Courts Reform (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 46</th>
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<td>Introduced on:</td>
<td>6 February 2014</td>
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<td>Introduced by:</td>
<td>Kenny MacAskill MSP (Government Bill)</td>
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<td>Passed:</td>
<td>7 October 2014</td>
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<td>Royal Assent:</td>
<td>10 November 2014</td>
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**Passage of the Bill**

The Courts Reform (Scotland) Bill was introduced in the Scottish Parliament on 6 February 2013 by the Scottish Government. The Justice Committee conducted Stage 1 scrutiny at meetings in March and April 2014.


The Justice Committee published its Stage 1 Report on 9 May 2014 and the Stage 1 Debate took place on 21 May 2014. The Scottish Government responded to the Stage 1 Report in a letter to the Justice Committee dated 2 June 2014.

The Justice Committee considered amendments to the Bill at Stage 2 on 10 June and 17 June 2014. The Delegated Powers and Law Reform Committee published its report on the delegated powers provisions of the Bill as amended at Stage 2 on 7 October 2014. The Stage 3 debate also took place on this date. The Bill, as amended, received Royal Assent on 10 November to become the Courts Reform (Scotland) Act 2014 (asp 18).

**Purpose and objectives of the Bill**

The overarching objective of the Bill was to address the problems identified in the Scottish Civil Courts Review headed by Lord Gill (also known as ‘the Gill Review’). The Gill Review made a wide range of recommendations designed to improve the efficiency and effectiveness of Scotland’s civil courts.
Note that not all Lord Gill’s recommendations were taken forward in the Bill. Some were departed from; others were addressed by other means, including the Scottish Government’s Making Justice Work programme and modernised court rules.

Provisions of the Bill

The Bill proposed a number of reforms to court structure, organisation and procedure. These included the following key reforms:

- an increase in the ‘exclusive jurisdiction’ (or ‘exclusive competence’) of the local sheriff courts so that more cases would be 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

- changes to the rules relating to ‘judicial review’, a type of court action which allows individuals and organisations to challenge the exercise of power by public bodies and other official decision makers

Parliamentary consideration

The jurisdiction of the sheriff courts

Much of the debate at Stage 1 focused on the appropriate level at which the ‘exclusive competence’ of the sheriff court should be set. This competence is expressed as a monetary amount and indicates which cases must be heard in the sheriff court. The previous limit was £5,000 but the Bill proposed to increase the exclusive competence to £150,000.

In its Stage 1 report, the Justice Committee took the view that the proposed increase was too great a leap and recommended that the Scottish Government introduce a lower limit.

At Stage 2, a non-Government amendment, which set the level of the exclusive competence of the sheriff court at £100,000, was agreed to.

Sanction for counsel

Counsel (or ‘advocates’ as they are also known) are lawyers who specialise in presenting arguments to the higher courts in Scotland (i.e. the Court of Session in civil cases), although they can also appear in the sheriff courts.
In the Court of Session, the winning party typically recovers his or her legal expenses of instructing counsel from the losing party. That is not the position in the sheriff court, where the expenses of instructing counsel are recoverable only if the sheriff sanctioned the employment of counsel.

Part of the policy debate associated with altering the exclusive competence of the sheriff court was linked to the absence of automatic sanction for counsel in the sheriff courts. Concerns were raised by some stakeholders that, as a result, parties would sometimes not get access to the best legal advice.

The report of the Taylor Review (which looked at the funding of civil litigation in Scotland) recommended that the current test for sanctioning counsel be amended. Specifically, a general test of reasonableness should be added, along with the need to have regard to the resources of the other party in the case. In its Stage 1 Report the Justice Committee recommended that this amended test be included on the face of the Bill. At Stage 2, a non-government amendment giving effect to this change was agreed to.

There were further non-governmental amendments at Stage 3 which proposed further alterations to the test to make it more likely that counsel would be sanctioned in the sheriff courts. These amendments included proposals relating to specific types of case. All of these amendments were disagreed to or not moved.

**Resources**

At Stage 1, some stakeholders raised concerns about whether the sheriff court system could cope with the increase in business created by the new exclusive competence of the sheriff courts.

At Stage 2, non-government amendments sought to address these concerns. They included proposals that orders bringing into force certain parts of the Bill, where concerns about resources had been expressed, would be subject to the affirmative procedure in the Scottish Parliament. These amendments were disagreed to. There were similar non-government amendments at Stage 3 and these were also disagreed to.

**The Sheriff Appeal Court**

*Whether experienced sheriffs should be Appeal Sheriffs*

Under the current system, civil cases begun in the sheriff courts are initially heard and decided upon by sheriffs, whereas sheriffs principal (senior local judges) hear appeals from those decisions. The Bill provided for existing sheriffs principal to be Appeal Sheriffs (section 48) in the new Sheriff Appeal Court but also, unlike the recommendation of Lord Gill in this regard, for sheriffs with five years’ experience to be eligible for appointment (section 49).

In its Stage 1 Report, the Justice Committee recommended that only sheriffs principal should hear appeals in the Sheriff Appeal Court. The Scottish Government did not accept this recommendation. At Stage 2, non-government amendments
aimed to make only sheriffs principal eligible for appointment as Appeal Sheriffs. These were disagreed to. Furthermore, at Stage 3 there were non-government amendments which aimed to give effect to the policy intent of Lord Gill’s original recommendation by different means. These were also disagreed to.

*How many Appeal Sheriffs should hear appeals?*

The Bill allows court rules to be made on the number of judges required to hear an appeal in particular circumstances. The Financial Memorandum to the Bill (para 116) assumes that 95% of civil appeals will get a hearing in front of one Appeal Sheriff, with only 5% of cases requiring a bench of three. At Stage 1, some stakeholders expressed concerns about this approach.

At Stage 2, non-government amendments aimed to ensure that a minimum of three judges heard appeals in the Sheriff Appeal Court in both civil and criminal matters. They would also have required one of the judges hearing the appeal to be a sheriff principal and another to be a subject specialist in the relevant subject area. These amendments were not moved.

*Judicial review*

One of the key changes proposed by the Bill relating to judicial review was the introduction of a three month time limit to commence an action (with the court retaining discretion to allow an action to be commenced outside this timeframe). This new limit would apply to judicial review actions relating to the European Convention on Human Rights. Previously such actions were subject to a one year time limit.

At Stage 1, several stakeholders expressed concern that the proposed limit was too restrictive, particularly where the party raising the action had to apply for legal aid.

At Stage 2, various non-government amendments aimed to either remove the three month time limit or to soften its impact in practice. On the other hand, other non-government amendments sought to introduce a six week time limit for cases relating to planning or procurement issues. All amendments at Stage 2 were either not moved or moved but, with agreement, withdrawn.

At Stage 3, various non-government amendments proposed the alternative time limits of six months and one year respectively. These amendments were either disagreed to or not moved.