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SPICe Briefing
Courts Reform (Scotland) Bill: Stage 3

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This briefing looks at Stage 1 and Stage 2 consideration of the Courts Reform (Scotland) Bill. The Bill was introduced in the Scottish Parliament on 6 February 2014. The Bill will implement, broadly, the reforms to the structure and procedure of the civil courts proposed in the Scottish Civil Courts Review (the "Gill Review"). The reforms are intended to make the civil justice system in Scotland more effective and efficient.

The key proposals are:

- an increase in the "exclusive competence" (or privative jurisdiction) of the sheriff court. The exclusive competence dictates the monetary value below which cases **must** be heard in the sheriff court. Increasing exclusive competence will have the effect of moving business from the Court of Session to the sheriff courts
- introducing a new judicial office of "summary sheriff" to deal with less serious criminal cases and some civil cases, including lower value cases and some urgent matters
- creating a Sheriff Appeal Court to hear appeals from the decisions of sheriffs and summary sherrifs in both civil and less serious criminal cases
- allowing cases to be heard by sheriffs who specialise in their subject matter in certain circumstances, including the creation of a specialist personal injury court

The main issues raised during the Bill's passage so far have been:

- the level at which exclusive competence should be set
- access to the services of advocates
- whether the sheriff courts can cope with the cases which would be transferred under the Bill's proposals without additional resources
- whether it is appropriate for single sheriffs to hear appeals from the decisions of other sheriffs, as may be the case in the proposed Sheriff Appeal Court

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INTRODUCTION

The Courts Reform (Scotland) Bill is a Government Bill, introduced in the Scottish Parliament on 6 February 2014 by Kenny MacAskill MSP. It proposes a range of reforms to the structure, organisation and procedures of Scotland's courts.

The court system is divided into criminal and civil courts. Criminal courts deal with the trial and (where found guilty) punishment of those accused of crimes. The civil courts deal with disputes about rights and obligations between people/organisations – such as contractual matters, divorce and housing rights. Civil matters are dealt with by the sheriff courts (which also deal with criminal matters) and the Court of Session, with appeal possible to the UK Supreme Court. The Bill's focus is on reforming the civil courts, although there are some knock on effects in relation to criminal matters.

The Bill intends to implement, broadly, the recommendations of the Scottish Civil Courts Review (SCCR 2009) – also known as the "Gill Review". Lord Gill, a senior judge, led this Review. It was tasked with proposing reforms to the civil justice system in Scotland to make the civil courts more effective, efficient and proportionate. It made a raft of recommendations which deal with the principles, structures and procedures which it argues should underpin the delivery of civil justice in Scotland. The Bill deals, in the main, with the structural changes recommended by Gill. The other recommendations from the Gill Review are being taken forward by other bodies, including the Scottish Civil Justice Council (which proposes new court rules) and those involved in the Scottish Government's "Making Justice Work" programme.

SPICe has produced a table linking the recommendations in the Gill Review to Scottish Government action towards implementation (Harvie-Clark 2014) which also highlights where implementation plans differ from the original recommendations.

SUMMARY OF PROPOSALS

The Bill proposes several radical reforms to the structure of Scotland's civil courts, as well as a number of related procedural reforms. The Scottish Government has stated that the fundamental principle is that "the right cases should be heard in the right courts"[1].

The key proposals are:

- **an increase in the "exclusive competence" (or privative jurisdiction) of the sheriff courts** – the Bill as introduced proposed an increase from the current exclusive competence of £5,000 to £150,000, although an amendment at Stage 2 reduced this to £100,000. This means that cases with a monetary value of up to £100,000 will require to be heard in the sheriff court. Thus, it is envisaged that a large proportion of the business currently carried out in the Court of Session will be transferred to the sheriff courts

