Justice Committee
Courts Reform (Scotland) Bill

Supplementary written submission from the Lord President of the Court of Session

I am grateful to you and your Committee for having invited me to give evidence on this Bill.

In the course of my evidence I offered some views on section 88 of the Bill, dealing with remits from the sheriff court to the Court of Session. Since then I have given further thought to the matter. I hope that it will be helpful to the Committee if I set out my concluded views on the section 88 questions that were put to me.

Section 88(4)

My conclusion is that the test of ‘exceptional circumstances’ in section 88(4) (for the remit of a case having a value less than £150,000) is too high. In my opinion, the test in section 88(4) should be the same as that set out in section 88(2) (which applies to all other sheriff court cases) namely, that “the importance or difficulty of the proceedings makes it appropriate [to remit]”. A single test for all remits is desirable in principle and has obvious practical advantages.

Section 88(5)

Section 88(5) provides that the Court of Session may accept a remit “on special cause shown”. This requirement presents an additional hurdle that an applicant for a remit must clear. On reflection, I consider that the test of ‘special cause shown’ is too high. The test of “cause shown” would adequately meet the situation. It would be a sufficient safeguard to prevent the abuse of process by way of inappropriate applications for remit, and would not impede the presentation of meritorious appeals.

Section 88(6)

I am grateful to Ms McInnes for having drawn my attention to section 88(6), and for having questioned whether it is appropriate. This provision would entitle the Court of Session to refuse a remit, on account of “the business and other operational needs” of the Court. This provision takes up a proposal in the Report of the Scottish Civil Courts Review (Chapter 4, paragraph 136). Since giving evidence, I have given further thought to this point. My conclusion is that Ms McInnes’ concerns are well founded. Under this provision the question would not be whether the appeal deserved to be heard but whether it suited the Court to hear it. That provision would almost certainly be in breach of the European Convention on Human Rights. Even if it was not, it would nevertheless be thoroughly undesirable, in my view.

Brian Gill
Lord President of the Court of Session
28 April 2014