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Official Report

JUSTICE COMMITTEE

Tuesday 10 June 2014

Session 4

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Tuesday 10 June 2014

CONTENTS

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DECISION ON TAKING BUSINESS IN PRIVATE 4643
COURTS REFORM (SCOTLAND) BILL: STAGE 2 4644

JUSTICE COMMITTEE
18th Meeting 2014, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*John Pentland (Motherwell and Wishaw) (Lab)
*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 10 June 2014

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the 18th meeting in 2014 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when switched to silent. No apologies have been received.

Agenda item 1 is a decision on taking business in private. I invite the committee to agree to consider items 3 and 4 in private. Item 3 is consideration of a report by the Justice Sub-Committee on Policing on its work in the first year of police reform, and item 4 is consideration of our initial approach to the scrutiny of the Scottish Government's draft budget 2015-16. Do members agree to take those items in private?

Members *indicated agreement.*

Courts Reform (Scotland) Bill: Stage 2

10:00

The Convener: Item 2 is day 1 of stage 2 proceedings on the Courts Reform (Scotland) Bill. We can go up to and including section 60 of the bill today and no further.

I welcome to the meeting the Cabinet Secretary for Justice and his officials.

Members should have their copy of the bill, the marshalled list of amendments and the groupings of amendments. I will take things slowly to start with until people get into their stride. That does not include the cabinet secretary, who is always in his stride.

The Cabinet Secretary for Justice (Kenny MacAskill): Perish the thought.

Sections 1 to 25 agreed to.

Section 26—Abolition of the office of honorary sheriff

The Convener: Amendment 22, in the name of Liam McArthur, is grouped with amendments 35 to 37. I understand that Liam McArthur is unable to attend the meeting, but Alison McInnes will speak to and move the amendments.

Alison McInnes (North East Scotland) (LD): As the convener said, I will speak to this group of amendments in the absence of my colleague Liam McArthur. He is sorry that he cannot be at the meeting, but he is in Malawi this week with the Commonwealth Parliamentary Association as part of the Parliament's continuing links with that country.

My colleagues Liam McArthur and Tavish Scott and I are concerned about the impact that the proposal to abolish the position of honorary sheriff will have on local justice, particularly in my colleagues' northern islands constituencies, but also anywhere else where there is only one permanent sheriff. I note that the committee's report touched on the committee's concerns about that provision in the bill. We think that honorary sheriffs are imperative for the delivery of justice in such rural and remote areas. They are afforded the same power and competence that a full sheriff is afforded and are ready to lessen the impact of the absence of the resident sheriff and take decisions that are required as a matter of urgency, often in out-of-office hours.

The bill's policy memorandum notes that there may never be

"enough work for both a summary sheriff and a sheriff, so there may never be a summary sheriff deployed in some remote areas."

For places such as the islands, there is little certainty on where the nearest summary sheriff might be based. Section 26 as it stands could therefore further erode locally delivered justice.

Amendments 22 and 35 would remove the provision that abolishes honorary sheriffs. The approach is supported by the Law Society of Scotland, which believes that there may well remain a need for honorary sheriffs in rural areas. Given that they are unpaid, there would not be any financial implications.

If the Government is unable to support the removal of section 26 completely, I urge it at least to support amendments 36 and 37, which would make the commencement of the provisions subject to the affirmative procedure and delay the abolition of the office of honorary sheriff until the Parliament is confident that robust alternative judicial arrangements are in place. That would provide a safeguard against ministers simply asserting that the conditions for the abolition of honorary sheriffs—for example, appropriate technology—have been met.

I urge members to support the amendments.

I move amendment 22.

Kenny MacAskill: Amendments 22 and 35, which are in the name of Liam McArthur, supported by Tavish Scott, would omit section 26, which abolishes the office of honorary sheriff, and would retain the ability of sheriffs principal to appoint honorary sheriffs. Amendments 36 and 37, which are also in the name of Liam McArthur, supported by Tavish Scott, seek to make the commencement of section 26 subject to the affirmative procedure.

The Government recognises the contribution that honorary sheriffs have made to the justice system in rural, remote and island areas, particularly in view of the fact that the position is unpaid. I readily appreciate the role that honorary sheriffs have played in Orkney and Shetland over the years.

Honorary sheriffs perform urgent shrieval functions, such as custody court functions, in the absence or possible illness of the resident sheriff. Currently, honorary sheriffs have the same powers and competence as a full sheriff, even though there is no necessity for them to be legally qualified. Many are former sheriffs or solicitors, but some are not. The policy of the bill is to abolish the position of honorary sheriffs. The use of honorary sheriffs was criticised in some consultation responses, and some stakeholders, including Scottish Women's Aid, supported their abolition.

It is considered that the need for honorary sheriffs will reduce and then disappear completely due to the advent of the new summary sheriffs and as a result of the greater use of technology such as videolinks to remote locations. I understand that some business in Stornoway is already being dealt with in Inverness via videolink.

It is also desirable that Scotland should have a fully professional, legally qualified judiciary. Lord Gill gave evidence to the committee that

"The honorary sheriffs have fulfilled a need, particularly in outlying courts, but in a modern judicial system, all judicial work should wherever possible be done by professionally qualified and properly trained sheriffs."

He went on to say:

"However, there is value to be had from the services of honoraries in the outlying courts. I imagine that, over time, the need for those services will steadily diminish because, with the increased flexibility that we will have through the use of summary sheriffs, and the ability to deploy summary sheriffs over a wide area and between courts, the need to bring in honoraries at weekends, for example, should be so much less."—[*Official Report*, *Justice Committee*, 22 April 2014; c 4533.]

Abolition will be delayed until alternative judicial arrangements are put in place. That may take some time, as it is envisaged that summary sheriffs will be introduced gradually. However, it should be possible to extend videolinks to a greater number of remote and rural courts more quickly.

Amendments 36 and 37 would make the commencement of section 26 subject to affirmative procedure in the Parliament. Commencement orders are not normally subject to any parliamentary procedure and such a provision would be unusual.

I appreciate that the reasoning behind amendments 36 and 37 is to give Parliament an opportunity to consider whether alternative judicial arrangements have been made and whether appropriate technology has been installed. The Government will work closely with the Scottish Court Service and the Lord President to ensure that we are content that the appropriate alternative arrangements are in place before the office of honorary sheriff is abolished. Therefore, amendments 36 and 37 are unnecessary.

I ask Alison McInnes to withdraw amendment 22 and not to move amendments 36 and 37, given the assurance that I have given that the changes will be made over time and that alternative arrangements are also being made.

Alison McInnes: I hear what the minister says and recognise the importance of ensuring that services throughout Scotland are of a piece, but it

is important for the Parliament to have the assurances that we seek. I will press the amendments.

The Convener: The question is, that amendment 22 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 22 disagreed to.

Sections 27 to 38 agreed to.

Section 39—Exclusive competence

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2 to 4, 20 and 19.

Kenny MacAskill: Amendments 1 and 2 are technical amendments that respond to a point raised by the dean of the Faculty of Advocates when he wrote to the committee on 16 April in relation to the application of the exclusive competence limit by section 39.

The learned dean suggested that the present drafting leaves room for doubt as to whether the exclusive competence limit relates to the value of each individual order sought or the aggregate total value of such orders.

Amendments 1 and 2 remove that doubt by providing that the aggregate total value applies. If someone seeks two orders, one for payment of £200,000 and another for payment of £6,000, the addition of the crave for £6,000 will not have the perverse effect of requiring that an action that clearly has a value in excess of the exclusive competence limit must be brought in the sheriff court.

Section 89 permits the remit of cases from the Court of Session to the sheriff court where the judge assesses that the value of the order sought is likely to be less than the exclusive competence of £150,000. Therefore, it is necessary to amend section 89 to take into account the changes made to section 39 by amendments 1 and 2 in relation to how the value of an order, or the value of orders, is assessed, so that section 89 operates under the same principles. Amendments 19 and 20 make the appropriate amendments.

Amendment 3 is a technical amendment that is consequential on amendments 19 and 20. As those amendments introduce the term "order of value" into section 89, the definition of that term in section 39(6) needs to apply also for the purposes of section 89. That is what amendment 3 achieves.

Amendment 4 amends the existing power of the Court of Session in section 39(7) to ensure that it has the power to make acts of sederunt governing the way in which the value of an order, or the aggregate total value of orders, is to be determined.

I move amendment 1.

Roderick Campbell (North East Fife) (SNP): I welcome the cabinet secretary's amendments. They deal well with the situation in which there might be multiple financial claims but where one of those claims is less than the exclusive competence limit. I am pleased to support the amendments.

Elaine Murray (Dumfriesshire) (Lab): I welcome the amendments and I am also pleased to support them.

The Convener: I take it that you do not wish to wind up, cabinet secretary.

Kenny MacAskill: No.

Amendment 1 agreed to.

The Convener: Amendment 38, in the name of Roderick Campbell, is in a group on its own.

Roderick Campbell: I refer to my entry in the register of members' interests, which includes my membership of the Faculty of Advocates.