- **remit** – the Bill proposed restrictions on sheriffs' ability to remit (ie. transfer) cases to the Court of Session. This action may be appropriate where a case is complex or raises novel legal issues. In the Bill as introduced, remit would only be possible where there were "exceptional circumstances" and the business needs of the Court of Session allowed it. Amendments tabled at Stage 2 made the remit test less onerous

- **the creation of a new judicial office known as "summary sheriff"** – the summary sheriff will have competence to deal with less serious criminal cases and lower value civil cases, as well as certain more urgent types of court business. Summary sheriffs will

[1] Scottish Parliament Official Report. 21 May 2014. Col. 31303

share their powers with sheriffs so that sheriffs will be able to undertake all business in situations where no summary sheriff is available, or in locations where none have been appointed

- **sheriff specialisation** – currently, sheriffs deal with all business which may be heard in the sheriff courts. The Bill brings forward proposals for the Lord President (the head of the courts in Scotland) to declare certain subject areas as suitable for specialisation. Sheriffs principal (who head up the administration of justice in a sheriffdom) would then have discretion as to whether to appoint sheriffs to fill these specialist roles, depending on the business demands in their area. It is expected that, in time, every sheriffdom will have sheriffs specialising in personal injury and family cases at least

- **"all Scotland" sheriff courts** – the Bill contains provisions which would enable Scottish Ministers to create specialist sheriff courts which could hear a case from anywhere in Scotland. In practice, it is intended that a specialist personal injury court will be created to deal with the significant volume of personal injury work which is expected to move from the Court of Session to the sheriff courts as a result of the increase in the sheriff court's exclusive competence

- **a Sheriff Appeal Court** – it is proposed to create a new Sheriff Appeal Court, presided over by sheriffs principal and experienced sheriffs. They will hear appeals from the decisions of sheriffs. The court will deal with both civil and less serious criminal appeals, and its decisions will be binding on all sheriffs. The current position in civil appeals is that the decision of a sheriff principal is only binding on the sheriffs in that sheriffdom

- **restricted appeal routes** – currently, someone who is not satisfied with a civil court judgment can usually appeal as of right to a higher court. Under the Bill's proposals, the only automatic appeal route (in most circumstances) will be from the sheriff to the Sheriff Appeal Court. Onward appeal to the Court of Session and then to the UK Supreme Court will only be possible if permission is granted, either by the court hearing the case or by the proposed appeal court. Criminal appeals from the sheriff court to the High Court of Justiciary are also affected. The test to be considered in relation to appeal to the Court of Session or the High Court is whether the case raises an important point of principle or practice, or whether there is some other compelling reason for the appeal to proceed

- **procedural reforms** – the Bill proposes a number of reforms to court procedure, including the creation of a new "simple procedure" for lower value cases. It proposes to update the Court of Session's procedural rule-making powers to ensure they are wide enough to enable the modernisation of court rules envisaged by the Gill Review to be taken forward

- **judicial review** – the Bill proposes a three month time-limit to present a petition for judicial review (although the court will be able to exercise discretion to allow a petition to be presented outside this time frame), as well as a "sifting" process under which a judge will consider the merits of a petition before it is allowed to proceed

- **merger between the Scottish Court Service and the Scottish Tribunals Service** – the proposed merger will create the Scottish Courts and Tribunals Service

The Scottish Government expects that the Bill's proposals will, if implemented, generate cost-savings – although there will be one-off start-up costs. The main area where savings are expected is in relation to judicial salaries. This is because the Bill's proposals shift work down the court hierarchy, so that some of the work which would previously have been carried out in the Court of Session will be moved to the sheriff courts and some of the work previously undertaken by sheriffs will be undertaken by summary sheriffs. The Scottish Government will

gain the benefit of any savings in relation to judicial salaries. The start-up costs will mainly fall on the Scottish Court Service. No new funding is being made available, so these costs are expected to be met from revenue generated by court fees.

