Justice Committee

Courts Reform (Scotland) Bill

Response from the Scottish Government to the Committee's Stage 1 report

I am writing to respond to points raised in the Justice Committee's Stage 1 Report on the Courts Reform (Scotland) Bill. I wish to thank the Justice Committee for its consideration of the bill and as I have stated previously we are actively considering the issues that have been raised in this report in relation to what, if anything, we need to do for Stage 2.

In this response, I shall confine my remarks to the parts of the Report where the Committee had suggested amendments to the Bill or has sought reassurance or clarification.

Summary sheriffs

I note the Committee's concerns that the references to summary sheriffs undertaking the more routine, low value civil cases might lead to the perception that such cases are being downgraded and are of lesser importance. I should note that when the term 'low value' has been used it is in relation to those cases under £5,000 which will make up part of the summary sheriff's jurisdiction. It was never the Government's intention to suggest those other types of cases that are within the summary sheriff's jurisdiction, including family and domestic abuse cases, should be considered as being of less importance than other cases.

The Scottish Civil Courts Review concluded that too many straightforward or low value cases were being considered too high up the system by judicial officers who were over-qualified to deal with them. Sheriffs should be hearing only the more complex cases, but often are diverted to straightforward or low value work.

The reforms are about a proportionate use of the judiciary in line with the legal complexity and monetary value of cases and are in no way about de-valuing the importance of specific cases. Although it is intended that summary sheriffs will therefore deal with less complex casework, there is no suggestion that such cases are any less important to those who are involved in them. It is, however, accepted that cases which may at first appear to be straightforward can give rise to a complex or novel point of law, but this can be catered for by having a system for remitting such cases to a higher court or indeed from a summary sheriff to a sheriff.

The introduction of summary sheriffs will bring proportionality to the system, will permit sheriffs to concentrate on more complex casework and will enable greater specialisation in the sheriff court.

Summary sheriffs will be recommended for appointment by the Judicial Appointments Board for Scotland and will be trained by the Judicial Institute for Scotland. They will be drawn from the ranks of practitioners who have been qualified for at least 10 years (the same as for sheriffs) and have experience and expertise in the kinds of cases which will fall within their competence.

The Judicial Appointments Board for Scotland is of course independent of the Scottish Government and if the Committee wishes to be kept apprised of the Board's work on its consideration of the specialist skills and assessment processes which it will adopt in relation to summary sheriffs then the Committee's clerks would be best advised to approach the Board directly.

In terms of the work of the judicial structures project this is being taken forward through Making Justice Work and we will ensure that the Committee is kept updated on the progress of this project.

We also noted the Lord President's recent welcome announcement regarding the wearing of wigs and gowns by the judiciary when hearing civil appeals in the Inner House. As the Committee will be aware any decision on the wearing of wigs and gowns at any time is a matter for the Lord President.

Part time sheriffs

While the Government continues to believe that part time sheriffs are required for the time being to cover emergencies, absence and illness, the need to deploy part time sheriffs will decrease over time as more summary sheriffs are deployed. In these circumstances, there is no longer any need to specify a maximum number of part time sheriffs.

Honorary sheriffs

The abolition of honorary sheriffs will depend on alternative judicial arrangements (specifically the deployment of summary sheriffs), as well as technological additions to the justice system. Rural and remote areas will not be disadvantaged by this approach as honorary sheriffs will not be abolished until such alternative arrangements are in place. The current planning assumption is that it will take around 10 years before the full complement of summary sheriffs are in place, this would indicate that the timescale for the abolition of honorary sheriffs will be of the same order.

The SCS is also undertaking a project to improve their IT systems. As Eric McQueen, Chief Executive of the SCS, told the Committee this will involve installing a new network infrastructure to ensure they have high-speed access in all of the courts. They will also be bringing in a new civil database system that will help the courts to move away from the current paper-dominated environment. Mr McQueen agreed with the Convener's suggestion that it would be a good idea to visit and see the use of technology in the courts and the improvements that will be made. These improvements will be key in ensuring that alternative arrangements are in place to deal with urgent business, particularly in rural and island communities.