Moving on from the previous group of amendments, I still think that there might be a problem in cases in which the real purpose is something other than an order of value, such as a reduction of contract or an interdict of a role that is coupled with a claim for value that is less than the financial limit.

I have framed amendment 38 to find a way around that problem that avoids the necessity for—potentially—multiple legal proceedings, but I am more than happy to listen to the cabinet secretary's views on that point.

I move amendment 38.

Elaine Murray: I have a lot of sympathy for the amendment. Like Roddy Campbell, I am interested to hear what the cabinet secretary has to say, particularly on whether the amendments in the previous group remove the need for

amendment 38. I am very supportive of the principle of the amendment.

Kenny MacAskill: I am grateful to Roderick Campbell for raising the issue, and I hope that I can clarify things for him and Elaine Murray. The effect of amendment 38 would be that exclusive competence of the sheriff court would apply only where the only order sought was an order of value—that is, an order for the payment of money or an order determining rights in relation to property.

Section 39 gives the sheriff exclusive competence in any civil proceedings in which an order of value is sought that does not exceed £150,000. The consequence of that is that in proceedings in which a number of orders are sought—for example, orders for reduction, interdict or declarator—as well as an order of value, notwithstanding the nature and significance of the other orders sought, if the order of value is less than £150,000, the case must be heard in the sheriff court.

Amendment 38 would mean that only the cases where only an order for value is claimed would be subject to the exclusive competence of the sheriff court. It is not difficult to imagine that parties may seek to avoid the effect of the new exclusive competence by simply adding an extra crave or request to the court, in addition to the claim for an order of value. In that way, the £150,000 limit would be avoided. For example, if one had a claim for contractual damages of £25,000, the exclusive competence limit could be avoided by adding a claim for reduction of the contract. That would enable parties to frustrate the policy behind the exclusive competence.

Amendment 38 would simply provide a way of avoiding the new exclusive competence, which I remind committee members is intended to ensure that the resources of the courts are used efficiently. It is for that reason that I ask Rod Campbell to withdraw amendment 38, although I understand where he is coming from.

Roderick Campbell: After having heard what the cabinet secretary has to say, I am happy to withdraw my amendment.

Amendment 38, by agreement, withdrawn.

Amendment 2 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 39, in the name of Roderick Campbell, is grouped with amendments 24, 40 and 23. I draw committee members' attention to the pre-emption and direct alternatives: if amendment 39 is agreed to, I cannot call amendments 24, 40 and 23—they are pre-empted. I hope that members are taking notes on this. Amendments 24, 40 and 23 are direct alternatives. Do not ask me to explain that again.

Elaine Murray: Can you just clarify—

The Convener: I will do it again.

Elaine Murray: Can you just clarify what that means? Does it mean that if amendment 24 is agreed to, amendments 40 and 23 fall?

The Convener: If amendment 39 is agreed to, I cannot call amendments 24, 40 and 23 because they are direct alternatives.

Elaine Murray: So if amendment 24 is agreed to—

10:15

The Convener: This has been explained to me, but I knew that I would get it wrong. We will start again. I should have had a bigger breakfast.

We understand the pre-emption. Amendments 24, 40 and 23 are direct alternatives, so they can be called.

Elaine Murray: But if amendment 24 is agreed to, the figure of £150,000 will no longer be in the bill.

The Convener: We can still call the amendments. Elaine Murray should sit in the convener's chair; it would make things a lot easier for me. Are we all happy now?

I have lost my place, so we will go back to the beginning. Roderick Campbell is to move amendment 39 and speak to the other amendments in the group.

Roderick Campbell: First, I apologise to members who might be slightly confused by my amendment. Amendment 39 is not really about the limits that we are about to discuss but about how commercial or non-personal injury cases should be considered in exactly the same way as personal injury cases.

I will refer to the history of court reform. As far as I could see, in the Gill review, there was no real discussion about different privative limits for different types of claim. However, paragraphs 104, 105, 131 and 132 in chapter 4 of the review certainly dealt with the statistics on business in the general department of the Court of Session. It is notable that paragraph 105 picked up that there were very few commercial cases in the initial audit so a different audit was carried out. The final statistics showed that 49 per cent of commercial cases contained a conclusion for more than £150,000 and only 9 per cent contained a conclusion for less than £50,000. At the end of the day, we are moving on to a situation in which approximately 26 per cent of commercial actions

will be transferred to the sheriff court in accordance with the bill's provisions.

The policy memorandum and the financial memorandum take the Gill review forward. It is notable that the financial memorandum contains different scenarios that reflect personal injury cases shifting from the Court of Session, but there is no assessment of the impact on non-personal injury cases. The information that we have is that about 700 cases will be transferred if the exclusive competence limit is kept at £150,000.

From my questioning of Eric McQueen of the Scottish Court Service, we know that there is no geographical breakdown of where the transferred cases might come from. In effect, we have little information about the impact of the proposed changes, other than what is said in the Gill review. I have no doubt that disproportionate costs will be incurred in commercial cases as well as in personal injury cases but, at six figures, I would have thought that cases in which disproportionate costs were incurred would not be particularly numerous. There are certainly reasons why some of those cases end up in commercial procedure at the Court of Session in the first place. Some of the arguments that we have heard arise really from the necessity of fixing the personal injury problem, if I can put it that way.

More important, although the bill provides for the possibility of a national specialist commercial sheriff court, there are no plans in the short term to set one up. We should consider the argument that there is a possibility of specialist sheriffs hearing cases locally. Lord Gill said:

> "specialisation will be heavily concentrated in the major courts in the cities".—[*Official Report, Justice Committee*, 22 April 2014; c 4530.]

Although I also accept Sheriff Principal Taylor's argument that the evidence is that commercial cases are heard and dealt with properly in Glasgow sheriff court, I do not think that that quite deals with the point that I made in the stage 1 debate about cases in Wick and Stranraer. I accept the evidence to the committee about capacity and that such cases will no doubt be able to be heard at various courts throughout Scotland. I am concerned about how the same access to justice that is provided in the cities will be provided in remoter areas in particular.

We will obviously have a debate about the appropriate jurisdiction limit for personal injury cases; I do not want to be drawn into that for the moment. I will listen carefully to what Sandra White and other members have to say on that. I simply invite the Government to consider the position further and to consider what further information might be provided on the impact of whatever limit is agreed before stage 3.

I move amendment 39.

The Convener: I take it from what you have said that you do not want to speak to the other amendments in the group.

Roderick Campbell: No.

Sandra White (Glasgow Kelvin) (SNP): I thank Roderick Campbell for his explanation of amendment 39. He started by saying that we might be confused by the amendment, but he has clarified for us exactly what the amendment is probing, regarding commercial injury cases being considered in the same way as personal injury cases in the sheriff court system.

I will speak to amendments 40 and 23.

The Convener: Have you spoken to amendment 24 yet?

Sandra White: Do you want me to speak to it first, convener?

The Convener: Well, it is your amendment.

Sandra White: Yes, but I can speak to it after this. I just wanted to—

The Convener: It is up to you. You can pick and mix.

Sandra White: I would prefer to speak to Alison McInnes's amendment 40 and Elaine Murray's amendment 23 first.

If too low a threshold is selected—for example, £30,000 or £50,000—the reforms that we are looking for will not be delivered, nor will there be reduced costs or greater efficiency. The case for a specialist personal injury court, which is supported by the Scottish Trades Union Congress, would also be undermined if we went down to such a low figure.

My amendment 24 proposes an increase in the exclusive competence of the sheriff court to £100,000, rather than the £150,000 that has been suggested by Lord Gill and the Scottish Government. The committee has heard lots of evidence from stakeholders saying that £150,000 is too high; we need to recognise that, which is why I propose a lower limit of £100,000. As I mentioned in relation to amendments 40 and 23, a limit of £50,000 or £30,000 will not deliver the changes that are needed in order to improve the civil court system vastly. I remind members that the previous Labour Scottish Government, when Cathy Jamieson was Minister for Justice, asked Lord Gill and his team to look at the issue and to produce an independent report on how access to civil justice could be improved by reducing the cost of litigation and delays. Their advice was that the exclusive competence of the sheriff court be raised to £150,000.

The whole point is that the system must be improved for the people who need to use it, and the low limit that has been proposed will not do that. Too many cases will continue to be raised in the Court of Session, which will clog up that court. The Court of Session should deal with complex cases such as asbestosis cases, which the committee has heard about. Under my amendment 24, personal injury cases in which the damages would be below £100,000 would be dealt with in a specialist personal injury court or by specialist sheriffs in the local sheriff courts. That would surely be an improvement on the current system, and it would give stakeholders including Clydeside Action on Asbestos more options for meeting the needs of their members in settling their claims swiftly and effectively.

Alison McInnes: Amendment 40 would increase the proposed privative jurisdiction of the sheriff court to £50,000. We probably all agree that the limit of £150,000, which is currently in the bill, would set the bar far too high. It would be a significant leap from the existing £5,000 threshold and would be considerably higher than the equivalent limit elsewhere in the United Kingdom. The amendment is supported by the Law Society of Scotland and would bring Scotland broadly into line with England and Wales. I believe that that would go some way towards allaying the concerns of many organisations regarding the automatic right to counsel, the impact on the bar and the possibility of attaining early and efficient settlement of cases.