PARLIAMENTARY CONSIDERATION

The Bill was introduced on 6 February 2014. The Justice Committee was designated the lead committee for the purposes of Stage 1 scrutiny. The Committee issued a call for evidence on 18 February 2014 and took evidence from interested parties at its meetings on 18 March 2014, 25 March 2014, 1 April 2014, 22 April 2014 and 29 April 2014.

The Finance Committee considered the Financial Memorandum to the Bill and reported (2014) to the Justice Committee highlighting a number of concerns around the assumptions detailed in the Memorandum. The Delegated Powers and Law Reform Committee looked at the delegated powers contained in the Bill. Its report (2014) highlighted several improvements to the subordinate legislation procedure in the Bill. It also noted that the Bill significantly widens the Court of Session's powers to make court rules (which are not subject to any parliamentary scrutiny).

The Justice Committee published its Stage 1 Report on 8 May 2014. The Scottish Government responded to the Committee's recommendations (2014). The Stage 1 Report and the Scottish Government response are discussed in more detail below. The Stage 1 debate took place on 21 May 2014. There was cross-party support for the general principles of the Bill, although Labour, the Conservatives and the Liberal-Democrats voted against the associated financial resolution due to concerns about the accuracy of the information contained in the Financial Memorandum.

Issues raised by MSPs included: that the proposed new exclusive competence was too high and may have unintended consequences; that, to ensure high quality judgments, the Sheriff Appeal Court should be presided over by three rather than one judge and/or the judges in question should all be sheriffs principal (as originally recommended in the Gill Review); that the test for remitting cases from the sheriff courts to the Court of Session was set too high, meaning that deserving cases may not be taken on by the Court of Session; that access to "counsel" (an advocate, who would be available automatically if a case was heard in the Court of Session) would be unfairly restricted, which was especially worrying given that Westminster's Enterprise and Regulatory Reform Act 2013 would make it more difficult to prove employer liability in workplace injury cases; that the sheriff courts may not have sufficient capacity to deal with the changes without additional resources, particularly in light of current and planned court closures; and that the proposed three month time limit for judicial review cases may be overly restrictive, given that it would replace the current one year timescale set out in the Human Rights Act 1998 and the Scotland Act 1998.

Stage 2 consideration took place on 10 June 2014 and 17 June 2014. The Bill as amended at Stage 2 was published on 19 June 2014.

KEY ISSUES AT STAGE 1 AND STAGE 2

The table below (Table 1: key issues at Stage 1 and Stage 2) outlines the key issues raised during parliamentary scrutiny of the Bill so far, including the Justice Committee's Stage 1 recommendations, the Scottish Government response and whether the issue was addressed at Stage 2. It is designed to provide a summary of the main issues associated with the Bill. It is not a comprehensive discussion of all the issues raised.

