

SPICe Briefing

Civil Justice - Civil Courts and Tribunals

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The civil justice system exists to give people and organisations a way to protect and enforce their legal rights. It deals with issues such as accident claims, divorce and contractual disputes. The criminal justice system, on the other hand, exists to prosecute (and, where found guilty, sentence) those accused of crimes.

This briefing describes the structure of civil courts and tribunals in Scotland. Another SPICe briefing, [“Civil Justice – Going to Court”](#) – looks at issues to do with taking court action.



CONTENTS

EXECUTIVE SUMMARY	3
CONTEXT	6
CIVIL JUSTICE.....	6
DEVOLUTION.....	6
KEY DEFINITIONS.....	7
LORD PRESIDENT.....	7
<i>Lord Justice Clerk</i>	8
SCOTTISH CIVIL COURTS REVIEW.....	8
SCOTTISH CIVIL JUSTICE COUNCIL.....	8
SCOTTISH CIVIL COURTS	8
OVERVIEW.....	8
THE SHERIFF COURTS.....	9
<i>Organisation</i>	9
<i>Court personnel</i>	9
<i>The Sheriff Personal Injury Court</i>	10
<i>Appeals</i>	10
THE SHERIFF APPEAL COURT.....	11
<i>Organisation</i>	11
<i>Court personnel</i>	11
<i>Appeals</i>	11
COURT OF SESSION.....	12
<i>Organisation</i>	12
<i>Court personnel</i>	12
<i>Specialisation</i>	12
<i>Appeals</i>	13
UK SUPREME COURT.....	13
COURT OF JUSTICE OF THE EUROPEAN UNION.....	13
<i>Operation</i>	13
<i>Brexit</i>	14
EUROPEAN COURT OF HUMAN RIGHTS.....	14
<i>Background</i>	14
<i>Enforcing human rights</i>	15
<i>Human rights and the devolution settlement</i>	15
TRIBUNALS AND SPECIALIST COURTS	15
INTRODUCTION.....	15
TRIBUNALS.....	15
<i>Background</i>	15
<i>Structure</i>	16
SPECIALIST COURTS.....	17
SOURCES	18
RELATED BRIEFINGS	20

EXECUTIVE SUMMARY

Context

The civil courts in Scotland are in the middle of the biggest reform initiative for a century. This follows on from Lord Gill's "Scottish Civil Court Review" (2009). The reforms have affected court structure, judicial personnel and court procedures. The process is ongoing.

Scotland's courts, as well as tribunals operating in devolved areas, are administered by the Scottish Courts and Tribunals Service.

Scottish civil courts

Sheriff courts

The [sheriff courts](#) are Scotland's local courts. They deal with both civil and criminal business. Civil cases with a monetary value of up to £100,000 must be raised, in the first instance, in the sheriff courts.

Sheriff courts are organised in regional groupings called sheriffdoms. A Sheriff Principal heads up each sheriffdom. As well as having judicial responsibilities, the Sheriff Principal is responsible for the efficient disposal of sheriff court business in his or her area.

[Sheriffs](#) and [summary sheriffs](#) hear cases in the sheriff courts. The role of summary sheriff was created by the Courts Reform (Scotland) Act 2014. It is intended that they will deal with less complex business, so that sheriffs' time is freed up to focus on more complicated cases.

There are currently 15 summary sheriffs in post, as well as some part time appointments. This number will increase over time as more sheriffs retire. The particular complement of sheriffs and summary sheriffs will depend on court business in a particular area.

Appeal from the sheriff courts will usually be to the Sheriff Appeal Court (it was previously to the Sheriff Principal). Where legislation provides for a case to be considered at first instance by the Sheriff Principal, appeal is usually to the Inner House of the Court of Session.

Sheriff Appeal Court

The [Sheriff Appeal Court](#) was created by the Courts Reform (Scotland) Act 2014. It hears appeals from the decisions of sheriffs and summary sheriffs in both civil cases and less serious criminal cases.

