

CIVIL APPEALS (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. The following documents are published to accompany the Civil Appeals (Scotland) Bill introduced in the Scottish Parliament on 29 September:

- Explanatory Notes;
- a Financial Memorandum; and
- the Presiding Officer's Statement on legislative competence.

A Policy memorandum is printed separately as SP Bill 77– PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Adam Ingram MSP, the member in charge of the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. Currently, final appeals in Scottish criminal cases are held in a Scottish court while the ultimate appeal in civil cases re heard in England by the House of Lords Appellate Committee. In order to address this anomaly the Bill provides for a final civil appeal court in Scotland.

5. It does this by:

- Establishing a Civil Appeals Committee in Scotland; and
- Abolishing the right of civil appeal to the House of Lords

COMMENTARY ON SECTIONS

Section 1: Civil Appeals Committee

6. Section 1(1) establishes a Civil Appeals Committee in Scotland and subsection (2) provides that the Lord President may appoint judges to sit on the Civil Appeals Committee to hear and dispose of appeals,

7. Subsection (3) requires the Civil Appeals Committee to consist of a minimum of least five appointed judges before it can be considered constituted. It may have more judges that 5 should the Lord President determine that this is necessary.

Section 2: Appointment of Judges

8. Section 2 (1) requires the Lord President to appoint Judges from the Court of Session to the Civil Appeals Committee. All arrangements for the appointment of Judges will be regulated by Act of Sederunt, there is flexibility in the Bill for the Lord President to be either included or excluded as a Judge sitting on the Civil Appeals Committee. Ultimately it will be for the Court to decide what is appropriate under the circumstances.

9. Subsection (2) allows the Court of Session, by act of sederunt to provide that judges for the Civil Appeals Committee are to be appointed from the existing judges at the Court of Session. There is no provision for judges to be specifically appointed only for the purposes of the Civil Appeals Committee. Judges appointed will be members of the First or Second Division of the Inner House, and when necessary will be appointed from the judges of the Outer House. As the Civil Appeals Committee will be a court of final appeal it is considered appropriate for the Judges to be appointed in the first instance from the Inner House as it consists of more senior judges than the Outer House.

10. The Court of Session is made up of an Outer House and Inner House. The Outer House is almost exclusively a court of first instance, dealing with civil actions including divorce, contact, residence, adoption, actions for recovery of debt or heritable property, and damages for defamation and personal injury.

11. The Inner House generally acts as a court of appeal for decisions of the Outer House and for certain decisions from the sheriff courts and from statutory tribunals and courts, such as the Scottish Land Court and Employment Tribunals.

12. The Inner House consists of two divisions, the First and Second divisions, each of equal importance and jurisdiction. The Lord President heads the First Division which comprises a maximum of four other senior judges and the Lord Justice Clerk heads the Second Division which also has a maximum of four other senior judges.

Section 3: Jurisdiction

13. Section 3 effectively removes the appellate function of the House of Lords as regards Scottish civil cases. It provides that an appeal from any order or judgement from a court in Scotland in relation to civil matters that would currently be taken to the House of Lords will now be heard by the Civil Appeals Committee. This comes in force as explained at paragraph 24 below.

14. Subsection (2) makes it explicit that there is no appeal from the Civil Appeals Committee to the House of Lords. The decision of the Civil Appeals Committee will be final.

Section 4: Procedure

15. Section 4 gives power to the Court of Session to make rules by act of sederunt governing the practice and procedure to be followed in the Civil Appeals Committee.

16. Subsection (2) requires that the rules must cover four specific areas. Firstly they must cover (a) the procedure to be followed and requirements to obtain leave to appeal from the Civil Appeals Committee. Leave to appeal is a mechanism to regulate the grounds upon which appeals to the Civil Appeals Committee can be made.

17. Secondly the rules must contain directions on (b) giving security for costs. This will cover any financial deposits required by the appellant before an appeal can be brought; the purpose

being to ensure that the respondent to an appeal has recourse to payment of expenses should an appeal be unsuccessful.

18. Thirdly rules must cover (c) certification and signing of appeals. At present an appellant to the House of Lords requires their appeal to be certified by two Queens Counsel that the appeal is, in their opinion, relevant and of some substance before it may be lodged. It will be for the act of sederunt to determine any similar or other requirements before an appeal can be made.