Table 1: key issues at Stage 1 and Stage 2

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Structure of sheriffdoms		
Section 2(1) of the Bill confers power on the Scottish Ministers to change (including abolish) sheriffdoms and sheriff court districts via subordinate legislation. The powers, as introduced, were subject to negative parliamentary procedure. The Delegated Powers and Law Reform Committee raised concerns that, given the potentially significant effect of court closures and other alterations on users of the courts, the affirmative procedure would provide a more suitable level of parliamentary scrutiny	The Justice Committee endorsed the Delegated Powers and Law Reform Committee's recommendation The Scottish Government indicated that, in response to the concerns, it would bring forward a Stage 2 amendment to make the power subject to the affirmative procedure.	Amendment 123 in the name of the Cabinet Secretary provided that orders under section 2(1) would be subject to the affirmative procedure. Amendments 100 and 101 made similar provision for orders under sections 59(2) or (6) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which deal with justice of the peace courts. All three amendments were agreed to.
Sheriffs		
Witnesses to the Justice Committee raised concerns that the title "summary sheriff" was inappropriate because it may be taken to suggest that issues such as domestic abuse and child custody were being downgraded.	The Justice Committee supported, broadly, the creation of summary sheriffs. However, it expressed concern that the references in the Policy Memorandum to them undertaking more routine, low value civil cases could lead to the perception that cases dealt with by summary sheriffs are being downgraded. The Scottish Government indicated that the term "low value" was used in relation to those cases under £5,000 which will make up part of the summary sheriff's jurisdiction. It had no intention of suggesting that other types of cases within the summary sheriff's jurisdiction were of less importance.	Amendments 41 and 42 in the name of Alison McInnes would have removed adoption and forced marriage proceedings from the list of civil proceedings in which a summary sheriff has competence. Amendment 41 was disagreed to, whilst amendment 42 was not moved.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Sheriffs cont.		
The Gill Review noted that 20% of sheriff court business was dealt with by part-time sheriffs. Part-time sheriffs may also work as solicitors or advocates in private practice, and some have raised concerns that this might affect their impartiality. Concerns also exist around the impact of their use on efficient case management and consistent decision-making. The Gill Review recommended that the use of part-time sheriffs should be restricted to cover for leave, illness and emergencies. However, the Bill (section 8) does not limit their role and removes the current cap on the number of part-time sheriffs who can be appointed.	The Justice Committee accepted that part-time sheriffs should be available to cover emergencies, absence and illness, particularly in remote areas, but noted that they should not become a routine part of the staff complement at the sheriff court. It urged the Scottish Government to monitor closely the effects of removing the cap. The Scottish Government's view was that the need to deploy part-time sheriffs would decrease over time as more summary sheriffs were deployed. Therefore, there was no longer a need to specify a maximum number.	No action at Stage 2
Section 26 of the Bill proposes to abolish the post of honorary sheriff. Honorary sheriffs may provide cover in emergencies when a sheriff is not available. Some witnesses raised concerns that honorary sheriffs do not have to be legally qualified and may not have regular experience in justice matters. Others highlighted the important role they played in rural areas, where it may be more difficult to secure the availability of a sheriff.	The Justice Committee agreed that the position of honorary sheriff should be abolished, but sought assurances that rural and remote areas would not be disadvantaged. It asked the Scottish Government to provide a timetable for the removal of honorary sheriffs, including proposals related to their current workload. The Scottish Government stated that the post of honorary sheriff would not be abolished until alternative arrangements were in place. It expected it would take around 10 years for the full complement of summary sheriffs to be in place. The timescale for abolition of honorary sheriffs was likely to be similar.	Amendments 22 and 35, in the name of Liam McArthur and supported by Tavish Scott, proposed omitting section 26 of the Bill. Amendments 36 and 37, also in the name of Liam McArthur and supported by Tavish Scott, were alternatives which sought to make the commencement of section 26 subject to the affirmative procedure. Amendments 22, 35 and 36 were disagreed to. Amendment 37 was not moved.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Exclusive Competence		
Much of the debate at Stage 1 focussed on the appropriate level at which the "exclusive competence" (or privative limit) of the sheriff court should be set. This competence is expressed as a monetary amount and indicates which cases **must** be heard in the sheriff court[2]. The current competence is £5,000, meaning that cases with a monetary value of £5,000 or less must be raised in the sheriff courts. The Bill proposed to increase the exclusive competence to £150,000. Increasing the exclusive competence is an important mechanism in shifting work from the Court of Session to the sheriff courts. This downwards movement is, in turn, key to delivering the Bill's aims of more efficient and effective justice.	The Justice Committee took the view that the proposed increase in the exclusive competence of the sheriff court from £5,000 to £150,000 was too great a leap and recommended that the Scottish Government introduced a lower limit. The Scottish Government indicated that, although it was happy to consider views on a lower limit, any limit would have to meet the aim of improving the Court of Session and ensuring a suitable volume of cases to justify the establishment of the new specialist personal injury court.	Amendment 24, in the name of Sandra White, which set the level of the exclusive competence of the sheriff court at £100,000, was agreed to (by division). Amendment 39, proposed by Roderick Campbell, would have set the level of the exclusive competence privative jurisdiction of the sheriff court at £150,000 for damages actions and £100,000 for all other actions. It was withdrawn by agreement. Amendment 40, from Alison McInnes, sought to set the level of the exclusive competence of the sheriff court at £50,000, whilst amendment 23, proposed by Elaine Murray, sought to set the limit at £30,000. Both these amendments were disagreed to.