The court usually sits in Edinburgh. It started hearing civil appeals in January 2016. Decisions of the Sheriff Appeal Court must be followed by sheriffs and summary sheriffs across Scotland.

It is possible to appeal a decision of the Sheriff Appeal Court to the Inner House of the Court of Session, but only with the permission of one or other of those courts. Permission may only be

granted if the appeal raises an important point of principle or practice, or if there is some other compelling reason for the appeal to be heard.

Court of Session

The [Court of Session](#) is divided into the Outer and Inner Houses. The Outer House deals with cases at first instance (ie. when they are being heard for the first time). The Inner House deals with appeals from the Outer House and from the Sheriff Appeal Court. The judges of the Court of Session are known as [Senators of the College of Justice](#).

The Outer House deals with cases at first instance with a monetary value of more than £100,000. There are also several types of action which can only be raised in the Court of Session. Chief among these is judicial review, which challenges the use of power by public bodies.

Decisions of the Inner House can be appealed to the UK Supreme Court, with the permission of one or other of those courts. Permission may only be granted if the case raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time.

UK Supreme Court

The [UK Supreme Court](#) (formerly constituted as the House of Lords) can deal with appeals from the Inner House of the Court of Session in civil matters. There is no appeal to the Supreme Court for criminal cases, except where these raise a constitutional issue.

The Supreme Court's decisions are final in domestic legal matters, but there may be a role for supra-national courts (see below). Decisions in Scottish cases are binding on all Scottish civil courts. Decisions in cases from other parts of the UK may be persuasive where the law is substantially the same.

Supra-national courts

Two supra-national courts have a particular role in Scotland's civil justice system. The [Court of Justice of the European Union](#) (ECJ) issues interpretations of EU law. Scottish courts may refer contentious EU matters to the ECJ for a ruling. The ruling is binding as far as interpretation of EU law goes. However, domestic courts remain responsible for issuing a final decision taking into account factual and domestic law issues.

The [European Court of Human Rights](#) (ECtHR) deals with disputes about rights under the European Convention on Human Rights. Its decisions are binding on national governments.

The Human Rights Act 1998 made it possible for courts in the UK to consider the principles contained in the European Convention on Human Rights when deciding certain cases. Individuals may still take cases to the ECtHR, but only when they have exhausted all means of resolving the dispute through the UK courts.

Specialist courts and tribunals

A number of specialist courts and tribunals also operate in Scotland. Examples of specialist courts include the [Scottish Land Court](#), which deals with agricultural and crofting matters, and the Lands Valuation Appeal Court, which deals with rateable value issues. Appeal from specialist courts is usually to the Inner House of the Court of Session.

Some tribunals in Scotland operate in areas of devolved competence and are administered by the Scottish Courts and Tribunals Service. Examples include the [Mental Health Tribunal for Scotland](#) and the [Additional Support Needs Tribunals for Scotland](#).

The administrative structure of devolved tribunals is currently being reformed. The intention is that different tribunals will be grouped together in themed chambers, with appeal to an upper tribunal. Onwards appeal is to the Inner House of the Court of Session.

There are also a number of tribunals in Scotland which deal with areas of reserved competence – for example social security and employment tribunals. These are currently administered by Her Majesty's Courts and Tribunals Service in England and Wales.

The Scotland Act 2016 put in place arrangements to devolve the administration of reserved tribunals to the Scottish Parliament. This will be done on a case-by-case basis using secondary legislation.

The UK Parliament will retain responsibility for legislating for the subject matter of these tribunals. For example, the Scottish Parliament will be able to remove the requirement to pay a fee to bring a case to an employment tribunal. However, it will not be able to alter employment rights, such as the right to a redundancy payment.

CONTEXT

CIVIL JUSTICE

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) the sentencing of those accused of crimes. The civil courts deal with disputes about rights and obligations between people/organisations. Examples of subjects dealt with by the civil courts include contractual disputes, accident compensation claims, divorce and housing rights.