The Government will work closely with the SCS and the Lord President to ensure that we are content that the appropriate alternative arrangements are in place before the office of the honorary sheriff is abolished.

Sheriff specialisation

The Committee has asked for clarification of how specialisation among sheriffs will be managed so as to enable access in remote areas as well as in the major courts. These are ultimately matters for the Lord President and the Scottish Court Service, but we anticipate that such remote access will mainly be achieved by video link from a local sheriff court to a centre of civil specialisation (which are expected to be at the 16 mainland sheriff courts identified by SCS as future sheriff and jury centres). So a party in Wick or Banff would be able to have their case heard by a specialist sheriff in Inverness, for example.

Depending on volume of business of a particular kind in a specific court, it is possible that specialist sheriffs may travel to an outlying location if a sufficient caseload in a particular specialism at a remote court merits their attendance.

Exclusive competence (privative limit) of the sheriff court

I welcome the Committee's support for the proposal to increase the exclusive competence of the sheriff court in order to free up the Court of Session to deal with the most complex and serious cases in order to ensure that the civil justice system works more efficiently and economically.

It is important to ensure that any new limit set for cases being raised in the Sheriff Court reflects the fact that at present too many low value cases are being raised unnecessarily in the Court of Session. This results in increased costs for all parties involved and impacts on other kinds of litigation from being raised there. It is also important to ensure that the limit allows a suitable amount of business to transfer to the new specialist personal injury court. We consider this a more effective and efficient way to deal with such cases than the current situation where personal injury cases make up almost 80 per cent of cases raised in the General Department of the Court of Session.

The Scottish Civil Courts Review recommended £150,000 as the appropriate limit for the exclusive competence of the sheriff court to meet these aims, and the Scottish Government agrees, which is why we consulted on that level and included it in the Bill.

We believe that there is sufficient capacity in the sheriff courts to absorb the expected transfer of around 2,700 cases from the Court of Session. This was also the view of the Lord President, Sheriff Principal Stephen and the Chief Executive of the Scottish Courts Service when they gave evidence to the Justice Committee. Indeed, recently released statistics show that there has been a substantial reduction in the number of civil cases being heard at sheriff court level – a drop of around 8,000 cases (9%) between 2011-12 and 2012-13, and a drop of over 50,000 cases (41 per cent) since 2008-09.

In the Financial Memorandum, the Government provided a breakdown (by value bands) of all the personal injury cases in the Court of Session for both 2011 (2,694 cases) and 2012 (2,653 cases). This showed that an exclusive competence level of £150,000 would remove around 80 per cent of personal injury cases from the Court

of Session. We believe that this level of transfer would be required to meet the aim of improving the Court of Session and ensuring a suitable volume of cases to justify the establishment of the specialist personal injury court. As the Minister told the Committee we will be happy to consider views on this but any limit would need to meet those requirements.

Whilst lower limits have been promoted by stakeholders, including the Faculty of Advocates and APIL, they have focussed on the settlement value. As Sheriff principal Taylor told the Committee:

> "We must consider the sums that are sued for because, at the outset of a case, we do not know at what sum the case will settle."[1]

We would ask that the Committee is mindful of this when considering any amendment to lower the limit.

As stated above, personal injury makes up 80 per cent of the cases in the General Department of the Court of Session. Figures from the SCS database shows that in 2011-12 there were only 146 commercial cases in the Court of Session. Therefore, the Government does not believe that, given the relatively few cases that would be affected, that there is a case for the exclusive competence of the sheriff court to be different for commercial cases as distinct from personal injury actions. Indeed, as Sheriff Principal Taylor pointed out that many actions for considerably more than £150,000 are raised in the commercial court of Glasgow Sheriff Court.