19. Finally, the rules are also required to make provision for (d), the time limits for making appeals.

Section 5: Modification of enactments

20. Section 5 introduces schedule 1 which modifies other relevant pieces of legislation. On the main, the modifications substitute the Civil Appeals Committee for the House of Lords in relevant statutory provision covering appeals. The Solicitors (Scotland) Act 1980 is amended to ensure that relevant solicitors with rights of audience at the Court of Session will have these rights in relation to the Civil Appellate Committee. The Legal Aid (Scotland) Act 1986 is amended to ensure civil legal aid is available to the Civil Appeals Committee and the Contempt of court Act 1981 is amended to apply its provisions to cases before the Civil Appeal Committee.

Section 6: Ancillary provisions

21. Section 6 gives wide powers to the Scottish Ministers to make orders for such incidental, supplemental consequential transitional or saving provision as they consider necessary or expedient for the purposes of or in consequence of the Bill. Two types of Parliamentary procedure are provided under this provision, with the approval of the Scottish Parliament required for any order that modifies an enactment. The Bill affects a wide range of legislation. This power will allow Ministers to make any further changes to relevant enactments

Section 8: Repeals

22. Section 8 introduces schedule 2 which repeals certain provisions contained in the Appellate Jurisdiction Act 1876 which provide for appeal to the House of Lords in Scotland under common law or statute.

Section 9: Short title and commencement

23. Section 9 sets out the short title of the Act as the Civil Appeals (Scotland) Act.

24. Subsection (2) provides that the Act will come into force 6 months following the date of Royal Assent. This 6 month period allows for preparatory work, the making of the relevant acts of sederunt and any procedures to be put in place to provide for appeals to the Civil Appeals Committee.

25. Subsection (3) makes it clear that the Act does not apply to any appeals that are pending before the House of Lords immediately before the commencement date. Subsection (4) sets out that an appeal before the House of Lords is deemed to be pending until any application for leave to appeal is disposed of. If leave is granted, the appeal is remains outstanding until finally disposed off. Subsection (5) sets out that where leave to appeal is not required then the appeal is pending before the House of Lords until it has been disposed of.

26. Subsection (6) sets out that an appeal or application for leave to appeal is to be considered disposed of once the time in which it should have been made has expired without it being made.

27. The effect of these provisions in section 9(3) to (6) is that if the appeal has been presented to the House of Lords but not heard prior to the commencement of the Bill, it would continue to be heard by the House of Lords. If an appeal could be made before the commencement date whether requiring of leave to appeal or not, then it continues to be a matter for the House of Lords to determine. If the appeal has already been heard before the commencement date but not decided, it has not been disposed of and the Bill would not affect that appeal either.

FINANCIAL MEMORANDUM

INTRODUCTION

28. This Financial Memorandum has been prepared by Adam Ingram MSP, the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

29. The costs associated with the provisions of this Bill will fall upon the Scottish Administration.

COSTS ON THE SCOTTISH ADMINISTRATION

30. There will be some costs to the Scottish Ministers involved in the tidying up of subordinate legislation as a result of the Bill (e.g. changing Civil Legal Aid Regulations to refer to the new appeals committee rather than House of Lords Appellate Committee). It is expected that these costs will not be significant and can be absorbed within existing resources.

31. There may be further costs to the Scottish Ministers from changes to literature/advice and for the production of any publicity about the change to the appeals process. Again it would be expected that any such costs will not be significant and that they can be absorbed within existing resources.

COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

32. No costs are expected to accrue to local authorities.

33. The Scottish Legal Aid Board (SLAB) are a non-departmental public body who, amongst other functions, manage the Legal Aid Fund.

34. SLAB are likely to incur start-up costs in terms of amending literature, forms and advice leaflets to reflect the new arrangements, and in training new staff. However, much, if not all, of this is expected to be able to be absorbed within existing resources, particularly given the limited number of appeals that are taken.

35. SLAB are also likely to incur costs from updating their computer systems to incorporate the changed arrangements and in providing training to staff on these alterations to the IT system. However, as the change only involves a change of location/name of the appeals committee, alterations and the cost of reprogramming ought to be minimal and again should be able to be absorbed within existing resources.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

36. The Bill directs that rules of Court be amended to cover the arrangements for the Civil Appeals Committees within the Court of Session. The Rules Council of the Court of Session will be responsible for ensuring this is done and are likely to incur costs in terms of staff time etc. It is expected that these costs will be absorbed within existing budgets.