Civil justice cases can further be divided into public law and private law matters. Public law deals with disputes between individuals and public bodies or the state. It covers topics such as asylum and immigration, human rights and planning.

Private law covers disputes between individuals or private entities such as companies. It also covers private law disputes with public bodies – such as an accident claim against a local authority. Areas covered by private law including family law matters (eg. divorce) and contractual disputes.

DEVOLUTION

Scotland has traditionally had legal rules and practices distinct from those in England and Wales. However, as a result of sharing a legislature for over 300 years, there are also a number of legal rules which are the same or similar.

The arrangements for devolving power to the Scottish Parliament in the Scotland Act 1998 sought to preserve these differences and similarities.

It is within the competence of the Scottish Parliament to legislate on the vast majority of criminal justice matters. However, legislation on a number of civil justice subjects is outwith devolved competence – for example, in relation to employment rights, immigration and company law.

Matters to do with the administration of the Scottish civil and criminal justice systems are, broadly speaking, within devolved competency. This covers things like the court structure, court fees and court procedures.

However, competency in relation to some significant aspects of court structure is reserved to the UK Parliament. In particular, the UK Parliament retains competency for the [UK Supreme Court](#). This is the final domestic appeal court for Scottish civil cases.

It also retains competency for a number of [tribunals dealing with reserved subject matters](#) – for example in relation to employment or social security rights. Arrangements for devolving the administration of these tribunals are discussed below.

KEY DEFINITIONS

When discussing what courts do, it is useful to understand some of the technical words and phrases used.

Jurisdiction – a court is said to have jurisdiction in respect of a legal dispute where it has authority to hear and determine a case.

Court of first instance – a court is acting as a court of first instance when it is considering a case for the first time. This will usually involve considering evidence as to the factual circumstances of the case.

Appeal court – a court may act as an appeal court when it re-considers the decision made by a lower court.

Question of fact – an appeal on a question of fact challenges a decision about what the facts underlying the case are. It is sometimes only possible to appeal a decision on a question of law.

Question of law – an appeal on a question of law challenges a decision as to how the law applies to the case.

Senior courts – the senior courts in Scotland are the Court of Session (dealing with civil cases) and the High Court of Justiciary (dealing with criminal cases). The phrase may also include the UK-wide Supreme Court.

Domestic courts – a nation's internal courts, excluding supra-national bodies such as the European Court of Human Rights.

LORD PRESIDENT

The Lord President is the most senior member of Scotland's judiciary. As well as having judicial duties, the Lord President chairs the board of the [Scottish Courts and Tribunals Service](#). This provides administrative support to Scotland's courts and devolved tribunals.

The Judiciary and Courts (Scotland) Act 2008 sets out the responsibilities of the Lord President. These include:

- making arrangements for securing the efficient disposal of business in the Scottish courts;
- making arrangements for the welfare, training and guidance of judges; and
- representing the views of the Scottish judiciary to the Scottish Government and Scottish Parliament.

The Lord President is given similar responsibilities in relation to tribunal business and members under the Tribunals (Scotland) Act 2014. These functions can be delegated to the President of Tribunals.

Lord Justice Clerk

The Lord Justice Clerk is the second most senior judicial role in Scotland. The post-holder takes a prominent role in criminal matters in the High Court of Justiciary. The Lord Justice Clerk also heads up the second of three divisions of judges in the Inner House of the Court of Session. The first division is headed by the Lord President.

SCOTTISH CIVIL COURTS REVIEW

The Scottish Civil Courts Review was initiated in 2007 by the then Scottish Executive. It was led by a senior member of the judiciary, Lord Gill. It is often referred to as the “Gill Review”.

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 promoting effective, efficient and proportionate access to justice.

The Final Report of the Scottish Civil Courts Review was published in 2009. It made a raft of recommendations to improve the delivery of civil justice in Scotland, leading to the creation of the Scottish Civil Justice Council (discussed below), as well as the enactment of the Courts Reform (Scotland) Act 2014. Work on some recommendations is ongoing, with aspects, such as modernising court procedures, likely to continue for many years.

