Civil Appeals (Scotland) Bill

Introduced on: 29 September 2006 [SP Bill 77]
Introduced by: Adam Ingram MSP (Members’ Bill)
Fell: 20 December 2006

Purpose and objectives of the Bill

The Civil Appeals (Scotland) Bill [SP Bill 77] sought to end the current possibility of appeal to the House of Lords in relation to Scottish civil cases. In doing so it would also prevent that possibility of appeal being transferred to the new Supreme Court of the United Kingdom (once that court is open for business).

The Bill also sought to establish an additional level of appeal within Scotland for Scottish civil cases. The new possibility of appeal would be to a ‘Civil Appeals Committee’, comprising judges appointed from existing judges of the Court of Session, and would exist where there was formerly a right of appeal to the House of Lords.

Information on current arrangements for appeals in Scottish cases, together with further information on the Bill, is set out in SPICe briefing 06/99 (November 2006).

Parliamentary consideration of the Bill

The Bill was introduced in the Parliament by Adam Ingram MSP on 29 September 2006.

In his statement on legislative competence, the Parliament’s Presiding Officer identified a significant number of provisions in the Bill which he considered to be outwith the legislative competence of the Parliament. The provisions considered to be outwith competence included ones ending the possibility of appeal to the House of Lords in relation to Scottish civil appeals. The reason given for the Presiding Officer’s view in this area was that these provisions, in seeking to amend the judicial functions of the House of Lords were, in effect, seeking to amend the functions of the United Kingdom Parliament – a reserved matter under Schedule 5 to the Scotland Act 1998.

The Justice 2 Committee, as lead committee, considered its approach to the Bill at its meeting on 28 November 2006. In light of the Presiding Officer’s statement on legislative competence, the Committee agreed (by division: For 5, Against 2, Abstentions 0) to make a recommendation to the Parliament that the general principles of the Bill not be agreed to.1

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1 The recommendation was made under powers set out in Rule 9.14.18 of the Parliament’s Standing Orders.
A motion proposing that the Parliament does not agree the general principles of the Bill was considered by the Parliament as a whole on 20 December 2006 – one member speaking in favour of the motion and one against.

Speaking in favour of the motion, David Davidson MSP (Convener of the Justice 2 Committee) highlighted the views of the Presiding Officer on legislative competence. He went on to state that:

“In the light of the evidence, I concluded that undertaking the extensive work that stage 1 consideration would involve would not be a productive use of the committee’s, or the Parliament’s, time (...). I do not criticise the policy aims of the proposal. Indeed, I recognise that there may be room for debate about the appropriate route for such appeals, but I do not believe that the bill is the correct vehicle for such a debate, given the competency issues I have outlined.”

Speaking against the motion, Adam Ingram MSP argued that legal opinion on the competence of the Bill was split. He stated that:

“My view is that the legal advice given to the Presiding Officer could have been, and should be, challenged. Whether the bill is within the Parliament’s legal competence revolves around whether the judicial committee of the House of Lords should be regarded as a court or a part of the United Kingdom Parliament in the context of what the bill aims to do. Given that the bill focuses exclusively on the civil appeal process, the pith and substance of its purpose falls within a devolved, rather than a reserved, area.”

Following the above debate, members voted in support of the motion that the Parliament does not agree to the general principles of the Bill (by division: For 75, Against 36, Abstentions 0). As a result of this vote the Bill fell on 20 December 2006.

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