

ITEM 7.1: COURTS REFORM (SCOTLAND) BILL - REPORT ON STAGE 2**Purpose**

1. To update members on the Court Reform (Scotland) Bill Stage 2 proceedings at the Scottish Parliament Justice Committee meetings of 10 and 17 June.

Stage 2 Proceedings

2. The Cabinet Secretary for Justice, Kenny MacAskill, spoke for the Scottish Government (SG) at day one of the [Stage 2 Proceedings](#) on 10 June 2014 and Roseanna Cunningham, Minister for Community Safety and Legal Affairs spoke for the SG at day two of the [Stage 2 Proceedings](#) on 17 June 2014. The Bill as amended at Stage 2 and details of all amendments can be found at the [Scottish Parliament webpages on the Bill](#). However, for information, a summary of the amendments agreed is provided at **Annex A** and amendments lodged but not agreed (i.e. lodged but either disagreed or withdrawn) at **Annex B**.
3. All of the SG amendments - some minor, some significant - were agreed. Members' attention is drawn to the following:
 - The Bill now provides that the Interpretation and Legislative Reform (Scotland) Act 2010 will apply to Court of Session rules in the same way as it does to the rules to be made for the sheriff court and Sheriff Appeal Court. (Amendments 72, 73, 76 to 79 and 119)
 - Clarification of the SCJC's powers to deal with draft fees rules is now provided for. (Amendment 120)
 - Provision has been included enabling the Court of Session make rules to assist in determining whether individual proceedings fall into definition of simple proceedings (to preserve any necessary case law applicable in summary cause proceedings). (Amendment 52)
 - The simple procedure rules may be exercised so court may "facilitate negotiation" between instead of "negotiating with" parties as previously provided for. (Amendment 58)
 - Changes have been made to the provisions for remit of cases to the Court of Session (which the Lord President suggested in his oral evidence to the Committee) to provide for a single test for remit. Amendments have been made to the appeal provisions following the changes to the test for remit and

the provision allowing the Court of Session to take account of its business and operational needs in deciding on whether to remit to the sheriff has been removed. (Amendments 66-71)

4. Five non-government amendments were also agreed. Details of these are provided below.
 - The SG supported Sandra White's amendment to restrict the privative limit to £100,000. The amendment was agreed by division (5-4).
 - The Committee agreed to John Finnie's amendments 135, 136 (introduces new section 70A) and 137 (introduces new section 75A) without division. The first two of these amendments provide that actions under £5,000 brought in specialist PI court would not be subject to simple procedure (if a s.41(1) order allows cases under £5,000 to be heard in that court). Amendment 137 creates a new rule that where proceedings for payment of up to £5,000 simple procedure limit are raised in the specialist court, any party can apply to the sheriff to have them transferred into simple procedure in the local court on special cause shown. The SG supported these amendments.
 - The Committee also agreed without division to John Finnie's amendment 142 (placing into the Bill the 'sanction for counsel' test proposed by Sheriff Principal Taylor). The test will therefore appear on the face of the Bill, though it will be left to the SCJC to flesh out and if need be to amend or modify the statutory test, by the exercise of rule-making powers. The SG supported this amendment.

Recommendation

5. **Members are invited to note this update.**

**Scottish Civil Justice Council – Secretariat
August 2014**

ANNEX A

Amendments Agreed		
Subject	Proposer/s [Am. No.]	Effect
Exclusive competence: orders of value	SG [1, 2-4, 19, 20]	Exclusive competence relates to aggregate of orders sought (and CoS rule making powers in this regard).
Exclusive competence: limit	Sandra White (SNP) [24]	Exclusive competence limit to be £100,000.
Appeal Sheriffs	SG [6-8]	To permit remuneration to former Appeal Sheriffs who re-employed (under s50) and enabling Senators to be appointed to act as Appeal Sheriffs for a period of 3 years.
Sheriff Appeal Court	SG [5, 9, 10-15-18, 21, 109, 10]	Records of the sheriff appeal court to be produced and kept in electronic form; clarifying that Court may be constituted by a single appeal sheriff in some cases (if provided for in the rules). Technical amendment to give the sheriff appeal court power to require provision of legal aid in proceedings before that court. Consequential amendment to s.112 to ensure provisions on sentencing guidelines, and on publication of appeal decisions relating to sentencing, continue to operate correctly.
Civil Jury Trials	SG [49]	Minor amendment allowing rules to make provision for summoning jurors.
Simple procedure	SG [50-61]	CoS may make rules to assist in determining whether individual proceedings fall into definition of simple proceedings (to preserve summary cause case law). Simple procedure rules may be exercised so court may 'facilitate negotiation' between instead of 'negotiating with' parties. Increasing levels of awards of aliment under simple procedure. Technical amendments clarifying operation of simple procedure and categories of case which will be heard under it and to ensure appeals to Sheriff Appeal Court from simple procedure are on final decisions only.
Simple procedure: all-Scotland court	John Finnie (Ind) [135-137]	Actions under £5k brought in specialist PI court would not be subject to simple procedure (if s41(1) order allows such cases to be heard there). Cases may be transferred to local court.
Judicial Review: general	SG [62, 63,65, 114 - 117]	To clarify how time limits are expressed and introduce time limit inadvertently omitted. Further technical amendments on procedural steps when CoS remits a petition for judicial review to upper tribunal for Scotland under s57(2) of the Tribunals (Sc) Act 2014 .
References to Tribunals (Sc) Act 2014	SG [64, 102, 103, 111 - 113]	Technical amendments updating references to sections of the Tribunals (Sc) Act 2014 to take account of changes in the numbering sections after that bill's enactment.
Remit to Court of Session	SG [66-71]	To provide for a single test for remit; to make amendments to the appeal provisions and to remove the provision allowing CoS to take account of its business and operational needs in deciding on whether to remit.
Rule-making powers	SG [72, 73, 76-79, 119, 120]	Providing that the Interpretation and Legislative Reform (Scotland) Act 2010 will apply to CoS rules as it will for sheriff court and Sheriff Appeal Court. Also clarifying SCJC functions include preparation of fees rules.
Sanction for	John Finnie (Ind) [142]	Places into the Bill the 'sanction for counsel' test proposed by Sheriff