More information about [Scottish civil courts reform](#) is available from the website of the Scottish Courts and Tribunals Service.

SCOTTISH CIVIL JUSTICE COUNCIL

The [Scottish Civil Justice Council](#) has the role of keeping civil court practice and procedure under review. It drafts civil court procedure rules. It will, in due course, draft procedural rules for devolved tribunals as well. These are then passed to the Court of Session for formal consideration.

It also provides advice and makes recommendations on reform to the Lord President.

The Scottish Civil Justice Council has a pivotal part to play in the modernisation of Scotland’s civil justice system. It is intended that the Council will develop a new body of court rules to support more effective and efficient working.

SCOTTISH CIVIL COURTS

OVERVIEW

The sheriff courts are Scotland’s local courts. There are sheriff courts in many of the towns and cities of Scotland. They also deal with criminal business. Appeal, where available, is generally to the Sheriff Appeal Court. This usually sits in Edinburgh (although it is technically able to sit anywhere in Scotland).

It is also possible to raise some civil court actions (depending on their type and value) in the Court of Session. This always sits in Edinburgh. Cases at first instance are heard by the “Outer House” of the Court of Session.

The Court of Session also sits as an appeal court. Appeals are heard by the “Inner House” of the Court of Session. Appeal is possible from a decision at first instance of the Outer House and from a decision of the Sheriff Appeal Court.

Onwards appeal is possible from the Inner House of the Court of Session to the UK Supreme Court. This court sits in London. Its decision is final in domestic legal matters. However, there may also be a role for the European Court of Justice (in European Union (EU) law matters) and the European Court of Human Rights (in human rights matters).

There are a number of tribunals and specialist courts operating in Scotland. These are discussed in more detail below.

THE SHERIFF COURTS

Organisation

Scotland's sheriff courts are organised into six regional sheriffdoms for administrative purposes. SCTS has created a [map](#) of court locations which also shows the sheriffdom the court is located in. For more information about individual sheriff courts, see [SCTS's website](#).

Court personnel

Sheriffs Principal

Each sheriffdom is headed by a Sheriff Principal. The Sheriff Principal has judicial duties but is also responsible for the efficient administration of court business in his or her area. For instance, they may be required to liaise with external agencies to deal with delays, or to allocate cases to particular sheriffs.

Sheriff clerks

Each sheriff court has a sheriff clerk, with responsibility for the administration of the court. They are supported by a range of other administrative staff.

Sheriffs and summary sheriffs

Sheriffs and summary sheriffs hear cases at first instance in the sheriff courts. Both can deal with civil or criminal business.

[Summary sheriffs](#) deal with less complex civil cases, as well as less serious criminal cases. They also have jurisdiction to deal with certain urgent matters. The role is a relatively new one. It was legislated for in the Courts Reform (Scotland) Act 2014 as a result of recommendations in Lord Gill's Civil Courts Review (discussed above).

It is intended that [sheriffs](#) will therefore focus on more complex civil cases (as well as more serious criminal cases, including jury trials). However, sheriffs will retain jurisdiction to deal with all sheriff court business, including subjects within the remit of summary sheriffs.

The split in responsibilities between sheriffs and summary sheriffs is intended to enable court business to be considered at an appropriate judicial level. In Lord Gill's view, this would contribute to more effective and efficient use of court time.

At the time of writing, 15 summary sheriffs (as well as some part time summary sheriffs) have been appointed (Scottish Government 2016). It is intended that more summary sheriffs will be appointed as existing sheriffs retire. The mix between sheriffs and summary sheriffs will depend on the business needs of particular courts.

Specialisation

Sheriffs have previously been considered “generalists” in that they were expected to deal with whatever business came to their court. This could range from low value debt claims to commercial contracts, to anti-social behaviour. In reality, it was impossible for a sheriff to have expertise in all the areas he or she may be expected to deal with.

There has been some specialism in sheriff courts in the past. For example, both Edinburgh and Glasgow Sheriff Courts have specialist family courts. In a criminal context, there are also specialist courts dealing with drug-related crime and domestic abuse.