Access to counsel

May I take this opportunity to emphasise once again that the proposed raising of the exclusive competence of the sheriff court is not intended to deny parties access to justice: rather the intention is to ensure that cases are raised at the appropriate level in the court structure. It is disproportionate to litigate low value claims in the Court of Session where the amount paid to the lawyers on both sides of such a claim almost invariably exceeds the settlement figure of a claim or the amount awarded by the Court.

It is in any case competent to apply for sanction for counsel in the sheriff court and the Lord President has said that "the opportunity should still exist for the specialist bar to work in the sheriff courts because some significant litigation will be taking place there. It would be helpful and in everyone's best interests if members of Faculty were given proper opportunities to appear in significant sheriff court actions. I would greatly regret it if they didn't".

I should like to reassure the Committee that there is no intention on the part of the Government that the current test for sanction for counsel in the sheriff court should be applied more stringently nor indeed do we detect any such intent on the part of Sheriff Principal Taylor in his Review of the Expenses and Funding of Civil Litigation in Scotland.

[1] Official Report, Justice Committee, 22 April, column 4516

Indeed it appears that Sheriff Principal Taylor's recommendation that the current test should be retained with an additional test of reasonableness and the need to have regard to the resources deployed by the other party ("equality of arms") merely reflects the reality of current practice in the sheriff court. Sheriff Principal Taylor indicated to the Committee that he considered that applications for sanction for counsel were rarely if ever refused, particularly in circumstances where the other side were employing counsel.

I should point out that the test for sanction for counsel in the sheriff court has until now been left to the discretion of sheriff which has built up a body of case law. There are also rules of court which set out the procedure for obtaining sanction and when it may be granted. The Government believes that it is appropriate and, given the current programme of reforms, more essential than ever, that the test for sanction for counsel be provided in rules as this will allow more flexibility to ensure that it can be adapted if it is considered necessary in the light of experience. Furthermore, we believe that the Scottish Civil Justice Council is a more appropriate body to take forward this issue as it is made up of representatives of different stakeholder interests and has the power to consult. It was formed for this very purpose.

It is worth reiterating that access to justice does not necessarily involve access to counsel. Sheriff Principal Taylor noted in his Review that "actions raised in the sheriff court are very often conducted by solicitors in a most efficient and competent manner. I do not accept the argument….that, by definition, all personal injury actions are of such importance and value to the pursuer that counsel requires to be instructed in every case".

As regards section 69 of the Enterprise and Regulatory Reform Act 2013, I have a great deal of sympathy with the concerns which have been expressed to the Committee about the change to the law passed by the coalition Government at Westminster which means that employees now have to prove negligence on the part of their employer in the event of injury.

As you are aware, this is reserved matter. If Scotland were to be independent, then we would of course be able to amend the law to the position which stood for nearly 40 years under UK Governments of different hue. We shall continue to consider whether there are any steps we can take to mitigate the effects of section 69.

Remit

As my Ministerial colleague, Roseanna Cunningham, has indicated to the Committee, 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 regular requests to remit a case in an attempt to circumvent the change in the exclusive competence.

It is, however, important that we get the balance right so that cases are able to find their appropriate level in the system. We have reflected on the views expressed by the Lord President about the provisions in the Bill on remit and while we do not agree that some of those provisions were likely to be in breach of the European Convention on Human Rights, 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.

Power to confer all-Scotland jurisdiction (the new specialist personal injury court)

I welcome the Committee's support for the new specialist personal injury court. This will retain the advantages of having a central court of expertise around which there is a cluster of expert practitioners and associated infrastructure. This will be a replacement for the current virtually unrestricted access to the Court of Session even for low value personal injury claims which leads to disproportionate costs for such low value actions.

The Scottish Court Service has modelled the resource requirements for the new court and they are satisfied that only a very small number of personal injury cases will be decided by a sheriff (around 25-30 per annum) as the vast majority of personal injury actions will settle.