The bill provides an opportunity for us to ensure that disputes are litigated at the most appropriate level, with low-value litigation being predominantly removed from the Court of Session. Today, the committee has been presented with a number of options and must decide how best to achieve that. However, our deliberations on the appropriate limit have been hindered by the Scottish Government's inability to provide robust evidence in support of its proposal, which has been widely criticised. Such evidence could have helped us in our consideration of the alternatives that we are presented with today.

Elaine Murray: The committee's stage 1 report considered that the proposed privative limit of £150,000 is too high. It would constitute a 3,000 per cent increase on the current limit, is five times the limit in Northern Ireland and three times the limit in England and Wales for personal injury claims, and is six times the limit for other claims. The proposed increase has been criticised by the STUC, the Educational Institute of Scotland, the Scottish Police Federation, Clydeside Action on Asbestos, the Association of Personal Injury Lawyers, the Faculty of Advocates and the Law Society of Scotland—to mention just a few. Amendment 23 is supported by the Faculty of Advocates and proposes a limit of £30,000. I will go through how that has been arrived at.

The argument is that the figure of £150,000 was based on weak analysis, in the Gill report, of old and limited data—93 cases over a three-year period, which represented less than 1 per cent of cases. The Faculty of Advocates and the Association of Personal Injury Lawyers have conducted two separate and more robust analyses of a total of 1,001 cases over 2011 and 2012. The figures were provided to me by the gentleman whom the cabinet secretary referred to as "the learned dean", which I hope means that he has some confidence in them. Those analyses demonstrate that a much lower limit would achieve the aims of the Gill review. Indeed, 70 per cent of all personal injury cases settle for £20,000 or less, and 80 per cent for less than £50,000.

The two analyses suggest that a limit of £100,000 would leave only 13 per cent of personal injury cases with the Court of Session. If the intention is to retain 20 per cent of cases in the Court of Session, the privative limit needs to be between £30,000 and £50,000. The figure of £30,000 is a compromise that would bring Scotland into line with Northern Ireland. Although the Gill review considered cases worth under £50,000 to be "of low value", the figure of £30,000 is more than the average annual wage, and having a limit of £30,000 would allow people who are resident in Scotland and who have serious life-limiting injuries to access the Court of Session and to have the benefit of advice by counsel. That would help to ensure equality of arms in more serious cases, because most insurance companies would be in a position to afford to instruct counsel. Furthermore, the proposal would not incur costs to the public purse because most personal injury cases are pursued on a no-win, no-fee basis.

I asked representatives from organisations that were arguing for a lower limit for examples of cases in which the proposals in the bill would have disadvantaged clients. I will briefly run through some of those examples to illustrate why victims need the limit to be substantially reduced. We are not talking about victims of crime here, of course; we are talking about victims of injustices such as industrial injury or accidents at work.

In May this year, a mother claimed for the loss of her 19-year-old son and was awarded £86,000 by the Court of Session. Comparison with similar cases in the sheriff court suggests that, if the case had been taken there, the award would have been around half of that sum. Also last month, a schoolgirl who was injured when a bus that she was travelling in was blown over was awarded £30,000 by a jury in the Court of Session, which found against the bus company. Again, that was a

complex case that was won for her by an experienced advocate.

Three cases that were brought to the Court of Session in 2010 against the Ministry of Defence by parents who had lost sons who were servicemen in the Nimrod crash in 2006 resulted in awards of between £90,000 and £100,000. In all likelihood, the parents would have received considerably less in the sheriff court—possibly as little as £15,000 or £25,000. A woodworker who contracted nasopharyngeal cancer due to wood-dust exposure lost several years' pay and was awarded less than £150,000 by the Court of Session. However, if he had not had specialist representation in what was an extremely unusual case of catastrophic injury, he probably would not have received anything at all.

In my view, the privative limit must be substantially lowered, for a number of reasons. The calculations on which the figure of £150,000 is based have been proved to be incorrect by analyses of data from two independent sources. The number of cases that are likely to be retained by the Court of Session will be too low to maintain expertise in that court, or to provide adequate opportunity for training young advocates.

The high privative limit would also have consequences for commercial cases. I share some of Roderick Campbell's concerns in that regard, because the bill does not propose a specialist commercial sheriff court. Businesses would therefore be offered the choice between having cases that are valued at less than £150,000 being heard by a sheriff—who, in many parts of the country, as Mr Campbell has said, might not be a specialist commercial sheriff—or writing into their contracts that any disputes will be heard under English law, where cases above £25,000 can be heard in the High Court.

Another factor is the important issue of equal access to justice. Most people earn well under £30,000, and significant levels of personal injury could result in claims for much less than that privative limit. However, rather than just being low-value cases, they may still involve catastrophic injury with life-changing consequences, and they may also be complex and require specialist representation. The bill risks creating greater inequality, so the privative limit must be substantially reduced.

I propose a limit of £30,000. However, if, during today's discussion, it appears that the committee would prefer Alison McInnes's proposed limit of £50,000, I would be prepared to support that, because I firmly believe that the limit must be reduced. I look forward to hearing the views of committee members.

John Finnie (Highlands and Islands) (Ind): There is sometimes difficulty in looking at one section in splendid isolation. My intention is to support amendment 24, in the name of Sandra White—which is not a position that I would have expected to find myself in. I have sought to understand the wider implications, and I think that the percentage shift of workload is important if the whole process is to work as a wider package.

10:30

I do not recognise some of the stuff that Elaine Murray said about low value. I certainly would not be party to anything that I thought would disadvantage any victim, whether their issues were being dealt with by the criminal court or the civil court. People will quite understandably seek reassurance regarding some aspects of representation, which can and will be dealt with elsewhere, and I hope that they will get that reassurance.

I am always minded to follow the position of the STUC, which is not concerned and is relaxed about the proposal that Sandra White has made, so that is the position that I will be supporting.

Margaret Mitchell (Central Scotland) (Con): We all agree that the £150,000 limit is too high. The question is, where do we set the threshold? I am not persuaded by the suggestion that the amount should be £100,000, because there is a real lack of empirical evidence to support that, and nor am I persuaded by the argument that people who are pursuing personal injury cases, such as Clydeside Action on Asbestos, would be pleased with a £100,000 threshold, rather than having the opportunity to take their case to the Court of Session, where counsel is guaranteed and there is equality of arms and representation.

I am attracted by Alison McInnes's proposal that the threshold be £50,000, which is of consequence, although if that fails I would certainly support Elaine Murray's proposal for a £30,000 threshold. I am concerned about some of the cases and evidence that she has cited today, and there is an argument for taking more evidence on that important issue, which affects access to justice. I am happy to support Alison McInnes's proposal for a £50,000 limit, which would give parity with England and Wales and avoid any unintended consequences of the difference between levels; failing that, I will support Elaine Murray's proposal.

Roderick Campbell: I have a point of information, convener.

The Convener: I am going to allow Christian Allard to speak first.

Christian Allard (North East Scotland) (SNP): I would like to make it clear that, following the debate at stage 1, I am not the only one who thinks that £150,000 is the right limit. Organisations such as Which?—the Consumers Association—and Citizens Advice Scotland said that they were relaxed about a £150,000 threshold and that that was the best way to address the issue of court reform. If cases that come before the new personal injury court are limited, the specialism of the court could, according to Lauren Wood of CAS, be undermined, and Julia Clark of Which? said that this was about there being proportionality in the system, which is what consumers require when it comes to access to justice. Lord Gill and Sheriff Principal Taylor also made it clear that a £150,000 threshold is widely thought to be the best way of addressing the issue and of ensuring that all court reforms are working properly.

I am quite disappointed that a lot of members think that £30,000 or £50,000 will not cause a lot of damage to the spirit of the bill. I would agree to drop the limit to £100,000, and I encourage members to back Sandra White's amendment, even though I would have preferred the figure to stay at £150,000.

Elaine Murray gave examples of the kind of thing that we heard about in evidence, but most of those cases would go to the Court of Session, because they are complex cases. Whatever value is attached to complex cases, they will have to go to the Court of Session, and I am reassured by that.

The Convener: John Finnie has made an important point about later sections in the bill; after all, we have to be able to bring all the provisions together. Christian Allard has made it clear that, irrespective of the tests that the committee feels should be applied in the bill—as introduced, or as amended—there will still be remitting of cases to the Court of Session, and the same applies to the availability of counsel. The problem is that we will not see how all these things mesh until after stage 2.

I do not know where Elaine Murray got her contrasting figures for sheriff court and Court of Session awards. How can one know whether there is any such disparity unless a case is tested at proof? Is there any academic research that highlights those differences? If so, I would be happy to see it, because Ms Murray has made quite substantial claims about huge differences between awards that have been made at the Court of Session and awards that have been made at the sheriff court. I just do not know where those figures have come from.

Elaine Murray: They were provided to me by a Queen's counsel.

The Convener: That might well be the case, but what is the evidential basis for the figures? The only thing that tells you what a court will award is the actual award that it makes, and any court—even a sheriff sitting on his or her own—will consider the awards that were made in previous cases. As a result, these things should not be so far out of balance. If they were, there would be an appeal to the sheriff principal.

