whether the litigant is vexatious.

Under the Bill's proposals, the Lord Advocate is given the power to apply for vexatious litigation orders. The application must be made to the Inner House of the Court of Session. An order has the effect of preventing a person from instituting further legal proceedings, or taking specified steps in ongoing proceedings without the consent of a judge of the Outer House of the Court of Session. That judge's decision is final.

In addition, it is proposed that Scottish Ministers will be able to make regulations allowing other courts to make orders controlling vexatious behaviour (section 102) with the effect of requiring the litigant to obtain consent from a specified judge or court before being able to take further steps in relation to litigation.

PART 4 – CIVIL APPEALS AND PART 5 – CRIMINAL APPEALS

The Bill's proposals are discussed, along with the creation of the Sheriff Appeal Court, under the heading "Part 2 – Sheriff Appeal Court".

PART 6 – JUSTICE OF THE PEACE COURTS

The issues dealt with in Part 6 of the Bill are discussed in the sections of this briefing dealing with the new jurisdiction of the sheriff courts and the creation of the post of summary sheriff.

PART 7 – THE SCOTTISH COURTS AND TRIBINALS SERVICE

The objective of Part 7 of the Bill is to merge the Scottish Tribunals Service (STS) with the Scottish Court Service (the new body will be known as the "Scottish Courts and Tribunals Service" (SCTS)). The aim is to create a joint administration for both the courts and for the First-Tier Tribunal for Scotland/Upper Tribunal for Scotland which are to be established under the provisions in the Tribunals (Scotland) Bill (i.e. devolved tribunals).

The Policy Memorandum explains that, currently, Scottish Ministers have responsibility for providing administrative support to certain devolved tribunals and that one of the main aims of Part 7 of the Bill is to increase the independence of tribunals by moving responsibility for this matter to the SCTS (headed by the Lord President) (see paragraphs 296–297). The Financial Memorandum explains that the annual operating cost of running the STS is currently around £10 million and that the proposal is that the current operating budget for the STS will be transferred to the annual operating budget of the Scottish Court Service (paragraphs 173–174). It also explains that there will be one-off transition costs of between 0.7 million and 1.2 million over a two year period in order to implement the merger (paragraphs 176–183).

SOURCES

AXA General Insurance Ltd and Ors v The Lord Advocate and Ors [2011] UKSC 46; [2012] 1 AC 868. Available at: http://www.supremecourt.uk/decided-cases/docs/UKSC_2011_0108_Judgment.pdf [Accessed 4 March 2014]

Courts Reform (Scotland) Bill [as introduced] Session 4 (2014). SP Bill 46. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_Bills/Courts%20Reform%20(Scotland)%20Bill/b46s4-introd.pdf

Courts Reform (Scotland) Bill: Explanatory Notes (and other accompanying documents). SP 46-EN. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_Bills/Courts%20Reform%20(Scotland)%20Bill/b46s4-introd-en.pdf

Courts Reform (Scotland) Bill: Policy Memorandum. SP 46-PM. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_Bills/Courts%20Reform%20(Scotland)%20Bill/b46s4-introd-pm.pdf

Harvie-Clark, Sarah. (2014) *The Scottish Civil Court System.* SB 14-15. http://www.scottish.parliament.uk/parliamentarybusiness/73068.aspx [Accessed 4 March 2014]

Her Majesty's Treasury. (2014) *GDP Deflators at market prices, and money GDP: December 2013*. Available at: https://www.gov.uk/government/publications/gdp-deflators-at-market-prices-and-money-gdp-march-2013 [Accessed 18 February 2014]

Judicial Appointments Board for Scotland. (Online) Available at: http://www.judicialappointmentsscotland.org.uk/Home [Accessed 5 March 2014]

Macphail, I. (2006) *Sheriff Court Practice.* Third Edition. Edinburgh: W Green & Son Ltd.

Ministry of Justice. *Practice Direction 7a – How to start proceedings – the claim form* [Online a]. Available at: http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07/pd_part07a [Accessed 5 March 2014]

Ministry for Justice. *Judicial Review Proposals for Reform* [Online b]. Available at: https://consult.justice.gov.uk/digital-communications/judicial-review-reform [Accessed 25 February 2014]

Mullen, T. (2014) *Reform of Judicial Review.* Glasgow: Legal Services Agency.

Review of Expenses and Funding of Litigation in Scotland. (2011) *Review of Expenses and Funding of Litigation in Scotland – Consultation Paper*. Available at: http://scotland.gov.uk/About/Review/taylor-review/ConsultationPaper

Review of Expenses and Funding of Litigation in Scotland. (2013) *Taylor Review: Review of Expenses and Funding of Litigation in Scotland*. Available at: http://scotland.gov.uk/About/Review/taylor-review/Report [Accessed 30 January 2014]

Northern Ireland Court Service.*(*2010) *Increasing the Jurisdictional Limit of the County Courts in Northern Ireland*. Available at: http://www.courtsni.gov.uk/en-gb/publications/public_consultation/documents/increasing%20the%20jurisdictional%20limit%20of%20the%20county%20courts%20in%20northern%20ireland/p_pc_increasing-the-jurisdictional-limit-consultation-paper.pdf

Northern Ireland Executive. (2013) *Ford announces an increase in the jurisdiction of county courts*. Press release 25 February 2013. Available at:

http://www.northernireland.gov.uk/index/media-centre/news-departments/news-doj/news-doj-febuary-2013/news-doj-250213-ford-announces-an.htm