As to when the new specialist court opens for business, it is clear that the court will need to be ready to receive new business when the change to the exclusive competence of the sheriff court is made. The necessary electronic and administrative systems have been considered by the Scottish Court Service as part of its modelling exercise.

It is entirely a matter for the party who wishes to pursue a personal injury claim as to the venue in which that claim is raised. In reality, however, it is the lawyer representing that party, who advises which is the appropriate forum and Sheriff Principal Taylor has drawn attention (in his Review of the Expenses and Funding of Civil Litigation in Scotland) that certain firms of solicitors have a business model which is predicated on raising all personal injury actions in the Court of Session. It is reasonable to expect that such firms are likely to continue to use the Court of Session for claims above £150,000 and the new specialist personal injury court for claims below that level.

It is important to remember, however, that, of the 7846 personal injury cases raised in Scotland in 2011-12, over two-thirds were raised in the sheriff court and so it is expected that the majority of personal injury cases will continue to be heard in local sheriff courts around Scotland.

Sheriff Appeal Court

I do not accept the arguments advanced by the Faculty of Advocates in relation to the Sheriff Appeal Court. The Bill does not set up two separate, but parallel, appeal structures. Rather there will continue to be a linear single route of appeal.

It is worth reflecting on the rationale for the establishment of the Sheriff Appeal Court. There is no justification for appeals of summary (ie less serious) cases going automatically from the lower criminal courts (sheriff, stipendiary magistrate or justice of the peace) to be dealt with in the High Court. Such matters do not require the attention of Scotland's leading judges. Sheriff Principal McInnes recognised that summary appeals could be dealt with much more quickly in a new court below the High Court.

The same principle applies to civil appeals. As it is felt that appeal to the sheriff principal in civil cases provides an inexpensive and prompt form of appeal, it is an obvious way of diverting cases from the Inner House of the Court of Session by introducing a new intermediate appellate court which will replace appeals to the sheriff principal in civil cases.

In summary, there is no justification for less complex civil and criminal appeals being dealt with by Scotland's top judges, in line with the principle espoused by the Scottish Civil Courts Review that cases should be directed to the lowest level at which they can competently be dealt with.

The Sheriff Appeal Court will have the power to remit an appeal which raises a complex or novel point of law to the Inner House. Where a case has been determined by the Sheriff Appeal Court, onward appeal to the Inner House will require the permission of the Sheriff Appeal Court. If this is not given, it will be possible to apply for permission to the Inner House. In both cases permission will only be given if the "second appeals" test is met. We recognise that this is a high threshold – the Sheriff Appeal Court or the Inner House may grant permission only if the court considers that the appeal would raise an important point of principle or practice or there is some other compelling reason for the Court of Session to hear the appeal.

This is to stop the Sheriff Appeal Court becoming merely an intermediate stage of appeal, rather than the final forum of appeal in the vast majority of cases, which is the intention. The Government is therefore satisfied that the threshold for appeals is justified and there is no parallel appeal structure.

I note that the Sheriffs' Association has asked that criminal appeals in the Sheriff Appeal Court should be heard by sheriffs experienced in criminal work sitting alongside a sheriff principal. The composition of the Sheriff Appeal Court will be a matter for the President of the Sheriff Appeal Court, but I think it is inconceivable that Appeal Sheriffs would be designated to sit on criminal appeals who did not have experience in criminal cases.

Sheriff Appeal Court: Appeal Sheriffs

I note that as a general rule the Committee believes that all appeals ought to be heard by a sheriff principal.

This 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.

The Court is to be staffed by Appeal Sheriffs – there will be no differentiation between appeal sheriffs who happen to be sheriffs principal and sheriffs. The six sheriffs principal will be Appeal Sheriffs, but the Lord President will appoint sheriffs of at least five years' experience to sit as Appeal Sheriffs. In practice, it is expected that only sheriffs of considerably longer experience will be appointed as Appeal Sheriffs.