[2] Not all cases have a monetary value. Rules of court govern how these are dealt with. Specific types of action (eg. "proving the tenor" of a will) may be required to be heard in a particular court, even where their value is below or above the exclusive competence. Again, rules of court make provision for these.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Exclusive Competence cont.		
Advocates are legal professionals who are experts in arguing cases. Advocates are automatically employed to deal with cases raised in the Court of Session. The increase in the exclusive competence proposed in the Bill would result in many of the cases currently raised in the Court of Session instead being raised in the sheriff court. The winning party in a sheriff court case cannot claim the extra expenses associated with employing an advocate from the losing party unless the sheriff has granted "sanction for counsel". Some respondents raised concerns that this would prevent those involved in cases which, under the Bill's proposals, would have to be raised in the sheriff court from getting access to the best legal advice.	In the report associated with the Taylor Review (Review of Expenses and Funding of Litigation in Scotland 2013), Sheriff Principal Taylor recommended that the test for granting sanction for counsel should be expanded to include a general test of reasonableness as well as the need to have regard to the resources deployed by the other party to the case. The Committee recommended that the Scottish Government introduced an amendment at Stage 2 to incorporate Sheriff Principal Taylor's test into the Bill. The Scottish Government said that it would prefer to address the matter via court rules to allow for more flexibility.	Amendment 142, in the name of John Finnie, aimed to place Sheriff Principal Taylor's test on the face of the Bill. It was agreed to (without division). See also John Pentland's amendments 45 and 141, discussed below.
Witnesses highlighted concerns about the treatment of cases involving asbestos-related diseases. It was argued that these were some of the most complex cases dealt with by the courts yet, under the Bill's proposals, most would fall within the remit of the sheriff courts. In addition, there would be no automatic sanction for counsel in sheriff court cases.	The Committee did not make any specific recommendations in relation to this issue, although it did discuss the treatment of asbestos-related disease cases.	Amendment 25, in the name of John Pentland, sought to exclude cases involving asbestos-related disease from the exclusive competence rules proposed in the Bill. This would mean that cases could continue to be brought in the Court of Session. Amendment 31, also from John Pentland, sought to exclude such cases from simple procedure. Both amendments were disagreed to. Members argued that an exception for one type of case was not justified.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Exclusive Competence cont.		
A number of witnesses raised concerns that the remit test (the test for transferring a case from the sheriff court to the Court of Session) was too high, creating a risk that deserving cases would not be transferred. In particular, Lord Gill (the Lord President), argued that the tests in the Bill as introduced were too restrictive. A specific area of concern was that section 88(6) proposed to allow the Court of Session to take business and operational needs into consideration which, arguably, allowed subjective matters to influence the decision.	The Justice Committee agreed with witnesses that the remit test proposed in the Bill was too high and welcomed the Scottish Government's commitment to table amendments in line with Lord Gill's recommendations, during his evidence to the Committee, on more appropriate tests. The Scottish Government reiterated its commitment to amend the test at Stage 2.	Scottish Government amendments 66 to 68 put forward changes to the proposed remit test to make it less onerous. As a result, cases could be remitted where the sheriff considered that "the importance or difficulty of the proceedings makes it appropriate to do so". In addition, for cases falling within the exclusive competence[3] of the sheriff courts, the Court of Session could accept a remit request on "cause shown". The ability of the Court of Session to take into account its business needs when considering whether to accept a remit request was removed by amendment 68. Amendments 66 to 68 were unanimously agreed to. Amendment 69 sought to enable decisions of the sheriff in relation to remit requests to be appealed to the Sheriff Appeal Court (where permission is granted). This was agreed to by the Committee. An alternative amendment to allow appeals to be considered by the Court of Session (amendment 140, proposed by Roderick Campbell and moved by Elaine Murray) was disagreed to.

