

**Justice Committee**  
**Courts Reform (Scotland) Bill**

**Letter from the Minister for Community Safety and Legal Affairs to the  
Convener**

I am grateful to the Committee for the opportunity to answer some of the concerns that were raised by Lord Gill during his evidence session on 22 April.

**Remits**

As I stated at my appearance on 29 April, the ability to remit a case which is within the exclusive competence of the sheriff court is a necessary and important tool. The provisions that are included in the Bill reflect recommendations 26 and 27, as set out in Chapter 4 paragraphs 134 to 136, of the Scottish Civil Courts Review.

The provisions set out this test to try to ensure that the system is not abused by requests to remit a case becoming the default in an attempt to circumvent the change in the exclusive competence.

However, it is important that we get the balance right so that cases are able to find their appropriate level in the system. As such, we were interested in the views that have been expressed by witnesses at the evidence sessions including, most recently, Lord Gill.

We have reflected on these views and we believe that there is merit in reconsidering the level of the test. Given that there is a two stage process with the Sheriff and then the Court of Session involved in the decision, we believe that this will provide a useful check to ensure the system is not abused.

As such we will bring forward amendments at stage 2 to amend or remove some of the stricter aspects of the test. These are outlined in more detail below in response to the specific points raised by Lord Gill in his letter to the Committee of 28 April.

**Section 88(4)**

Lord Gill concludes that the test of 'exceptional circumstances' in section 88(4) is too high. He also states that a single test for remit (that set out in section 88(2)) is desirable in principle and in practice.

The Government is drawn to the desirability of a single test for remit to make the rules and procedures of the courts easier to understand, and we will look to amend the provisions in line with Lord Gill's comments at Stage 2.

Assuming this is amended it will have the consequential effect of removing section 88(10) which restricts any right of appeal against the decision of a sheriff, in relation to a request for remit. It will therefore be possible to appeal the decision of the sheriff to the sheriff appeal court.

## **Section 88(5)**

Lord Gill believes that the test of 'special cause shown' presents an additional hurdle that an applicant for remit must clear. Lord Gill considers this too high and suggests a test of 'cause shown' would provide an adequate safeguard to prevent any abuse of process.

Given these views the Government is content to bring forward amendment at Stage 2 to amend this provision in line with Lord Gill's comments.

## **Section 88(6)**

Lord Gill concludes that after some reflection he no longer believes that the ability of the court to refuse a request for remit on account of 'the business and other operational needs' of the court, is appropriate. He further adds that this would almost certainly be in breach of the European Convention of Human Rights, and even if not, would be thoroughly undesirable.

The Scottish Government remains of the view that the provisions of the Bill, including those in section 88(6), are compatible with the European Convention on Human Rights. However, we note the Lord President's comments on the desirability of this provision.

We have reflected on this issue and we agree that this is not desirable. Therefore, we will look to bring forward an amendment at Stage 2 to remove this provision.

## **Sheriff Appeal Court – Parties Ability to Request Larger Bench**

Whilst not covered in Lord Gill's letter I did agree to respond to the Committee on this point.

Lord Gill stated in his evidence to the Committee that "parties are always free to apply to the court to convene a bench of three sheriffs principal if they consider the case warrants it." (COL 4535 of the Official Report for 22 April).

This is not the process as set out in the Bill. Section 56 of the Bill, allows the Appeal Sheriff(s) constituting the court to appoint the appeal to be reheard at another sitting of the court with a larger bench, if they consider it to be one of particular difficulty or importance. However, there is no specific provision allowing parties to apply for this.

While of course parties may make requests of the court, the Bill does not state that the Sheriff Appeal Court is able to entertain such a request. However the Court of Session, using its powers conferred through section 97 of the Bill, could make court rules which would ensure that such a request could be competently entertained.

I hope that the Committee find this information helpful and I will be happy to respond to any further questions that the Committee may have.

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