Sheriffs regularly sit as temporary judges in the Court of Session and so they may hear appeals of colleagues' decisions in that venue. I do not therefore accept that it is inappropriate for first instance sheriffs to hear appeals against the decisions of colleagues. I believe that the sensitivities regarding appeal sheriffs who are experienced sheriffs rather than sheriffs principal is overstated. Sheriffs are highly trained, many are QCs and there is no proposal to permit a recently appointed sheriff to sit as an Appeal Sheriff.

It is worth bearing in mind that most civil appeals will relate to minor, procedural matters. It is difficult to understand why an experienced sheriff, who may have sat as a temporary sheriff principal or a temporary judge in the Court of Session, should not be able to undertake the consideration of such appeals while sitting as an Appeal Sheriff and why such appeals should have to go to an Appeal Sheriff who is a sheriff principal.

However, taking all this into account, the Bill provides that the quorum of the Sheriff Appeal Court is to be left to court rules – as the Government chose not to constrain the Court in primary legislation. The quorum is therefore a matter for the Lord President as advised by the SCJC and determinations as to programming of business and which Appeal Sheriffs hear which cases will be a matter for the President of the Court.

Location of Sheriff Appeal Court

I welcome the Committee's support for the flexibility permitted by the Bill for the Sheriff Appeal Court to sit anywhere in Scotland designated for the holding of sheriff courts. Civil appeals may therefore continue to be held in the sheriffdom in which they originate, replicating the current situation where sheriffs principal hear appeals in their sheriffdom which is seen as an inexpensive and prompt form of appeal.

Criminal appeals

I have noted the concerns expressed by Justice Scotland about the appeal to proceed provisions in Part 5 and the Government will consider whether section 113

should be amended to allow for more circumstances where the period for appealing can be extended. As with civil appeals, however, the intention is that the Sheriff Appeal Court should be the final forum of appeal in the vast majority of cases rather than an intermediate stage of appeal before the High Court.

Simple procedure

The Government is minded to accept the concern raised by the Sheriffs' Association that it is not appropriate for a sheriff to "negotiate with the parties with a view to securing a settlement" as this might be said to interfere with the independence and neutrality of the judiciary and might lead to unnecessary appeals. The Government will therefore bring forward an amendment at Stage 2 which will refer instead to facilitating negotiation.

Judicial Review

The Government will consider producing further guidance on the meaning of "real prospect of success".

Aarhus Convention

I note that the Committee is sympathetic to calls for the introduction of an environmental tribunal for Scotland. I believe that consideration of such a body more properly belongs in legislation on environmental matters where such a proposal may be considered in the round.

Alternative Dispute Resolution

The Scottish Government has supported and encouraged the development and use of ADR for a number of years. We introduced the Arbitration (Scotland) Act 2010 and the Government is one of the members of the company which funds the Scottish Arbitration Centre. The Government has funded the Scottish Mediation Network since 2005 to promote and encourage the use of mediation in Scotland and to ensure that there are sufficient numbers of properly qualified mediators in all parts of Scotland. Relationships Scotland is also funded for its own provision of mediation services and for Counselling and Family Mediation Services across Scotland.

I agree that advice and guidance on the use of ADR and how it may be accessed should be more readily available for those involved in or considering court action, though there are financial implications in this which should not be under-estimated in the current economic climate.

The development of ADR forms part of the Making Justice Work programme which takes a co-ordinated system-wide approach, integrating policy development across the justice system. The Scottish Legal Aid Board is leading on Project 3 (Access to Justice), which includes a workstream focussed on developing policy options for the Scottish Government on the development and use of ADR. As part of this work, Scottish Government and SLAB are finalising the specification for further research into the benefits, drivers and impact of using ADR or negotiated settlement models,

drawing on the experience of existing projects funded by the Scottish Legal Aid Board.