[3] Ie. cases of a certain description with a monetary value of £100,000 (after amendment and Stage 2) or less.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Specialist personal injury court		
Section 41 of the Bill would enable Scottish Ministers to create specialist courts by secondary legislation. The Scottish Government intends that this power is used in the first instance to create a specialist personal injury court for Scotland. Under the Bill as introduced, personal injury cases of £5,000 or less were subject to the simple procedure and were not eligible to be considered by this specialist court. However, some stakeholders suggested that the simple procedure was not suitable for personal injury cases as they are inherently complex.	The Committee noted the concerns expressed in the Stage 1 Report (see para 274) but did not make any specific recommendations on this topic.	Amendments 135 and 136, in the name of John Finnie, proposed to permit personal injury cases with a value of £5,000 or less to be heard in the specialist personal injury court. Amendment 137, also in the name of John Finnie, would allow a case in the specialist personal injury court to be transferred to the simple procedure in another sheriff court on the application of one party where "special cause" is shown. (This contrasts to the Bill as introduced where a joint application by the parties was required.) These amendments were unanimously agreed to.
Section 69 of the Enterprise and Regulatory Reform Act 2013 (UK legislation) removes the automatic assumption that a breach of health and safety law is a breach of the duty of care an employer has to employees for the purposes of the law of negligence. This will make workplace negligence cases more complicated to prove for employees. Witnesses argued that allowing automatic sanction for counsel in the sheriff court for workplace injury cases would ensure employees had access to the best legal advice to counteract the impact of the Enterprise and Regulatory Reform Act 2013.	The Committee noted that the Scottish Government was in discussions to establish whether there are any steps it can take to mitigate the effects of section 69 of the Enterprise and Regulatory Reform Act 2013 and welcomed this approach. The Scottish Government re-iterated its commitment to looking at ways of moderating the impact of section 69.	See John Finnie's amendments 135 to 137, discussed above. Amendments 45 and 141, in the name of John Pentland, sought to create legal presumptions in favour of granting sanction for counsel in the specialist personal injury court. The proposal in amendment 45 was for a non-rebuttable presumption for sanction for counsel in personal injury cases dealing with death or workplace injury; and personal injury cases exceeding £20,000 in value. Amendment 141 was proposed as an alternative and introduced rebuttable presumption covering the same types of cases. The amendments were disagreed to.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Sheriff Appeal Court		
At present, civil cases begun in the sheriff courts are initially heard and decided upon by sheriffs, whereas sheriffs principal hear appeals from those decisions. The Bill provides for existing sheriffs principal to be Appeal Sheriffs (section 48) in the new Sheriff Appeal Court but also for sheriffs with five years' experience to be eligible for appointment (section 49). The Gill Review recommended that only sheriffs principal, and judges of equivalent rank to sheriffs principal, should hear appeals. Witnesses expressed concern that the Scottish Government's approach undermined the usual judicial practice that more senior judges heard appeals and may lead to poorer quality decisions.	The Committee recommended that only sheriffs principal should hear appeals in the Sheriff Appeal Court. The Scottish Government did not accept this view, arguing in its response that the sensitivities round this issue were "overstated" (p 8).	Amendments 26 to 28, in the name of Margaret Mitchell, aimed to only make sheriffs principal eligible for appointment as Appeal Sheriffs. Amendment 26 was disagreed to, and amendments 27 and 28 were not moved.
Section 97 of the Bill allows court rules to be made on the number of judges required to hear an appeal in particular circumstances. The Financial Memorandum (para 116) assumes that 95% of civil appeals will get a hearing in front of one Appeal Sheriff, with only 5% of cases requiring a bench of three. Some witnesses expressed concerns about this approach in evidence. Furthermore, the Gill Review recommended that civil cases in the Sheriff Appeal Court generally should be heard by three judges.	The Committee noted the approach proposed and the concerns expressed but made no specific recommendation on this topic.	Amendments 29, 30 and 34, in the name of Elaine Murray, aimed to ensure that a minimum of three judges heard appeals in the Sheriff Appeal Court in both civil and criminal matters. They would also have required one of the judges hearing the appeal to be a sheriff principal and another to be a subject specialist in the relevant subject area. Amendments 29, 30 and 34 were not moved.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Judicial review		