Start-up costs

37. The Scottish Court service (SCS) will incur start-up costs as detailed below

Recruitment

38. The SCS indicated in its response to the consultation on this Bill that the new committee could be accommodated within existing Court of Session resources. The Bill provides that committees would be drawn from any of the total 34 judges of the Court of Session. That will apply subject to existing criteria that they have not been closely involved in a previous hearing of the case. The number of final appeals is not expected to rise from the current low level and there is no justification for the appointment of additional judges. However, the Scottish Parliament already has the power to increase the maximum number of judges in the Court of Session by approving by resolution a draft Order in Council laid before it by the Scottish Ministers. The current salary of an Inner House judge of the Court of Session judge is £177,428 and this will rise to £184,400 in November 2006. The current salary for an Outer House judge of the Court of Session is £156,958, rising to £162,000 in November 2006.¹

39. It is anticipated that no additional staff will be required to support the committee, as this work will be carried out by existing staff who currently work with the judges who will be hearing the appeals.

¹ Department for Constitutional Affairs, Judicial Salaries 2006-2007, www.dca.gov.uk/judicial/2004salfr.htm

Training

40. The member anticipates that there will need to be an initial staff training period required to cover the new appeals system. As the Court of Session is accustomed to hearing other types of appeals these costs are likely to be minimal.

Accommodation

41. For the purposes of this memorandum, it is assumed that the Civil Appeals Committee will be accommodated within the same framework as the current Court of Session arrangements for hearing appeals in the Inner House. The Keeper of the Rolls of the Court of Session will deal with the administration involved in the new committee and the same court rooms, waiting rooms and anterooms will be used. Therefore, no additional office space will be required and no costs will be incurred in this respect.

42. If however, it was felt that the current accommodation was not sufficient to deal with the work involved in the extra committee, it is most likely that an alternative office would be found within the refurbished Court of Session buildings, and costs would be absorbed.

Equipment

43. It is anticipated that the set up and running of the Civil Appeals Committee will be accommodated within the existing administrative framework of the Court of Session. A modest initial outlay may be incurred in the first year to modify internal systems. Any such costs should be minimal and absorbed within existing resources.

Promotion and awareness training

44. Given the number of appeals it is not anticipated that there is any need for a bespoke exercise akin to that for the Legal Profession and Legal Aid (Scotland) Bill. It is anticipated that the legal profession will internally generate any required publicity, possibly as a consequence of articles in legal journals and publications.

Running costs

Staffing

45. It is expected that no additional staff will be required.

Training

46. It is anticipated that following the initial staff training detailed above, training on this aspect of the courts system will be provided alongside the existing provision and any costs will be absorbed within the existing training budget.

Accommodation

47. As previously stated, it is not expected that the set-up of the Civil Appeals Committee within the Court of Session will require additional accommodation and therefore there will be no additional running costs incurred.

Equipment

48. It is anticipated that the set up and running of the Civil Appeals Committee will be accommodated within the existing administrative framework of the Court of Session.

Costs to Appellants

49. Costs to appellants are expected to fall because of reduced travel and accommodation costs; also they will no longer be faced with the higher living costs of bringing appeals in London, whether it be for themselves or indirectly through Counsel.

50. No new costs are expected to accrue to parties to final appeals, whether appellants or defendants.

TOTAL COSTS

51. The total costs for the Bill falling on the Scottish Ministers, Scottish Court Service, Scottish Legal Aid Board and the Rules Council of the Court of Session will be minimal.

52. The Bill will place no new costs on appellants; it may lead to a reduction in costs currently associated with bringing an appeal in London.

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

53. On 21 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the following provisions are not within the competence of the Parliament—

Section 3

Section 5 insofar as it relates to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, 24, 25 and 27 of schedule 1

Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, 24, 25 and 27 of schedule 1

Section 6 insofar as it would confer power to make provisions relating to matters outside the competence of the Parliament

Section 8 and schedule 2

With the exception of paragraph 16 of schedule 1, the reason for this view is that in my opinion these provisions relate to the Constitution. The Parliament of the United Kingdom, including the judicial functions of the House of Lords, is reserved under paragraph 1(c) of Schedule 5 to the Scotland Act 1998. Section 29(2)(b) of the Scotland Act 1998 states that a provision is outside the legislative competence of the Parliament if it relates to reserved matters.

As regards paragraph 16 of schedule 1, the reason for this view is that in my opinion the provision would be incompatible with Article 6(1) of the Convention. Section 29(2)(d) of the Scotland Act 1998 states that a provision is outside the legislative competence of the Parliament if it is incompatible with any of the Convention rights.”

These documents relate to the Civil Appeals (Scotland) Bill (SP Bill 77) as introduced in the Scottish Parliament on 29 September 2006

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EXPLANATORY NOTES

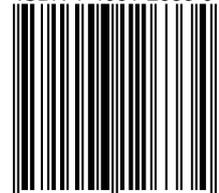
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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-2633-0



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