I am currently sympathetic to the proposal for a £100,000 limit, but I want to see how things pan out in the bill's other sections with regard to availability of counsel, remit to the Court of Session and so on. Such tests will be very important in ensuring that complex cases do not remain in the sheriff court but can easily be referred to the Court of Session, where QCs will be available, specific tests can be applied and novel areas of law or difficulties in evidence can be addressed.

I believe that Roderick Campbell has a point of information.

Roderick Campbell: With regard to Margaret Mitchell's point about the £50,000 limit in England, I point out that, technically, the position in relation to non-personal injury cases was changed by statutory instrument on 22 April and that the limit in England for such cases is now £100,000.

Margaret Mitchell: What is the limit for other cases?

Roderick Campbell: The limit for other cases is still £50,000.

The Convener: Thank you for that point of information. Cabinet secretary, do you wish to make any comments?

Kenny MacAskill: I am grateful to Rod Campbell for that information. The same point had been intimated to me in my discussions with the Lord President.

With regard to Roderick Campbell's amendment 39, there is a desire, which has been mentioned in the civil courts review, to ensure that specialisation can take place. Aberdeen, for example, is getting a new commercial and civil centre, and the bill will allow the Lord President to designate categories of specialism. That opportunity exists, and I am happy to make it clear that the Lord President and the Scottish Civil Justice Council will, I think, reflect on the matter.

Amendment 39 seeks to ensure that personal injury cases of £150,000 or less may be raised only in the sheriff court, but for other cases, the limit would be £100,000. That would set the bar higher for personal injury cases than for other cases with regard to their ability to be raised in the Court of Session, so I do not support the amendment. Although it could be said that the

amendment goes with the grain of our policy to return low-value personal injury cases to the sheriff court, including sending many cases to the new specialist personal injury court, we made it clear in our stage 1 response that we do not consider it appropriate to introduce different exclusive competence limits for different types of cases. Specialisation will be for the SCJC.

According to Scottish Court Service figures for 2011-12, only 146 commercial cases were dealt with in the Court of Session. Given that relatively few cases would be affected, we do not think that there is a case for having different limits. Indeed, on 22 April, Sheriff Principal Taylor said in evidence that many actions for considerably more than £150,000 are raised in the commercial court of Glasgow sheriff court.

Amendment 24, in the name of Sandra White, seeks to ensure that cases for £100,000 or higher may be raised only in the Court of Session. That would have the effect of lowering the exclusive competence limit in the bill from £150,000 to £100,000. As the Minister for Community Safety and Legal Affairs pointed out when she gave evidence to the committee on 29 April, we have been listening to stakeholders on the issue. Although the committee has heard from organisations including Which? that support a £150,000 limit, many of those who have appeared in front of the committee think that £150,000 is too high for the exclusive competence. Indeed, the same point was highlighted, to a lesser degree, in the consultation on the bill. We have recently had further discussions with the STUC, which also voiced concerns about the appropriate limit.

Taking all that on board, I think that amendment 24 strikes a balance between the original exclusive competence figure of £150,000 that was suggested by Lord Gill and the views of some stakeholders, while still being able to deliver the more efficient and affordable system that is intended in the Scottish civil courts review. I am therefore happy to support amendment 24.

Amendment 40, in the name of Alison McInnes, would ensure that cases of £50,000 or above may be raised only in the Court of Session. Amendment 23, in the name of Elaine Murray, would ensure that cases of £30,000 or above may be raised only in the Court of Session. I do not support either amendment. I do not accept, as the convener alluded to, that cases would be given lower awards in the sheriff court; I do not think that there is any evidence of that. In any event, there is a specialist personal injury court, which would ensure that balance.

Equally, it is important to point out that the whole purpose of Lord Gill's review was to ensure access to justice, which he suggested is not being provided. The convener has given appropriate caveats on amendments to come on remit and sanction. I remind the committee that both Labour and the Conservatives signed up to the principle in the SCCR of delivering a justice system that has fewer delays and costs, which is what I believe has been delivered by the Lord President.

Some stakeholders—the Faculty of Advocates, the Association of Personal Injury Lawyers and the Law Society of Scotland—have asked that there be a lower exclusive competence. The Faculty of Advocates referred to limits that are in place in other UK jurisdictions, but that does not compare like with like. Rod Campbell helpfully pointed out the recent changes in personal injury matters south of the border.

One of the major issues that the SCCR pinpointed is that the sums that are sued for in claims are being inflated by about three times in order to bring claims to the Court of Session, which means that it is highly misleading for the APIL and others to quote the settlement figure in the context of setting an appropriate exclusive competence figure.

In the current circumstances, applying the finding of the SCCR, settlement figures of £30,000 or £50,000 could likely be the result of claims being brought for £90,000 or £150,000. To put it another way, if we were to reduce the exclusive competence to £50,000, the likely settlement figure in a claim for that amount—the money that would be awarded at the end of the case—would be only around £17,000.

We need to choose the level of the exclusive competence based on the sum that is being sued for, because that is what is used to decide in which court to raise the claim. If people's cases are heard in the right court in a more efficient civil justice system, that will allow them to reach settlement and get their awards more swiftly.

Lord Gill's aim in proposing the reforms is to make justice more accessible to more people and to lower the cost of getting justice, and not to disadvantage people. An exclusive competence as low as £50,000 or even £30,000 would fundamentally fail to achieve that. I urge the committee to reject amendments 39, 40 and 43. I am happy to support amendment 29, in Sandra White's name.

Roderick Campbell: I just want to clarify what I was saying about the change in England. In non-personal injury cases the limit is £100,000. In personal injury cases the limit remains at £50,000. I will not press my amendment.

Amendment 39, by agreement, withdrawn.

The Convener: Cabinet secretary, I think that you intended to refer to Sandra White's amendment 24.

Kenny MacAskill: Yes. I am sorry.

Amendment 24 moved—[Sandra White].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

Against

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 24 agreed to.

Amendment 40 moved—[Alison McInnes].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 40 disagreed to.

Amendment 23 moved—[Elaine Murray].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 23 disagreed to.

The Convener: Amendment 25, in the name of John Pentland, is in a group on its own.

10:45

John Pentland (Motherwell and Wishaw) (Lab): The Scottish Parliament has always accepted that asbestos-related conditions are something of an exceptional circumstance when it comes to legislation and the pursuit of cases through the courts. That was clear in 2009 when the Damages (Asbestos-related Conditions) (Scotland) Bill was passed, and I note that asbestos is singled out in Stuart McMillan's mooted member's bill on the recovery of medical costs for asbestos diseases.

In its evidence, Clydeside Action on Asbestos argued that its members' cases

"must fall into the definition of 'the most complex and important cases'".

It stated:

"Our members must have access to experienced Advocates and Solicitor Advocates who have knowledge of this specialised area of Law"

and

"swift access to justice at the highest level."

It pointed out that the value of damages is lower than £150,000 in 95 per cent of cases but that their complexity is shown by the proportion that have been appealed to the Supreme Court. Sheriff Principal Taylor argued that many cases would end up in the Court of Session anyway because of their complexity, but of course the process would be more drawn out.

Prompt consideration of asbestos cases is important, and my amendment 25 seeks to recognise both that and their complexity by excluding such cases from the changes that are proposed in the bill.

I move amendment 25.

Margaret Mitchell: I have some sympathy with John Pentland's amendment. The difficulty, of course, is always in the detail. Legislating for one particular group makes it unclear who else would fall into the category.

The Convener: I support Margaret Mitchell on that. I have huge sympathy for the amendment,

but if we take one group and say that it is special, another group will come along and say that it is special, too. We still have within the sheriff court, apart from there being a specialist sheriff court, an option with complexity for remits to the Court of Session, and decisions at the Supreme Court are valuable in determining what are complexities and what value should be placed on matters. As a matter of principle, if we legislate to make one group, worthy though it is, special compared with any other group that exists or may come along, that will present difficulties.

Elaine Murray: The way in which the discussion has divided up goes back to the problem to which John Finnie referred. Other amendments that come later may clarify some of the issues around making a special case out of one group, because there are amendments that would enable ministers to alter what comes in as a special case. Part of the problem is that we are considering amendment 25 today and other amendments that are likely to come up next week would overcome some of the difficulty to which the convener refers.

The Convener: There are options at stage 3, in that case.

John Finnie: The convener and Elaine Murray have largely covered the issue. I would not want opposition to amendment 25 to be seen as a lack of sympathy for or recognition of the complexity of asbestos cases. It is for that reason that I think that the matter will be picked up later in the consideration of the bill.

Roderick Campbell: Like others, I am sympathetic to amendment 25 but I find difficulty in singling out one particular type of claim. Clinical negligence, for example, raises other issues. On balance, I think that we should oppose amendment 25.

Kenny MacAskill: Like members who have spoken, the Government sees where John Pentland is coming from. We all have great sympathy there, and that is why we have taken action to assist all those who have been harmed by negligent exposure to asbestos. We have legislated to ensure that a person who is dying from mesothelioma can receive damages without preventing members of their family from making a future claim for damages, and we have supported legislation that clarifies Scots law as it relates to damages for fatal personal injuries, reducing requirements for potentially intrusive, protracted and costly investigations and making the settlement of claims quicker and fairer.