The court reform process is expected to increase the opportunities for sheriffs and summary sheriffs to specialise in particular types of court work. The Courts Reform (Scotland) Act 2014 set out procedures for the Lord President to designate particular subjects as suitable for specialisation.

This is part of Lord Gill’s vision for more efficient handling of cases. Areas of likely specialism include personal injury, family law cases, commercial cases and criminal jury trials.

The Sheriff Personal Injury Court

The Courts Reform (Scotland) Act 2014 provided for Scottish Ministers to be able to create sheriff courts with specialist, Scotland-wide jurisdictions. This would enable particular types of cases to be raised in a specialist sheriff court, rather than in the local sheriff court. The person raising the case would still be able to choose to use the local sheriff court though, if that was their preference.

The legislation does not restrict the subject matters for which specialist courts may be created. However, during the passage of the legislation, the Scottish Government made it clear that the only current intention was to create a specialist personal injury court.

Claims for compensation for personal injury make up a significant proportion of civil court business. Over time, specific court practices and procedures have been developed to deal with them. The specialist personal injury court is the latest in this long line of differentiation.

The [Sheriff Personal Injury Court](#) can deal with claims using specialist sheriffs. It sits in Edinburgh, and it started work in September 2015.

As noted above, it is still possible to raise personal injury claims in a local sheriff court if this would be the preference of the person bringing the case. Personal injury claims with a value of more than £100,000 can also be raised in the Court of Session.

The creation of a specialist personal injury court flows from a recommendation in Lord Gill’s Scottish Civil Courts Review. Lord Gill believed that a specialist court would be able to deal with this type of case more effectively.

The Sheriff Personal Injury Court has specifically adapted procedures, including electronic case management, to aid with the handling of its case load. It is possible for certain personal injury cases to be heard by a sheriff and a twelve person jury.

Appeals

Until recently, the Sheriffs Principal of the sheriffdom heard a range of appeals on civil matters. However, most appeals are now heard by the Sheriff Appeal Court, described below.

In most cases, an appeal can be made to the Sheriff Appeal Court without the permission of the sheriff hearing the case. However, some decisions made by sheriffs can only be appealed with the sheriff's permission.

In some cases, legislation provides that challenges to administrative decisions can be taken directly to the Sheriff Principal. One example would be alcohol licencing decisions made by licensing boards. In these cases, onward appeal from the decision of the Sheriff Principal is to the Court of Session rather than to the Sheriff Appeal Court (unless legislation provides otherwise).

THE SHERIFF APPEAL COURT

Organisation

The [Sheriff Appeal Court](#) was created by the Courts Reform (Scotland) Act 2014. It hears appeals from decisions of sheriffs and summary sheriffs in both civil and criminal matters¹. It started hearing criminal appeals in September 2015 and civil appeals in January 2016.

The Court currently sits in Edinburgh, although it is empowered in legislation to sit anywhere in Scotland.

Decisions of the Sheriff Appeal Court must be followed by sheriffs and summary sheriffs across Scotland.

Court personnel

All Sheriffs Principal can sit in the Sheriff Appeal Court as [appeal sheriffs](#). The Lord President may also appoint sheriffs with five years' experience as Appeal Sheriffs.

Appeal Sheriffs will usually sit as a bench of three when hearing appeals. However, depending on the matter being considered, it is possible for one appeal sheriff (or more than three) to hear the case.

Appeals

It is possible to appeal a decision of the Sheriff Appeal Court to the Inner House of the Court of Session, but only with the permission of one or other of those courts. Thus appeals which are not considered to raise important issues can be stopped, preventing further court time being spent on them.

The Sheriff Appeal Court can grant permission to appeal only if it considers that²:

- the appeal would raise an important point of principle or practice; or
- there is some other compelling reason for the court to hear the case.

The Inner House of the Court of Session can consider separately whether to grant permission for such an appeal on these grounds if the Sheriff Appeal Court refuses to do so.