Meantime, the Bill makes clear in the rule-making provision in sections 96 and 97 that the Court of Session will have an unambiguous, clear power to consider and make rules which will encourage the use of methods of non-court dispute resolution in circumstances where it is felt that settlement might be achieved quicker than by court process. It is intended that this will apply to both cases where court action has already been instigated and cases where proceedings are still being contemplated.

This approach is appropriate and necessary in view of the duty placed on the Scottish Civil Justice Council under section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to have regard to the principle that methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.

Scottish Courts and Tribunal Service

I welcome the Committee's support for merging the Scottish Court Service and the Scottish Tribunals Service. I note the Committee's recommendation that the joint board of the Scottish Courts and Tribunals Service should include representation from the tribunal sector.

Care has been taken to provide that tribunal interests will be included within the joint board structure. Through the Tribunals (Scotland) Act 2014 the Lord President is to become Heads of Courts and Tribunals judiciary and as Chair of the board he will be able to ensure that the specialism of tribunals is retained. In addition, schedule 3 of the Courts Reform Bill amends the current board structure to conflate the current senatorial membership with that of the President of Scottish Tribunals so that the President will be on the joint board. Further schedule 3 adds a Chamber President of the First-tier Tribunal for Scotland to the board, or a current President of an existing tribunal until such time as Chamber Presidents are in place.

Capacity of the courts

As noted above, the number of civil cases in both the Court of Session and the sheriff court in 2012-13 was 77,453, a drop of 9% since 2011-12 and 41% since 2008-09. Recorded crime is at a 39 year low, down 35% since 2006-07. It is in this context that the capacity of the courts should be considered.

Various witnesses before the Committee drew attention to the pressures on the sheriff court: these witnesses were, however, describing the current, rather than the reformed sheriff courts. As the Committee has noted, Sheriff Principal Stephen commented that the proposed reforms would allow the courts to work more efficiently, thus freeing up current resources.

Transfer of cases from the Court of Session to the sheriff court

It is estimated that 2700 cases will no longer be raised in the Court of Session (cases which have already been raised there will remain in that court). Most of these cases (up to around 2000 cases) will be personal injury cases and will go to the new

specialist personal injury court. The remaining 700 cases will go to the network of sheriff courts to be added to the 72,500 civil cases in those courts in 2012-13 – this is under one per cent of the current total and it therefore anticipated that this business can be absorbed without difficulty in view of the continuing drop in civil casework.

The Government has been working extensively with the Scottish Court Service and others through the Making Justice Work programme to model the resource requirements. The Scottish Court Service has been planning for some time for the new specialist personal injury court (which is expected to be in Edinburgh but could also be established in Glasgow) and for the expected transfer of new cases from the Court of Session to the sheriff court, particularly in the light of its consultation "Shaping Scotland's Court Services" published in September 2012 and the resultant recommendations on court closures published in April 2013.

Court closures

The court closures were an operational matter for the Scottish Court Service which is now an independent, judicially led corporate body, following the enactment of the Judiciary and Courts (Scotland) Act 2008 passed unanimously by Parliament.

The proposals for rationalising the sheriff court structure are part of the wider reforms, both civil and criminal, which will ensure that cases are more effectively managed, reducing wasted time and the number of hearings required for each case. These outcomes cannot be fully achieved unless the court estate is rationalised by taking business out of courts that are under-used or which duplicate provision in an area.

It is important to remember that the volume of business carried out in the 10 sheriff courts scheduled for closure[2] is only around five per cent of the total business. Many of the courts proposed for closure are underutilised and can sit unused for long periods of time. Others are in close proximity to another court with the capacity to handle its caseload.

The Scottish Court Service is confident that the transferred business can be assimilated without difficulty in a smaller number of better equipped courts with modern facilities for victims, witnesses and jurors. The remaining courts will provide a more efficient structure for delivery of both general and specialist court services.

The Lord President now has the statutory responsibility under the Judiciary and Courts (Scotland) Act 2008 for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts. I note that the Lord President indicated to the Committee when he gave evidence that he was "absolutely certain that the capacity exists in the sheriff courts to absorb all of the business, even with the closure of the outlying courts". He has also said that he is "confident that the proposals [on court closures] will contribute significantly to the success of the forthcoming civil justice reforms."