The Courts Reform (Scotland) Bill will ensure that cases are heard in the appropriate court, reducing unnecessary delays and disproportionate costs to all litigants. This is an important and sensitive area. I listened carefully to the evidence on the subject that was given to the committee at stage 1, particularly what was said by Phyllis Craig of Clydeside Action on Asbestos and Sheriff Principal Taylor, and I have also met Phyllis Craig.

Amendment 25 seeks to keep all asbestos cases in the Court of Session. In her evidence to the committee, Ms Craig said that she would prefer them to be heard in the Court of Session but she added:

> "However, if they had to be moved, we would want them to be moved into the sheriff court with all solicitors' and advocates' fees paid and with all the procedures that ensure efficiency in the Court of Session transferred to the sheriff court."—[*Official Report, Justice Committee*, 22 April 2014; c 4510-1.]

Let me address some of those points.

On whether all asbestos-related disease cases should automatically be raised in the Court of Session, I agree with Sheriff Principal Taylor. He argued that a decision to grant sanction for counsel should be dependent on the merits of each case, and went on to say:

> "a complex asbestosis case will probably be remitted to the Court of Session. However, even if it were to remain in the sheriff court, it would almost certainly merit sanction for counsel."—[*Official Report*, *Justice Committee*, 22 April 2014; c 4527.]

That is my experience not only as a Government minister, but as a practising lawyer.

Although there will not be automatic sanction for counsel in the specialist personal injury court or the sheriff courts, the Government believes that all cases that merit counsel will continue to benefit from the expertise of counsel. Most asbestos-related disease cases, even those of relatively low financial value, fall into that category.

When those cases are heard in the sheriff courts or the specialist personal injury court, the sheriff, who will have all the facts before them, is best placed to decide whether sanction for counsel is appropriate. That takes us on to the issue of equality of arms, which will, as the convener mentioned, doubtless be raised in discussions next week. I agree with and have great sympathy for Sheriff Principal Taylor's position in that regard.

Complex cases, which I understand make up the majority of cases, will be able to be remitted to the Court of Session where the sheriff and the Court of Session agree that it is the most appropriate course of action. To add further comfort, we will lodge an amendment next week to ease the test for remit from the sheriff court to the Court of Session, which will address some of the changes to which John Finnie and others referred in respect of the STUC's views.

I meet Clydeside Action on Asbestos regularly, and I will continue to do so throughout the bill's passage. The aim of the meetings is to ensure that

all those who suffer from this distressing disease, and all those who have lost loved ones on account of it, are supported throughout the court process and receive the justice that they deserve.

I believe that the committee shares that view, and I can give an assurance that the appropriate options with regard to remit, sanction and equality of arms will be put in place to ensure that the requirements for asbestos cases are met and the complexities in relation to other potential categories of victims are considered.

I share the committee's sympathies for those who are affected by asbestos-related conditions, and I think that we can provide a solution in the bill and through other changes. I oppose amendment 25.

The Convener: Can you tell us how you will ease the test? I do not know whether the amendment that you mentioned has been lodged, but it would be helpful for us to know—or maybe not; I do not want to put you on the spot.

Kenny MacAskill: We do not have permission to do so at the moment, but I can say that I am discussing the issues with the STUC, and I will be keeping Phyllis Craig apprised of the situation. We have already had discussions.

My officials have just told me that the amendments will be lodged at noon today.

The Convener: So you can tell us about that.

Kenny MacAskill: I do not have the amendment in front of me.

The Convener: Oh, right—unfortunately.

Kenny MacAskill: We have run the amendment by many of the organisations to which I have referred and, as I said, there are further on-going discussions.

The Convener: As you will appreciate, the committee had concerns about the test in the bill as it was introduced.

John Pentland: In light of what has been said, I will withdraw amendment 25 for now.

Amendment 25, by agreement, withdrawn.

Amendments 3 and 4 moved—[Kenny MacAskill]—and agreed to.

Section 39, as amended, agreed to.

Sections 40 to 43 agreed to.

Schedule 1—Civil proceedings, etc in relation to which summary sheriff has competence

The Convener: Amendment 41, in the name of Alison McInnes, is grouped with amendment 42.

Alison McInnes: Amendments 41 and 42 would remove adoption and forced marriage proceedings from the list of civil proceedings in which a summary sheriff has competence, as set out in schedule 1.

The amendments, which are supported by the Law Society of Scotland and the Faculty of Advocates, reflect the fact that adoption and forced marriage proceedings can be particularly complex. Following parliamentary approval of a motion earlier this year, it will shortly become a criminal offence to force someone into marriage, which will be punishable by up to seven years in prison.

We have struggled with the interaction between the civil remedies and criminal proceedings. In the context of the new criminal liability, the existing civil remedies for those who are at risk of forced marriage and those who have already entered into a forced marriage, which involve forced marriage protection orders, will become even more sensitive. The international racial and ethical dimensions of such cases can also cause them to be extremely complicated.

Similarly, the Law Society of Scotland argues that adoption and the grant of authority to adopt are the most serious form of interference in family life, and as such should not be the responsibility of the most junior tier of the judiciary. The society argues that such cases are among the most demanding to be heard in the sheriff court. In seeking to establish the facts, sheriffs can consider a wealth of reports and records, and hear from a number of witnesses. It can be a difficult balancing act to satisfy the requirements of domestic and international law, primarily the European convention on human rights. The society therefore maintains that such cases should continue to be heard by specialist family sheriffs, who are best placed to respond to their complexity and consider their far-reaching consequences.

To put that into perspective, such cases strike me as requiring a greater level of shrieval competence than, for example, the consideration of warrants, interim orders and extensions of time to pay debts.

I move amendment 41.

Margaret Mitchell: Alison McInnes makes a compelling case. These cases are very complex and emotive, and it makes sense to remove them from the competence of the summary sheriff's jurisdiction.

The Convener: I am back to where I was, I think—I beg your pardon. We will hear from Elaine, then I will come in. I am sorry—I did not see you there, Elaine. You were so good to me earlier on, when I had not found my feet.

Elaine Murray: I, too, am very sympathetic to both of Alison McInnes's amendments. The only thing that I would say is that a case could be made that it would not be appropriate for some domestic abuse proceedings to be dealt with by simple procedure, either. I do not know whether we need to address that.

The Convener: I am back to blanket removal. I think that we heard evidence that the sheriff principal would look at the allocation of cases to sheriffs. As we go through the process over the coming years, the sheriff principal will look at whether it would be appropriate for a case to go to a summary sheriff. I am always very cautious about taking something completely out of a remit.

I hear Alison McInnes's argument: such cases are complex and some special cases might have to be limited to the Court of Session. Flexibility regarding which sheriff and which court hears something is always terribly important.

Kenny MacAskill: My initial point is that the summary sheriffs will be highly qualified; they will have at least 10 years' professional standing. As the convener said, assignment of business is for the sheriff principal. Indeed, if a case is particularly complex, the sheriff principal may choose to assign it to a sheriff as opposed to a summary sheriff whose jurisdiction is concurrent.

Amendments 41 and 42 in the name of Alison McInnes would remove adoption proceedings and forced marriage protection orders from the competence of summary sheriffs.

The rationale for the introduction of summary sheriffs is that they should undertake work in the sheriff court to relieve sheriffs of the burden of dealing with the more legally straightforward civil cases and to thus permit sheriffs to be available for more complex casework. The review suggested that the advent of summary sheriffs will help to promote the development of specialisation at both shrieval and summary sheriff level while maintaining, where practicable, the principle of access to local justice.

The reforms are about a proportionate use of the judiciary in line with complexity and are by no means about devaluing the importance of specific cases—we recognise that all cases are important to resolve for those involved.

Although the intention is that cases should be dealt with at an appropriate level in the court hierarchy, which means that some cases will be heard by summary sheriffs, that does not mean that the quality of justice will be lowered. All judicial officers at whichever level of the courts system will be recommended for appointment by the Judicial Appointments Board for Scotland and trained as required by the Judicial Institute for Scotland.

Summary sheriffs will be drawn from the ranks of practitioners who have been legally qualified for at least 10 years—the same as sheriffs—and will have experience of the kinds of cases that will fall within their competence. It will be some considerable time before summary sheriffs are deployed widely, following recruitment and training, and in rural areas there may not be enough work for both a summary sheriff and a sheriff, so there may never be a summary sheriff deployed in some remote areas. All cases will remain with the resident sheriff in those areas. For those reasons, the policy is that summary sheriffs should have concurrent civil competence with sheriffs.

The Sheriffs Association said in evidence at the Justice Committee on 18 March that it welcomed the jurisdiction of the summary sheriff and that the summary sheriffs will be "perfectly competent" and "comfortable" doing family cases. Drawing summary sheriffs from areas of specialist expertise and bringing practical experience is seen as a good opportunity by some solicitors, including experienced family practitioners. The role also creates an excellent opportunity for the diversification of the Scottish judiciary.