¹ Some decisions in criminal cases must be appealed to the High Court of Justiciary. This is the final court of criminal appeal, although cases raising constitutional issues may be heard by the UK Supreme Court.

² Section 113(2) of the Courts Reform (Scotland) Act 2014.

COURT OF SESSION

Organisation

The Court of Session is Scotland's most senior civil court, although its decisions can be appealed to the UK Supreme Court.

The Outer House hears cases at first instance. Cases with a monetary value of less than £100,000 must be raised at first in the sheriff courts. Claims with a higher monetary value can be raised in either the Court of Session or the sheriff court. It is up to the person taking action in higher value cases to decide which court to proceed in.

There are also several types of action which can only be raised in the Court of Session. The most common of these is judicial review. This type of action challenges the use of power by public bodies. For more information, see the SPICe briefing "[Judicial Review](#)" (Harvie-Clark, S 2016).

Other types of action which remain within the exclusive jurisdiction of the Court of Session include patents and certain types of intervention in relation to trusts.

The Inner House of the Court of Session hears appeals, either from the Sheriff Appeal Court or from the Outer House. Appeals from decisions of Sheriffs Principal are also dealt with by the Inner House. There are exceptional circumstances where the Inner House may hear a case at first instance³.

Decisions of the Inner House are binding on all other civil courts in Scotland.

Court personnel

Scotland's most senior judges sit in the Court of Session. Their full title is [Senators of the College of Justice](#) (they are often just referred to as Senators). The same judges sit in the High Court of Justiciary – Scotland's final court of criminal appeal. In this role they are technically known as Lords Commissioner of Justiciary.

Senators are allocated to the Outer and Inner Houses. In the Outer House (where they are hearing cases at first instance), judges normally sit alone. There are certain cases involving personal injury where the judge may sit with a twelve-person jury. Judges in the Outer House are known as Lords Ordinary.

In the Inner House (where they are hearing appeals), judges usually sit as a bench of three. However, it is possible for a larger number of judges to consider particularly important or complex appeals.

Judges in the Inner House are split into three groups (called divisions). These all have equal standing. The first division is headed by the Lord President. The second division is headed by the Lord Justice Clerk. There is also an "extra" division, created to deal with pressure of business.

Specialisation

There is a limited degree of specialisation in the Court of Session. Nominated judges deal with certain cases, in particular commercial and intellectual property cases. There are also specialist procedures for certain types of action.

³ One example is an appeal to the "Nobile Officium". This is the traditional power of the Court of Session to provide a remedy where there is no other way to challenge the wrong in law.

Appeals

Cases decided in the Outer House can be appealed to the Inner House. This does not require the permission of either court.

Decisions of the Inner House can be appealed to the UK Supreme Court. This requires either the permission of the Inner House or, if that is not forthcoming, the permission of the Supreme Court.

The permission stage was introduced by the Courts Reform (Scotland) Act 2014. It addressed concerns that cases of little importance were being appealed from Scotland to the UK Supreme Court. In other parts of the UK, the requirement for such permission already existed.

Either court may only grant permission for an appeal to proceed if it “raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time”⁴.

UK SUPREME COURT

The [UK Supreme Court](#) deals with appeals from the Inner House of the Court of Session. It is based in London. There is no appeal outside Scotland for criminal matters, unless the case raises a “devolution issue” (see below). In October 2009, the Supreme Court assumed the judicial functions of the House of Lords.

Judges in the UK Supreme Court are known as Justices of the Supreme Court. Typically, five Justices sit together to hear a case. However, this number may be more or less, depending on the nature of the case they are considering.

Traditionally, two judges trained in Scots law sit in the Supreme Court. Where an appeal has come from Scotland, it is usual for at least one – and often both – Scottish Justices to be involved in consideration of the case. If the appeal involves a specialist point of Scots law, it is usual for one of the Scottish Justices to give the lead judgment.

Decisions of the UK Supreme Court are final. Decisions in Scottish cases must be followed by all Scotland’s civil courts. Decisions in cases from other parts of the UK may be persuasive where the law is substantially the same.