[2] Dornoch, Kirkcudbright and Rothesay in November 2013, Arbroath, Cupar and Stonehaven in May 2014 and Duns, Peebles, Haddington and Dingwall in January 2015.

Resources

The number of cases being dealt with in the system as a whole will not be affected by the reforms, though I have noted above the drop in civil business over the last five years. What will change, however, as a result of the reforms is where those cases are dealt with.

The policy objective of the Bill is to ensure that cases are heard at an appropriate level in the court structure – the right cases in the right courts. This is essential so that the system, as a public service, is arranged so that needless delay and unreasonable cost are eliminated so far as possible. The Scottish Civil Courts Review concluded that too many straightforward or low value cases are being considered too high up the system by judicial officers who are over-qualified to deal with them. Those judicial officers should be hearing more complex cases which are currently being held up by straightforward or, low value, cases.

The policy of the Bill is that this anomaly should be addressed in two ways: first, by a major transfer of litigation from the Court of Session to the sheriff court by means of a significant increase in the limit of the exclusive competence of the sheriff court; and second, by the creation of the office of summary sheriff to deal with a large part of the business of the sheriff court. The Scottish Civil Courts Review took the view that "the self-evident need is to ensure that cases are directed to the lowest level at which they can be competently dealt with". Both the transfer of low value business from the Court of Session to the sheriff court and the introduction of summary sheriffs will lead to savings to the public purse.

The Chief Executive of the Scottish Court Service gave evidence that "we are confident and comfortable that, within the funding that we have in our allocations from the Government, and given the plans for the future and the investment in technology, we have sufficient funds to implement and facilitate the civil court reforms". He went on to say that "big investment is going into the organisation this year and next year, particularly in information and communications technology".

The necessary resources have been, and will be, provided to the Scottish Court Service. The Government is not complacent about the need to monitor the implementation of the reforms and we shall ensure that the necessary resources continue to be provided to the Scottish Court Service.

The Committee is correct that savings will accrue in terms of judicial salaries as a result of the reforms, but these savings will only be derived on a gradual and rising basis over a period of years: the Financial Memorandum sets out the potential savings over a 10 year period.

While I would personally prefer that these savings should be re-invested in the justice system, in whatever way is thought most worthwhile at the time of realisation of the savings, I cannot guarantee what future budgeting arrangements will be for any incoming future administration.

In relation to the comment from the Scottish Legal Aid Board that the expected savings on the amount spent on counsel would depend on the number of cases coming through, I can only say that although the Board is able to forecast expenditure, those forecasts are subject to changes in the profile of cases raised and solicitors' practice. As a generality, less complex, low value cases should not require the deployment of counsel since experienced court solicitors should be more than competent to conduct such litigation.

Court fees

The last rise in court fees contained an element of 1% above inflation in order to pay for the reforms which are now to be implemented by the Bill. We would envisage that the next Orders will be similar to move towards full cost recovery. Any future rise in the level of court fees will inevitably include inflation rises but, as the Chief Executive of the Scottish Court Service pointed out to the Committee, court fees cover only around 80% of the cost of providing public courts and full cost recovery is a long way off.

Any amendments to court fees include a full public consultation and will require Orders to be laid in Parliament to be scrutinised. That will not change as a result of these reforms. It is also worth bearing in mind that court fees comprise a relatively small proportion of the cost of litigation in court, particularly by comparison with the cost of legal representation.

In relation to the Scottish Civil Justice Council suggestion that the Bill should be used to clarify the Council's functions in relation to the preparation of fees orders, I can confirm that the Government will be bringing forward appropriate amendments for this purpose.

I hope that these responses to the issues raised by the Committee are helpful.

Kenny MacAskill
Cabinet Secretary for Justice
2 June 2014