When asked whether she would prefer a summary sheriff or sheriff to deal with family law cases, Karen Gibbons of the Family Law Association told the committee:

> "In fact, it does not really matter whether they are summary sheriffs or sheriffs as long as they are experienced and have knowledge of family cases. That is the most important thing."—[*Official Report*, *Justice Committee*, 25 March 2014; c 4411.]

11:00

Following consultation, concurrent jurisdiction between sheriffs and summary sheriffs was extended to adoption and permanence cases and all relevant provisions within the Children's Hearings (Scotland) Act 2011 relating to court procedures arising from the children's hearings system. That decision has been taken to address concerns that, unless summary sheriffs were given full concurrent competence in those areas with sheriffs, it would mean that although some procedures might be dealt with by a summary sheriff, some closely related procedures would still have to be heard before a sheriff, leading to confusion among court users and inevitably greater expense to litigants and to the court system through duplication of proceedings.

Giving wider concurrent competence will make it possible for the whole of a case to be heard by either a summary sheriff or a sheriff, and the possibility that some parts of proceedings will be heard before a summary sheriff and some before a sheriff will be avoided.

The Lord President suggested that forced marriage protection orders should be included in the competence of the summary sheriff.

Amendments 41 and 42 do not divide up cases along lines of importance. They would, for example, leave domestic abuse proceedings and children's hearings within the competence of the summary sheriff, neither of which, I respectfully suggest to the committee, are less important than adoption or forced marriage. The Government believes that the amendments would lead to incoherence in the jurisdiction of summary sheriffs. For that reason, I ask the member not to press her amendments.

Alison McInnes: I am a little confused, because the cabinet secretary almost made the case for me in his opening remarks. He said that the summary sheriffs should deal with the more straightforward cases. I was not suggesting that the cases covered by my amendments were more important than domestic abuse or child protection cases; I was saying that they were likely to be more complex. They are, without a doubt, not straightforward cases. I press my amendment.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 41 disagreed to.

Amendment 42 not moved.

Schedule 1 agreed to.

Sections 44 and 45 agreed to.

Section 46—Jurisdiction and competence

The Convener: Amendment 5, in the name of the cabinet secretary, is grouped with amendments 29, 9, 10, 30, 11, 12, 15 to 18, 21 and 34. I understand this bit. If amendment 30 is agreed to, I cannot call amendment 11 because it is pre-empted.

Kenny MacAskill: I begin by addressing the amendments in the name of Elaine Murray. The purpose of amendment 29 is to ensure that an appeal in the sheriff appeal court is heard by a bench consisting of three or more appeal sheriffs. In addition, at least one of those appeal sheriffs on the bench must be a sheriff principal, and at least one must be considered by the president of the sheriff appeal court to be a specialist in the type of case to be heard. That is surely overkill. I appreciate that important appeals should be heard by a bench consisting of three or more appeal sheriffs, but minor procedural matters hardly warrant such an army of judges.

The Lord President gave an example of such a minor procedural matter when he gave evidence. He said:

> "A common situation is an appeal where a decree has been taken in absence, because through some blunder the defenders did not enter appearance on time."—[*Official Report, Justice Committee*, 22 April 2014; c 4534.]

A single appeal sheriff would be perfectly capable of dealing with such an appeal.

Furthermore, as there are only six sheriffs principal, at most only six sheriff appeal courts wouldl be able to run at the same time. Elaine Murray's amendments would therefore cause problems for running the sheriff appeal court. Currently, Scotland's six sheriffs principal deal with some civil appeals from their own sheriffdom. However, the new sheriff appeal court will, in addition to those appeals, deal with all the civil appeals that currently go direct to the Court of Session. Further, the new court will require to deal with all summary criminal appeals, which currently go direct to the High Court, meaning that all appeals that come from the justice of the peace court and all summary criminal appeals that come from the sheriff court will require to be dealt with. It is important to note that the sheriff appeal court will have to prioritise summary criminal work. Restricting the court to a maximum of six sittings at any one time could lead to delays in the delivery of civil appeals.

What if there is no specialist judge in the type of appeal? Amendment 29 would mean that the sheriff appeal court could not be constituted and the appeal would not be heard. Instead of tying the court's hand in that way, it is vital that the court be empowered with the flexibility to adapt the size and constitution of its bench as appropriate, to deal with a variety of types of case that will come before it.

Amendment 30 would have the effect that, if the bench of the sheriff appeal court consisted of an even number of appeal sheriffs and they were evenly divided in their verdict on any matter of fact or law, they could not appoint the appeal to be reheard at another sitting of the court with a larger

bench comprising an odd number of appeal sheriffs. I presume that amendment 30 is to be read with amendment 29 but, as amendment 29 states that there must be

“not fewer than 3 Appeal Sheriffs”,

that allows for four or six appeal sheriffs and the possibility of an evenly split decision, the result being that there would be nowhere for such a case to go for disposal.

Amendment 34 would repeal the section of the Criminal Procedure (Scotland) Act 1995 that governs the quorum in summary criminal appeals. At present, the 1995 act provides for three appeal sheriffs for appeals against conviction, and two for appeals against sentence only. Taken together with amendment 29, the effect would be that the quorum for summary criminal appeals would be three in all cases, of whom one would have to be a sheriff principal and one would have to be a specialist in criminal law. That would increase the judicial resource required to consider summary appeals against sentence beyond the status quo. In tandem with the limit on the number of sheriffs principal in the system, that could lead to case backlogs.

Amendments 5, 9 to 12 and 15 to 18, in my name, are drafting amendments. The policy intention is that the court will sometimes be constituted by a panel of appeal sheriffs for important cases, but it may comprise a single appeal sheriff for appeals on minor procedural matters.

Lord Gill stated in his evidence to the committee on 22 April:

“in appellate work in the sheriff court the great bulk of the appeals are not appeals on the merits of the case at all, but procedural appeals against a refusal by a sheriff to allow a party to amend a case.”—[*Official Report, Justice Committee*, 22 April 2014; c 4534.]

We envisage that the vast majority of such cases would be heard by a single appeal sheriff. However, the bill deliberately leaves such decisions on quorum and on who will preside at sittings of the court to rules of court. We have taken the view that any attempt in primary legislation to go further and to micromanage the size of the bench, or to manage who is to preside in every circumstance, would be impractical.

We have therefore provided clear and unambiguous powers for the Court of Session to do so instead, through flexible rules of court as proposed by the Scottish Civil Justice Council. In addition, we have empowered the sheriff appeal court to react in real time to a live case and to convene a larger bench under section 56. Further, it will be for the president of the sheriff appeal court to decide which of the appeal sheriffs are on the bench in any specific appeal.

It is an important principle of Lord Gill’s review and, therefore, throughout the bill, that courts have the flexibility to allocate the right judicial resources to the right courts. I therefore urge you not to accept Elaine Murray’s amendments in this group, which could have the effect of constraining the new court into an inflexible and administratively burdensome set of procedural obligations with regard to the size of bench and its constitution, stifling the court’s ability to adapt to the circumstances before it.

Turning to the amendments in my name, I note that the wording in the bill as introduced requires to be clarified in order to be consistent with the fact that the sheriff appeal court may, if rules so provide, be constituted by a single appeal sheriff in some cases. This set of drafting amendments makes it clear that the court can be constituted by a single appeal sheriff.

I move amendment 5.

Elaine Murray: The amendments in my name in this group are probing amendments. They seek to address the concerns that the committee voiced about the fact that appeals against judgments of the sheriff court might be heard by an appeal court consisting of only one sheriff, and that the judgment of that sheriff on that appeal would be binding right across Scotland. Committee members had concerns about that.

The purpose of amendment 29, which may not be worded absolutely correctly, is to require an appeal to be heard by three sheriffs, one of whom has to be a sheriff principal. Where relevant, one must have a specialism appropriate to the matter of the appeal. The president of the sheriff appeal court will decide whether that is required.

The current process of appeal to the sheriff principal can be considered to be anomalous, as it replaces one judge’s decision with another judge’s decision. That will be compounded if, as is suggested in the policy memorandum, the vast majority of appeals are to be decided by a single sheriff in the appeal court and the appeal sheriff does not have to be a sheriff principal.

There is also a risk in the bill that a judgment could be made by a specialist sheriff but the appeal could be heard by a sheriff who has less expertise in that area. Even if the appeal were to be heard by a sheriff principal, that sheriff principal could have less experience than the original specialist sheriff. Therefore, amendment 29 provides for, where relevant, a sheriff with the necessary specialism to be part of the appeal court.

The jurisdiction of the sheriff appeal court will be more significant than the current appellate jurisdiction of the sheriff principal. As the exclusive competence of the court will be increased, litigants

will no longer be able to appeal directly to the inner house of the Court of Session, and decisions are binding on sheriffs throughout Scotland. The sheriff appeal court will also take over the jurisdiction of the court of criminal appeal and summary criminal appeal cases.

Section 107 also severely limits the opportunity for further appeals to the inner house and, in most cases, the decisions of the sheriff appeal court will be final. The intention of amendment 29 is to introduce a safeguard so that the appeal court would consist of three sheriffs who, among them, would have sufficient experience and specialism to ensure that appeal judgments are consistent.