Scottish Civil Courts Review. (2007) *Scottish Civil Courts Review: a Consultation Paper.* Edinburgh: Scottish Civil Courts Review. Available at: http://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/making-justice-work-courts-reform-(scotland)-bill-a-consultation-paper-february-2013.pdf?sfvrsn=2

Scottish Civil Courts Review. (2009) *Scottish Civil Courts Review*. Available at: http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-reform [Accessed 29 January 2014]

Scottish Civil Justice Council. Available at: http://www.scottishciviljusticecouncil.gov.uk/ [Accessed 29 January 2014]

Scottish Civil Justice Council. (2013) *Annual Programme 2013/14*. Available at: http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-pubilcations/annual-programme-2013.pdf?sfvrsn=4 [accessed 29 January 2014]

Scottish Court Service. (Online) Available at: https://www.scotcourts.gov.uk/home

Scottish Court Service. *Rules of the Court of Session* [Online]. Available at: https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules [Accessed 25 February 2014]

Scottish Court Service. *Ordinary Cause Rules* [Online]. Available at: http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules [Accessed 25 February 2014]

Scottish Court Service. (2013) *Court of Session – Notes for the New User.* Available at: http://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/court-of-session---notes-for-the-new-court-user.pdf?sfvrsn=6

Scottish Government. *Making Justice Work* [Online]. Available at: http://www.scotland.gov.uk/Topics/Justice/legal/mjw [Accessed 29 January 2014]

Scottish Government. *Working Group on Bar Reporters – Terms of Reference* [Online]. Available at: http://www.scotland.gov.uk/Resource/0043/00435549.pdf [Accessed 4 March 2014]

Scottish Government. (2010) *Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review*. Available at: http://www.scotland.gov.uk/Publications/2010/11/09114610/0 [Accessed 29 January 2014]

Scottish Government. (2012) *Civil Law Statistics in Scotland 2011-12*. Available at: http://www.scotland.gov.uk/Publications/2012/12/9263 [Accessed 11 March 2014]

Scottish Government. (2013a) *Courts Reform (Scotland) Bill - Analysis of Consultation Responses*. Available at: http://www.scotland.gov.uk/Publications/2013/09/8038 [Accessed 4 March 2014]

Scottish Government. (2013b) *Making Justice Work: Courts Reform (Scotland) Bill – a Consultation Paper.* Available at: http://www.scotland.gov.uk/Resource/0041/00415373.pdf [Accessed 25 February 2014]

Scottish Government. (2013c) *Scottish Budget: Draft budget 2014-15*. Available at: http://scotland.gov.uk/Publications/2013/09/9971 [Accessed 5 March 2014]

Scottish Government. (2013d) *Courts Reform (Scotland) Bill – Consultation on the Treatment of Civil Appeals from the Court of Session.* Available at: http://www.scotland.gov.uk/Publications/2013/05/6753

Scottish Government. (2013e) *Consultation on the Treatment of Civil Appeals from the Court of Session – Analysis of Responses.* Available at: http://www.scotland.gov.uk/Publications/2013/11/8175

Scottish Government. (2013) *Responses to the Consultation on the Courts Reform (Scotland) Bill* [Online]. Available at: http://www.scotland.gov.uk/Publications/2013/10/1217 [Accessed 4 March 2014]

Responses:

Faculty of Advocates. Available at: http://www.scotland.gov.uk/Resource/0042/00425385.pdf [Accessed 25 February 2014]

Family Law Association. Available at: http://www.scotland.gov.uk/Resource/0042/00425300.pdf [Accessed 25 February 2014]

Friends of the Earth Scotland. Available at: http://www.scotland.gov.uk/Resource/0042/00425378.pdf [Accessed 25 February 2014]

Law Society of Scotland. Available at: http://www.scotland.gov.uk/Resource/0042/00425352.pdf [Accessed 25 February 2014]

RSPB Scotland. Available at: http://www.scotland.gov.uk/Resource/0042/00425377.pdf [Accessed 25 February 2014]

Scottish Legal Aid Board. Available at: http://www.scotland.gov.uk/Resource/0042/00425354.pdf [Accessed 25 February 2014]

Senators of the College of Justice. Available at: http://www.scotland.gov.uk/Resource/0042/00425366.pdf [Accessed 25 February 2014]

Shelter Scotland. Available at: http://www.scotland.gov.uk/Resource/0042/00425330.pdf [Accessed 25 February 2014]

Thompsons. Available at: http://www.scotland.gov.uk/Resource/0042/00425312.pdf [Accessed 25 February 2014]

Scottish Government. (2014a) *Personal Communication – comments from Hamish Goodall 11 March 2014*.

Scottish Government. (2014b) *Personal Communication – email from Hazel Gibson 27 February 2014*.

Scottish Legal Aid Board. *Civil cases*. Available at: http://www.slab.org.uk/public/civil/ [Accessed 29 January 2014]

Scottish Parliament Justice Committee. (2013) *Official Report 11 June 2013*. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8775&mode=pdf

UN Economic Commission for the Europe. (1998) *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.* Denmark: UN Economic Commission for Europe. Available at: http://www.unece.org/env/pp/treatytext.html [Accessed 4 March 2014]

World Commission on Environment and Development. (1987) *Our common future.* Available at: http://www.un-documents.net/our-common-future.pdf [Accessed 12 March 2014]

SPICe
The Information Centre

Related Briefings

SB 14-15 The Scottish Civil Courts System 649KB pdf