Judicial review is a type of court action which allows parties to challenge the exercise of power by public bodies and other official decision-makers. At present, there is no statutory time limit for raising an action for judicial review. However, the court can refuse to hear a case if there has been excessive or unreasonable delay by the applicant (known as "mora, taciturnity and acquiescence"). Section 85 of the Bill introduces a three month time limit, with judicial discretion to hear cases submitted late where it would be "equitable" to do so. Several witnesses expressed the view to the Committee that the chosen time limit is overly restrictive. For example, some witnesses were concerned that it would not leave parties enough time to apply for legal aid if required. Other witnesses supported the change citing benefits to the parties, the courts and the Scottish Legal Aid Board (SLAB). Various alternative time limits were suggested to the Committee in oral evidence.	The Committee noted the mixed views received in evidence. It recommended that those applying the new provision should do so with "discretion and flexibility, balancing the rights of the party challenging the decisions with the requirement for the public body to implement those decisions" (Stage 1 Report, para 301).	Amendment 25, in the name of Elaine Murray, sought to start the clock ticking for the purpose of the time limit when the party raising the judicial review action became aware of the grounds for review, rather than when the grounds for review first arose. This aimed to protect community groups by giving them more time to seek legal advice. The amendment was moved and, by agreement, withdrawn. Amendments 139 and 143, in the name of Alison McInnes, aimed to remove a statutory time limit for judicial review, as well as other proposed reforms to judicial review, from the Bill. These amendments were not moved. Amendments 32 and 138, in the name of Margaret Mitchell, sought to create a shorter time limit of six weeks, where the party raising the judicial review action was a company and the challenge was to a planning decision. These amendments were intended to address an alleged tactic used by some companies to delay their commercial rivals. Amendment 32 was moved but withdrawn by agreement. Amendment 138 was not moved.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Judicial review cont.		
At present, there is no requirement to seek the permission of the court for an application for judicial review (although an applicant must demonstrate "sufficient interest" in the subject matter). Section 85 of the Bill introduces such a requirement. The court may grant permission only if (a) the applicant can demonstrate "sufficient interest" and (b) the application has a real prospect of success. Whilst the first part of the test met with approval, some concerns were expressed about the second part of the test ((b)). Views included that the bar was set too high or that the requirement was unnecessary.	The Committee said it remained to be convinced that the requirement to seek permission was absolutely necessary but welcomed the reassurances of the Lord President in this area. The Committee also asked the Scottish Government to consider whether guidance should be provided on the meaning of "real prospect of success". In its response to the Stage 1 Report, the Scottish Government said it would consider this matter further.	See above for the discussion of amendment 139.
Alternative Dispute Resolution		
The Bill enables court rules to be made to "encourage" the use of alternative dispute resolution (ADR). However, some respondents called for the Bill to go further in actively promoting ADR to enable it to become embedded in the civil court system.	The Committee noted its view that parties should not be required to undertake ADR if they did not want to, with particular regard to domestic abuse situations. However, it believed that ADR had an important role to play in facilitating the settlement of cases. It called on the Scottish Government to explain how it intended to promote the use of ADR. The Scottish Government responded that its approach to supporting ADR was being developed under the "Making Justice Work" work programme. In the meantime, it believed the Bill gave the Court of Session clear powers to make rules in this area.	No action at Stage 2.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Merger with Tribunals Service		