Amendment 30 is consequential to amendment 29. If a sheriff appeal court consists of three sheriffs, there is no possibility of the court being divided equally, so the bill does not need to make provision for that eventuality with regard to further appeal. The amendment would remove that provision.

Amendment 34 is also consequential, as schedule 2 makes changes to section 173 of the Criminal Procedure (Scotland) Act 1995. The section is amended so that it applies to the sheriff appeal court and appeal sheriffs, instead of High Court and judges. The bill does not alter the position with regard to criminal appeals. However, amendment 29 sets a quorum of three appeal sheriffs for both civil and criminal cases and, if passed, supersedes the need to amend the 1995 act and that section would simply be repealed.

Section 97 of the bill gives the Court of Session the powers to make various provisions by act of sederunt, including the quorum for sittings of the sheriff appeal court. However, that topic goes beyond today's finishing point, and a further amendment could be lodged next week to make alterations to section 97(2)(p).

Margaret Mitchell: I have sympathy with amendment 29, in the name of Elaine Murray, which tries to improve the bill's provisions by looking at the issue of a single sheriff hearing another sheriff's appeal. However, the amendment would require an appeal to be heard by three appeal sheriffs even though that would not be necessary in every case. We have the same concerns, so I hope that Elaine Murray will be sympathetic to the amendments in my name when we come to them.

The Convener: The cabinet secretary provided a very helpful explanation about why we do not want always to have three sheriffs principal or a sheriff principal and two other sheriffs sitting. I want clarification about that. You made the point that the size of the appeal court is covered by the rules of court, but who comprises the appeal court would be, I think, a matter for the president of the sheriff appeal court. I may have got that wrong. Who would that be?

Kenny MacAskill: The president of the sheriff appeal court would be the person who ultimately decides the rules of court.

The Convener: Who would that be? Would that be Lord Gill? Who would make the decision?

Kenny MacAskill: Ultimately, that would be the Court of Session.

The Convener: It would be—

Kenny MacAskill: The president is one of the appeal sheriffs. All those things will ultimately fall within the domain of the Lord President. The president of the appeal court will be a sheriff principal.

The Convener: A sheriff principal will decide the composition of a sheriff appellate court, whether that is a single sheriff on a minor matter or three sheriffs principal on a major matter. I am just trying to understand. I like the idea of flexibility, but I want to know how it works.

Kenny MacAskill: The rules of court will be designed by the Lord President; he presides over that. Who constitutes the bench will be a matter for the president of the sheriff appeal court, who will be a sheriff principal.

The Convener: Right. I got that. Anyway, I will move on. I appreciate that amendment 29 was a probing amendment, but it was very important.

I ask the cabinet secretary to wind up.

Kenny MacAskill: We have said that the vast majority of appeals are minor and procedural and it would be a huge waste of resources to have three sheriffs sitting on the appeal court. We understand the point that Elaine Murray has made, which is why section 56 allows the court to convene a larger bench if and when that is needed. It is clear that the presiding sheriff principal will seek the appropriate expertise. I think that the convener made the point that there is the ability to convene a larger bench for complex cases, but I believe that it would be best for the bench to decide who would be the appropriate specialists to sit on it, given the particular case.

11:15

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Abstention

McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 5 agreed to.

Section 46, as amended, agreed to.

Sections 47 and 48 agreed to.

Section 49—Appointment of sheriffs as Appeal Sheriffs

The Convener: Amendment 26, in the name of Margaret Mitchell, is grouped with amendments 27 and 28.

Margaret Mitchell: Amendments 26 to 28 provide for all appeals in the sheriff appeal court to be heard by sheriffs principal instead of sheriffs.

The Gill review recommended that appeals should generally be heard by three judges, chaired by the sheriff principal of the sheriffdom. It recommended that only appeals from cases heard under the simplified procedure should normally be heard by a single sheriff. The effect of amendment 26 would be that that single sheriff would be of sheriff principal level in the judiciary. That is because appeals under the reforms affect not only the sheriffdom in which they are heard but the law Scotland-wide. Furthermore, the amendment addresses concerns from the Gill review that it would be inappropriate for an appellate court to consist of members of the same level of the judicial hierarchy as those from whom an appeal is marked.

As a consequence of the amendments, as the Gill review noted, a sheriff appeal court would require an increase in the number of sheriffs principal, and that could be done by appointing a number of judicial officers of equivalent rank to a sheriff principal to sit as members of the court with the status and powers of a sheriff principal but without the specific responsibility for the administration of business that the current sheriffs principal have.

Amendment 26 would remove the provision that allows sheriffs to be appointed as appeal sheriffs. Amendments 27 and 28 are consequential to that amendment.

I move amendment 26.

Elaine Murray: Margaret Mitchell is addressing some of the issues that I tried to address with my amendments in the previous group. The only problem that I have with her amendments is that they would remove the possibility of a specialist sheriff being appointed as an appeal sheriff. There could be cases in which it could be very important to have a specialist sheriff as an appeal sheriff, particularly if it was against a decision of a specialist sheriff. For that reason, I will not be able to support amendment 26 .

Kenny MacAskill: In the debate on the previous group of amendments, members stressed the importance of having a sheriff appeal court constituted by three experienced judges. I argued that it was important that there should be flexibility to set the quorum of the court to reflect the nature of the appeal and that it would be disproportionate to require minor procedural appeals that raised no general points of law to be decided by a three-judge court, but serious and difficult appeals should continue to be heard by a bench of three and the sheriff appeal court will sometimes have to overrule itself, which could be done only by a larger court. Therefore, the court will often have to sit with three judges, and sometimes even with five or more.

Section 49 allows the Lord President to appoint sheriffs of at least five years' standing as appeal sheriffs. Those who are appointed as appeal sheriffs would be experienced judges who are perfectly capable of handling appeals in the sheriff appeal courts. I think that that is sensible and will result in a suitable pool of appeal sheriffs who are available to the president of the sheriff appeal court for the efficient disposal of business.

The effect of the amendments, which would omit section 49, would be that the only judges who could become appeal sheriffs would be sheriffs principal. There are six sheriffdoms and six sheriffs principal. If the amendments were agreed to, there would be only six appeal sheriffs. The bill proposes that the sheriff appeal court should hear not only civil appeals from the sheriff court but summary criminal appeals. Appeals against conviction require three-judge appeal courts, as do civil appeals that raise difficult or important issues of law, and if these amendments are agreed to, half the available judges would be involved in both types of case.

There is simply no way that the system can operate with only six judges. As I argued in relation to the previous group of amendments, it is wrong to treat sheriffs principal differently from other appeal sheriffs, as all of them will be highly

qualified and experienced judges and will, as Elaine Murray pointed out, have the appropriate expertise.

Consequently, I oppose amendments 26, 27, and 28.

Margaret Mitchell: I regret that the cabinet secretary did not listen to my opening comments, because I made it quite clear that more sheriffs principal would be appointed and that they would not necessarily have the responsibility for the administration of business that the current sheriffs principal have in the six sheriffdoms. The number of sheriffs principal in the system would not be restricted to merely six.

As for specialist sheriffs being included in an appeal, I think that it would be up to the sheriff principal in the appeal court to consider the specialisms of other sheriffs principal. Of course, the Scottish Government is proposing that appeals be generally heard by a single sheriff, albeit that, as the cabinet secretary has suggested, they will be sheriffs of five years' standing. I note, however, that the bill leaves it open for appeals to be heard by a sheriff principal or larger benches.

The financial memorandum assumes that 95 per cent of appeals will be heard by only one judge. The cabinet secretary has said that a lot of these cases will be procedural, but he has also said that he cannot "micromanage" various appeals. Clearly, therefore, we cannot know what that 95 per cent of appeals will consist of.

I am particularly concerned that the bill will result in appeals on decisions made by a sheriff being heard by a single judge of the same seniority. The Gill review concluded that it would be inappropriate for the appellate court to consist of members of the same level of the judicial hierarchy as those from whom an appeal has been marked. Again, I make the point that we are not talking about decisions that affect only one sheriffdom; this affects the whole of Scotland.

More worryingly, the Government appears to have decided to depart from the Gill review recommendations not in an attempt to improve the justice system but because of financial considerations. The financial memorandum certainly recognises that the make-up of the appeal court has financial implications. Perhaps costs can justifiably be saved here, but savings should not be made at the expense of access to justice or ensuring that a proper appeal is heard by a proper panel of appeal court judges. The Scottish Government response to the Justice Committee's stage 1 report stated that if appeals had to be heard by a sheriff principal, such an approach would

"negate some of the advantages to be derived from the establishment of the Sheriff Appeal Court as, for instance, there may not be an Appeal Sheriff who is a sheriff principal available to hear an appeal."

That response does not reject the advantages of having sheriffs principal sit in the appeal court; instead, it merely points out that the changes to the rules require additional resources.

If the committee supports these amendments, my intention is to revisit at stage 3 the question whether further amendments are necessary to permit the appointment of additional sheriffs as recommended in the Gill review. I will press amendment 26.

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 26 disagreed to.

Section 49 agreed to.

Section 50—Re-employment of former Appeal Sheriffs

Amendments 27 and 28 not moved.