The UK Supreme Court is also the final determiner of “devolution issues”. This is the procedure for deciding whether the Scottish Parliament or Scottish Government has acted beyond the powers granted in the Scotland Act 1998.

COURT OF JUSTICE OF THE EUROPEAN UNION

Operation

The [Court of Justice of the European Union](#) (often referred to as the European Court of Justice or ECJ) ensures that EU law is interpreted and applied in the same way across the EU. National courts are required to refer cases to the ECJ for a ruling where there is any doubt as to how EU law should be applied.

The ECJ is made up of one judge from each EU country. It sits in Luxembourg.

⁴ Section 40A of the Court of Session Act 1988.

Any judgment issued by the ECJ is binding as far as the interpretation of EU law goes. However, domestic courts remain responsible for issuing a final decision in the case. This may require them to consider the factual circumstances surrounding the case as well as any domestic law issues.

It is possible for the European Commission, or another EU country, to take enforcement action against a national government in the ECJ. This might happen if a national government had failed to implement EU legislation. The court also deals with other issues – including actions by individuals and organisations who believe their EU rights have been compromised. It is known as the General Court rather than the Court of Justice when dealing with some of these issues.

When considering a case, the ECJ will first have the benefit of an opinion from an Advocate General. The Advocate General is a senior lawyer with responsibility for advising the court. Such a role is a feature of the legal system in several EU countries.

The opinion will set out the relevant legal issues and how the Advocate General believes the law should be applied. The ECJ is not bound to follow the Advocate General's opinion. However, it often does.

Brexit

It is not clear what impact Brexit will have on judgments from the ECJ. The UK will no longer be part of the EU, so there will be no need to refer cases to the court for a ruling. However, previous decisions have played an important role in our understanding of how existing EU legislation should be interpreted.

EU legislation may appear in the UK statute books as Acts of Parliament, Acts of the Scottish Parliament, regulations, or other forms of subordinate legislation.

It may be that ECJ judgments will remain relevant for as long as the legislation they interpret stays on the statute book. However, it is also possible that the UK courts could be charged with re-interpreting legislation without the requirement to refer to ECJ decisions.

EUROPEAN COURT OF HUMAN RIGHTS

Background

The [European Court of Human Rights](#) (ECtHR) adjudicates over disputes about the rights found in the European Convention on Human Rights. The ECtHR is sometimes confused with the Court of Justice of the European Union. However, it has no direct connection with the EU or its institutions.

The ECtHR sits in Strasbourg and is sometimes referred to as “the Strasbourg court” to differentiate it from the European Court of Justice.

The ECtHR and the European Convention on Human Rights fall under the auspices of the [Council of Europe](#). This organisation promotes human rights, democracy and the rule of law through a variety of international treaties, committees and monitoring work. It has 47 member states, stretching from Iceland to Azerbaijan.

The European Convention on Human Rights is binding on the governments of the countries which have signed it. Thus, it is governments which are brought before the ECtHR when it is argued that there has been a failure to provide a remedy for a human rights breach.

Enforcing human rights

Individuals, groups and organisations can bring cases to the ECtHR. They must have exhausted all the options available to resolve the dispute through their country's own legal system before doing so. It is also possible for country signatories to the European Convention on Human Rights to take action in the court against another country signatory.

The Human Rights Act 1998 enabled the principles embodied in the European Convention on Human Rights to be enforced in the UK's domestic courts. Thus, UK courts can consider Convention rights when interpreting legislation and deciding cases. They can "take into account"⁵ judgments of the ECtHR when reaching their decisions.

Individuals and organisations can take action in the domestic courts alleging their human rights have been breached. However, action can only be taken against "public authorities" (such as government, local authorities and government agencies). Private individuals and organisations (eg. companies and charities) are not bound by the rights set out in the Convention.