counsel		Principal Taylor.
Procedure and fees	SG [74, 75, 80, 81, 91, 108, 118, 124]	Consolidation of existing law in relation to Ministers' powers to set court fees, plus some consequential drafting amendments.
Vexatious litigation orders	SG [82-90]	Technical amendments to clarify meaning of "court".
Effect of appeal	SG [92-97]	Minor amendments to ensure consistency of language.
Payment of judicial salaries	SG [98, 99, 121, 122]	To provide for Scottish Courts and Tribunal Service to be responsible for paying Senator's salaries and expenses.
Court closure orders	SG [100, 101, 123]	To ensure orders for reorganising courts are subject to affirmative procedure.
JABS: assistants	SG [104]	Judicial Appointments Board Scotland to have power to appoint non-board members to assist in carrying out functions.
Judicial retirement ages	SG [105-107]	Technical amendments consequential on Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014.

ANNEX B

Amendments NOT Agreed		
Subject	Proposer/s [Am Nos.]	Effect of amendment
Honorary Sheriffs	Liam McArthur (LD) [22, 35, 36, 37]	Removal of provisions abolishing Honorary Sheriffs.
Exclusive competence: level of limit	Roderick Campbell (SNP) [38, 39]; Alison McInnes (LD) [40]; Elaine Murray (Lab) [23]; John Pentland (Lab) [25]	Amendments offering alternatives to level of privative limit/disapplying limit in PI actions.
Summary sheriffs	Alison McInnes (LD) [41, 42]	Remove adoption and forced marriage proceedings from summary sheriff jurisdiction.
Sheriff Appeal Court: bench	Elaine Murray (Lab) [29, 30, 34], Margaret Mitchell (Con) [26- 28]	Various amendments requiring SPs to hear appeals (not a sheriff only).
Simple procedure	Alison McInnes (LD) [43, 44]; John Pentland (Lab) [31]	Amendments to prevent PI actions/asbestos related claims from being heard under simple procedure.
Judicial Review: time limits in planning cases	Margaret Mitchell (Con) [32, 138]	To reduce time limit for lodging, from three months to six weeks, in challenges where applicant is a company and the challenge is to a decision under part III of the Town and Country Planning (Scotland) Act 1997.
Judicial Review: general	Elaine Murray (Lab) [125] Alison McInnes (LD) [139, 143]	Changes point clock starts ticking to when applicant first has knowledge of grounds of appeal rather than date grounds first arise. Remove changes Bill makes to judicial review procedure.
Remit of cases to the Court of Session	Roderick Campbell (SNP) [140]	To replace right of appeal to sheriff appeal court against sheriff's decision on remit with right of appeal to CoS.
Rule-making powers	Graeme Pearson (Lab) [126, 127]	Ensure CoS rule-making powers are exercised with a view to enabling the Court to conduct proceedings justly.
Sanction for counsel	John Pentland (Lab) [45, 141, 47, 144]	Alternative amendments providing for an automatic right or a presumption in favour of sanction in certain PI actions (e.g. fatal or work-related injuries or claims above £20K).
Sheriff Appeal Court	Elaine Murray (Lab) [128, 129, 130] John Pentland (Lab) [46]	All appeals against final decisions by the personal injury court to be heard in CoS. Lower the test High Court has to meet to extend time period for appeal from Sheriff Appeal Court from "exceptional circumstances" to "special cause"
Exclusive competence and simple procedure	Elaine Murray (Lab) [131, 132, 134]	Making commencement of s.39 and s.70 subject to affirmative procedure and to specify conditions to be met before making the order.
Annual Report	Elaine Murray (Lab) [133]	Duty on Ministers to report annually on the operation of the legislation.