The Bill provides for the merger of the Scottish Court Service and the Scottish Tribunals Service. Some respondents feared that the distinctive character of tribunals (particularly their focus on users) might be lost if a judicial ethos was to dominate.	The Committee recommended that the joint board of the Scottish Courts and Tribunals Service should include representation from the tribunal sector to protect its specialist approach. The Scottish Government's response highlighted that Schedule 3 of the Bill provides for the President of the Scottish Tribunals and a "Chamber President" (the person heading up a particular category of tribunals) to sit on the board. SPICe notes that these are both judicial offices.	No action at Stage 2.
Resources		
The Financial Memorandum sets out the Scottish Government's view on the resources needed to implement the Bill. This highlights one-off expenditure balanced against savings in the medium to long-term. However, the expenditure falls on the Scottish Court Service while the savings fall to the Scottish Government. No new resources will be made available to cover the costs of implementation.	The Committee stated that it "remained to be convinced" that there would be no financial impact overall. It called on the Scottish Government to monitor implementation to ensure adequate resources were in place. It also asked whether the savings accruing to the Scottish Government as a result of the reforms would be used to benefit the civil justice system. The Scottish Government committed to monitoring implementation and providing the necessary resources. The Cabinet Secretary noted that, while he would prefer savings to be re-invested in the justice system, he could not bind future administrations.	See below for a discussion of amendments 131, 132 and 134.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Resources cont.		
Witnesses raised concerns about whether the sheriff court system (which some characterised as already creaking at the seams) could cope with the increase in business created by the new exclusive competence. It was noted that the Scottish Court Service is currently implementing proposals to close a number of sheriff courts, which will put additional strain on capacity.	The Committee noted witness concerns in this area and questioned whether sufficient time had passed to judge the impact of the programme of court closures on sheriff court capacity. It called on the Scottish Government to provide further information on its planning to meet the capacity requirements. The Scottish Government argued that the trend for reducing demand for civil court business meant that it would be possible for the Scottish Court Service to accommodate the expected future case load without the need to increase resources. It noted that the majority of cases due to transfer out of the Court of Session are expected to be raised in the new specialist personal injury court. The Scottish Government also highlighted that cases which have already begun in the Court of Session on the raising of the exclusive competence will remain there. This will allow the number of cases moving to the sheriff courts and specialist personal injury court to build up gradually.	Amendments 131, 132 and 134, in the name of Elaine Murray, sought to introduce "sunrise" clauses to areas of the Bill where concerns about resources had been expressed. They proposed that orders bringing into force the sections abolishing honorary sheriffs (section 26); increasing the privative jurisdiction of the sheriff courts (section 39); and introducing simple procedure (section 70) would be subject to affirmative procedure in the Scottish Parliament. In addition, before an order bringing sections 39 and 70 into force could be laid, Scottish Ministers would be required to: • have plans to bring into force provisions relating to the specialist personal injury court • prepare a report demonstrating that there would be no adverse impact on court resources The Scottish Government argued that it would be "very unusual" for commencement orders to be subject to affirmative procedure and that adequate assurances in relation to resources had already been provided. The amendments were disagreed to.

Issue	Stage 1 Report and Scottish Government Response	Action at Stage 2
Resources cont.		
It is expected that the Scottish Court Service will use income generated from court fees to cover expenditure related to the reforms. The most recent subordinate legislation setting court fees allowed for an above inflation increase in order to fund the reform programme. Witnesses expressed concern that there might be steep rises in court fees in the future to cover reform-related costs.	The Committee sought assurances that there would not be a substantial increase in court fees to pay for the reforms. It also committed to monitoring the next consultation on fees in this regard. The Scottish Government noted that it expected court fees to increase when the matter was next considered (by a magnitude similar to the last increase, which was 1% above inflation). This was in order to bring the Scottish Court Service closer to its aim of full cost recovery. It highlighted that court fees currently only cover around 80% of costs, so full cost recovery is a long way off.	No action at Stage 2.

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