Human rights and the devolution settlement

As part of the arrangements for devolution, the Scottish Parliament and Scottish Government are required to comply with the principles set out in the European Convention on Human Rights. Acts of the Scottish Parliament which breach human rights are beyond its legislative competence and are therefore "not law"⁶. Executive acts by the Scottish Government which breach Convention rights are similarly beyond devolved competence and can be challenged in the courts.

TRIBUNALS AND SPECIALIST COURTS

INTRODUCTION

Tribunals and specialist courts have limited jurisdiction. This means that they can only deal with certain types of claims. Sometimes tribunals and specialist courts are set up because of the technical nature of the subject they deal with. Sometimes they are set up to provide a less formal forum than the courts to resolve certain types of dispute.

TRIBUNALS

Background

Tribunals are usually considered to be less formal, and therefore more user-friendly, than the courts. They may take place in less formal settings, and have procedures which are easier for someone without legal training to use. Thus, it may be possible for a complainant to appear without legal representation.

However, tribunal procedure can still be fairly complex. Some users would argue that representation – from a solicitor or other expert – is hugely beneficial.

⁵ Section 2 of the Human Rights Act 1998.

⁶ Section 29 of the Scotland Act 1998.

Structure

Devolved tribunals

There is a wide range of tribunals operating in Scotland. Some of these come within the devolved competency of the Scottish Parliament and Government. These are known as “devolved tribunals”. They may have been created since devolution or operated in an area of devolved responsibility prior to devolution.

Examples include:

- the [Mental Health Tribunal for Scotland](#);
- the [Additional Support Needs Tribunals for Scotland](#); and
- the [Scottish Charity Appeals Panel](#).

The Tribunals (Scotland) Act 2014 reformed the administrative arrangements for supporting devolved tribunals. It created a “chamber” structure which would see different tribunals grouped together in themed chambers.

The reform process is ongoing. The first tribunals to be included in the new structure are the Home Owner Housing Panel and the Private Rented Housing Panel. These form the “Housing and Property Chamber”, operational from 1 December 2016.

The 2014 Act also unified the arrangements for onwards appeal. Once a tribunal has moved into the new structure, appeal will be to an upper tribunal and then on to the Inner House of the Court of Session.

Devolved tribunals are administered by SCTS.

Reserved tribunals

There are also a large number of tribunals operating in Scotland for which the UK Parliament and Government have competence. These are referred to as “reserved tribunals”. Together these deal with a significantly larger volume of claims every year than the courts.

Examples include:

- the [Employment Tribunal](#);
- the [Social Security and Child Support Tribunal](#); and
- the [Immigration and Asylum Tribunal](#).

Most reserved tribunals already operate in a two tier, chamber structure. They are currently administered by Her Majesty’s Courts and Tribunals Service (for England and Wales).

Further devolution

The Scotland Act 2016 set up a process by which responsibility for the administration of tribunals dealing with reserved subject matters can be devolved to the Scottish Parliament. This will be done on a case-by-case basis using subordinate legislation. It is envisaged that, when responsibility for the administration of a tribunal is transferred, it will be absorbed into the devolved chamber structure outlined above.

Competence for legislation governing the rights to be adjudicated by these tribunals will remain with the UK Parliament. For example, it would be possible for the Scottish Parliament to legislate to remove the requirement to pay a fee to bring a case to an employment tribunal. However, the Scottish Parliament will not be able to alter employment rights, such as the right to a redundancy payment.

SPECIALIST COURTS

Scotland also hosts several specialist courts. As noted above, these have jurisdiction to deal with particular types of claim only. For example:

- the [Court of the Lord Lyon](#) deals with entitlements to use certain coats of arms⁷;
- the [Scottish Land Court](#) deals with disputes in relation to agricultural and crofting tenancies; and
- the Lands Valuation Appeal Court deals with appeals on the rateable value of property for the purposes of calculating local business tax.

Appeal from these courts is to the Inner House of the Court of Session (although the Lands Valuation Appeal Court's decision on rateable value is final).

⁷ Such decisions can have significant knock-on effects, such as who is entitled to inherit titles or sit in the House of Lords.

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