The Convener: Amendment 6 is in a group on its own.

Kenny MacAskill: Section 50 of the bill permits the re-employment of appeal sheriffs who have ceased to hold that office but have yet to reach the age of 75.

Appeal sheriffs who are sheriffs principal and sheriffs will not be paid additional remuneration for acting as such, although they might be paid expenses, because such deployment is, and will be, considered to be a development opportunity. That is in accordance with normal practice in this area. For example, sheriffs who act up as temporary Court of Session judges are not paid extra.

Amendment 6 will, however, permit the payment of remuneration to former appeal sheriffs who are re-employed under section 50 of the bill.

It is expected that former appeal sheriffs will normally be retired, and therefore payment for their time would be appropriate. The Lord President may consider that such re-employment is necessary in order to facilitate the disposal of business in the sheriff appeal court. That will mean that re-employed appeal sheriffs will be remunerated in the same way that re-employed sheriffs and summary sheriffs are paid by the Scottish courts and tribunal service under section 16 of the bill.

I move amendment 6.

Elaine Murray: I have a brief question. I presume that the former appeal sheriffs should have been in section 16 but have been omitted in error. I just wondered why we are not amending section 16 rather than section 50.

Kenny MacAskill: It is to keep all the parts on the sheriff appeal courts together in the bill. That is the technical reason. It all needs to be part of that particular section so that it is easier to discover it, one hopes.

The Convener: I love how that explanation was passed along the row of officials to the minister. I presume that it was not Chinese whispers and that we have ended up with the right explanation.

Amendment 6 agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

After section 51

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendment 8.

Kenny MacAskill: This group of amendments is intended to assist with the successful establishment of the sheriff appeal court. Amendment 7 is required to introduce amendment 8, which will permit senators of the college of justice, as Court of Session and High Court judges are formally known, to be appointed to act as appeal sheriffs in the new sheriff appeal court by the Lord President, in order to assist the appeal sheriffs, both sheriffs and sheriffs principal, with the appellate work in that court. The arrangement would, however, be restricted to a period of three years to permit the senators to pass on the benefit of their practical and legal expertise in dealing with appellate work.

Senators are to act as but not be appeal sheriffs, although they are to be treated as appeal sheriffs. Accordingly, just in the same way as sheriffs principal are not given greater powers in the sheriff appeal court than sheriffs who are also appeal sheriffs, the same is to apply for senators.

I am aware that the committee has expressed concerns about appeal sheriffs who are not sheriffs principal hearing appeals while sitting alone. I believe that the assistance of senators in the early years of the sheriff appeal court will help appeal sheriffs, both sheriffs and sheriffs principal, to build up the expertise of that court in handling and deciding upon appeals.

Most of the business of the sheriff appeal court will be minor and procedural appeals and the Government is therefore confident that appeal sheriffs sitting alone will be perfectly capable of dealing with such appeals, particularly after they have had the benefit of the assistance and expertise of senators sitting beside them as appeal sheriffs in the early days.

Under the provisions of the bill, it will be for court rules made by the Lord President to decide upon the quorum of the court in particular kinds of cases. It would be wrong for the bill to restrict that flexibility. The Lord President will be able to appoint as many senators to act as appeal sheriffs as the Lord President considers necessary for the purposes of the court during the three-year transitional period. A senator will be appointed to act as an appeal sheriff only if they have held office as a senator for at least one year. The appointment of a senator will not affect the senator’s capacity as a Court of Session judge or as a High Court judge, and they may continue to act in those capacities.

The provisions permitting senators to act as appeal sheriffs are to be active for a transitional period of three years after the sheriff appeal court becomes operational. After that period, all the appointments of senators under that temporary provision will cease. A senator who acts as an appeal sheriff will, however, be able to continue to give judgment on or deal with a matter relating to a case with which they are involved that began before the expiry of that period.

To make it permanently possible for the Lord President to appoint senators to act as appeal sheriffs would go against the rationale for having a sheriff appeal court and the principle of the bill generally, which is to ensure that cases are dealt with at the lowest level in the court structure at which they can competently be dealt with.

The sheriff appeal court will deal with summary criminal appeals and most of the civil appeals before it will be procedural in nature. Neither group of appeals merits the attention of the High Court or the inner house of the Court of Session. However, it is right that, in its early years, the new court should benefit from the assistance and experience of senators of the Court of Session.

I move amendment 7.

11:30

Elaine Murray: I welcome the fact that transitional arrangements are being introduced. That is the sensible thing to do. It is expected to take 10 years until all the summary sheriffs are in place, so how was the transitional period of three years arrived at? Why is three years appropriate, rather than a longer period?

Roderick Campbell: It is sensible to take advantage of the senators' judicial experience. It will assist.

On whether the transitional period should be three years or longer, I would think that it is nothing more than a considered view as to how long is necessary to get the sheriff appeal court up and running. I do not have a problem with a three-year period.

Margaret Mitchell: Although the senators' judicial experience is, of course, welcome, it is a temporary measure. It merely muddies the waters and makes it unclear what the bill is trying to achieve.

The Convener: Cabinet secretary, does it muddy the waters?

Kenny MacAskill: No, I do not believe so. Parts 1 and 2 of the bill are separate. Summary sheriffs are distinct and separate and will not sit in the sheriff appeal court.

The three-year period was the Lord President's suggestion. It is a proportionate measure to ensure that, when we establish the sheriff appeal court, the appropriate experience can be shared. As we indicated in discussions on earlier amendments, the vast majority of appeals are minor and procedural, will be relatively straightforward and will not require such assistance. However, if the Lord President feels it appropriate, it is appropriate that, for the transitional period, an experienced senator should be able to give their counsel and wisdom to ensure that the court has the necessary experience in the complex cases that will require to be presided over by more than one member of the judiciary.

The timescale was chosen by the Lord President and we are happy to accept it.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)

The Convener: Margaret Mitchell sometimes glories in being the only one. The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 7 agreed to.

After schedule 1

Amendment 8 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 8 agreed to.

Sections 52 to 54 agreed to.

After section 54

Amendment 29 not moved.

Section 55 agreed to.

Section 56—Rehearing of pending case by a larger Court

Amendment 9 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 9 agreed to.

Amendment 10 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 10 agreed to.

Amendment 30 not moved.

Amendment 11 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 11 agreed to.

Amendment 12 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
White, Sandra (Glasgow Kelvin) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 12 agreed to.

Section 56, as amended, agreed to.

Sections 57 to 59 agreed to.

Section 60—Records of the Sheriff Appeal Court

The Convener: Amendment 13, in the name of the cabinet secretary, is grouped with amendment 14.

Kenny MacAskill: Amendments 13 and 14 are intended to provide for the records of the sheriff appeal court to be produced and kept in electronic form. Amendment 13 will permit the sheriff appeal court to keep records electronically and to authenticate a record or a copy of a record by means of an electronic signature. Amendment 14 defines what is meant by an electronic signature.

Given that one of the bill's key aims is to modernise the justice system and bring it into the 21st century, it is appropriate to make provision to ensure that the sheriff appeal court may, from the outset, keep and authenticate its records electronically.

Provision already exists elsewhere for electronic signatures to be used—for example, the Criminal Procedure (Scotland) Act 1995 permits electronic signatures on specific documents relating to summary criminal proceedings.

The Scottish Government digital strategy is investigating with the Scottish Court Service the possibility of greater use of electronic signatures in the context of court proceedings—for example, on warrants and interim orders. If those advances are to happen in the sheriff courts, we agree that they should also happen in the sheriff appeal court, as that court will receive appeals from the sheriff court.

The existing provisions in section 60 allow records of the sheriff appeal court to be authenticated by being signed by an appeal sheriff or a clerk of the court. A record means an interlocutor, decree minute or other document relating to the proceedings and decisions of the

sheriff appeal court. A clerk of the court may also authenticate a copy of such a record as a true copy.

Amendment 13 will make it clear that such records can be produced in electronic format and that such records or copies of them can be authenticated electronically—in the case of the records by an appeal sheriff or a clerk of the court, and in the case of a copy by the clerk of the court.

Amendment 14 defines the meaning to be given to electronic signatures by reference to the meaning that is given to that phrase in the Electronic Communications Act 2000 and includes in that definition a printed version of that electronic signature.

Further, in conjunction with amendment 13, the court may specify another form of authentication by act of sederunt made by the Court of Session allowing the court to adjust it to meet practice or procedural requirements. On-going developments in information and communications technology, which we cannot perhaps envisage or contemplate now, may mean that some other definition of electronic authentication should be added in the future, and the courts should be able to use their powers to adjust flexibly to accommodate any such development.

It is essential that our courts are enabled to use technology to help them to process their business appropriately.

I move amendment 13.

The Convener: No one has indicated that they wish to speak. I do not think that the amendment is controversial for the committee—we are quite technological these days.

Amendment 13 agreed to.

Amendment 14 moved—[Kenny MacAskill]—and agreed to.

Section 60, as amended, agreed to.

The Convener: That ends consideration of amendments for today. I thank the cabinet secretary and his officials.

11:38

Meeting continued in private until 12:06.

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