



Shelter Scotland response to the Scottish Government consultation on the Courts Reform (Scotland) Bill

Shelter Scotland is responding to this consultation in our capacity as a homelessness and housing charity. Our work means we represent clients in court facing a variety of housing problems across all tenures. If a dispute reaches the court stage our law service can offer legal help. We represent clients facing a variety of housing related disputes including: mortgage repossession actions, judicial reviews of decisions by public bodies, eviction actions and repairs actions.

As we specialise in homelessness and housing matters, we have only responded to the chapters in the consultation document that relate to our specific areas although, more generally, we believe that consumers should be informed and empowered, able to effectively assert their rights.

Shelter Scotland helps over half a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place. We're here so no-one has to fight bad housing or homelessness on their own.

Shelter Scotland provides expert support services, online advice and a free national helpline for everyone facing housing and homelessness difficulties.

Summary:

- Shelter Scotland is supportive of a national sheriff appeal court which would enable greater consistency in decision making in housing cases across Scotland.
- We feel that a three month time limit for the raising of judicial review actions is insufficient. Our clients would not have time to take an informed decision about whether they wish to raise an action against a public body. This could also encourage judicial review actions, pursuers may be tempted to lodge actions to make sure they are not affected by the three month time bar.
- Leave to proceed for judicial review actions should not become a barrier for clients looking to assert their rights.
- Alternative dispute resolution should be encouraged by the court where appropriate. However, it is important to recognise its limitations and we feel that there will always be a place for some form of formal dispute resolution in housing cases.
- In terms of housing cases we feel that many of the issues the Courts Reform (Scotland) Bill seeks to resolve could be addressed by setting up a full housing

tribunal, as we argue in our Scottish Government consultation response 'Better dispute resolution in housing'¹. We strongly support the setting up of such a tribunal which would take the vast majority of housing cases outside the sheriff court.

Contact: James Battye, Policy Officer on 0344 515 2463 or james_battye@shelter.org.uk

¹ Shelter Scotland, Consultation response: 'Better dispute resolution in housing', April 2013
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/consultation_response_better_dispute_resolution_in_housing

COURTS REFORM (SCOTLAND) BILL



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Shelter Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Battye

Forename

James

2. Postal Address

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

CHAPTER 1

Moving civil business from the Court of Session to the sheriff courts

Q1. Do you agree that the provisions in the Bill raising the exclusive competence and providing powers of remit will help achieve the aim of ensuring that cases are heard at the appropriate level?

Yes No

Q2. Do you think that the Court of Session should retain concurrent jurisdiction for all family cases regardless of the value of the claim?

Yes No

Q3. Do you think that the Court of Session should retain concurrent jurisdiction in any other areas?

Yes No

Q4. What impact do you think these proposals will have on you or your organisation?

CHAPTER 2

Creating a new judicial tier within the sheriff court

Q5. Do you think that the term "summary sheriff" adequately reflects the new tier and its jurisdiction?

Yes No

We do not find the term "summary sheriff" to be particularly controversial. However, in terms of housing cases we support the creation of a new housing tribunal, as we stress in our Scottish Government consultation response 'Better Dispute Resolution in Housing'. This would take the majority of housing matters out of the sheriff court and into a more informal dispute resolution setting, which purely focuses on housing matters. This would allow for specialisation and more consistent decision making.

Q6. Do you agree with the proposal that the qualifications for appointment as a summary sheriff should be the same as that for a sheriff?

Yes No

Q7. Do you agree with the proposed competence of summary sheriffs in family cases?

Yes No

Q8. Do you agree that summary sheriffs should deal with referrals from children's hearings?

Yes No

Q9. Do you think that in addition to summary crime, summary sheriffs should have powers in other areas of criminal jurisdiction?

Yes No

Q10. Do you agree that the allocation of cases where there is concurrent competence between sheriffs and summary sheriffs should be an administrative matter for the relevant Sheriff Principal?

Yes No

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Q11. What impact do you think these proposals will have on you or your organisation?

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CHAPTER 3

Creating a new sheriff appeal court

Q12. Do you agree that criminal appeals should be held in a centralised national appeal court?

Yes No

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Q13. Do you think that civil appeals should be heard in the sheriff appeal court sitting in the sheriffdom in which they originated?

Yes No

This would ensure ease of access for our clients. If the sheriff appeals court were to sit in one location, e.g. in the central belt, we would expect there to have been developed effective ways of ensuring access to justice for people across Scotland – particularly those in very rural areas.

Q14. Do you agree that the sheriff appeal court should be composed of appeal sheriffs who are Sheriffs Principal and sheriffs of at least five years experience?

Yes No

[]

Q15. What impact do you think these proposals will have on you or your organisation?

Having one sheriff appeal court – rather than the current system of sheriff principals – would be beneficial to us, and our clients.

This would be advantageous to our clients as decision-making in the sheriff courts is more likely to be more consistent across Scotland. Currently, it is unclear how a sheriff principal's decision applies across Scotland. Sometimes sheriff principal decisions are followed in some sheriffdoms, but not others.

For example it has been hard to say how recent mortgage repossession cases will be interpreted across Scotland. This has made it difficult to advise clients of their prospect for success. If a centralised national appeals court

were to be created this would help clients decide what to do.

This would also be remedied by taking housing cases out of sheriff courts and into a housing tribunal – a view which we supported in the 'Better Dispute Resolution in Housing' consultation.

CHAPTER 4

Creating a specialist personal injury court

Q16. Do you agree that establishment of a specialist personal injury court?

Yes No

Q17. Do you agree that civil jury trials should be available in the specialist personal injury court?

Yes No

Q18. What impact do you think these proposals will have on you or your organisation?

CHAPTER 5

Improving judicial review procedure in the Court of Session

Q19. Do you agree with the three month time limit for judicial review claims to be brought?

Yes No

This would be an added barrier for our clients who wish to assert their rights in terms of the duties owed to them by public bodies. For example, it can take a significant amount of time and work to put together a judicial review claim for a homeless applicant. For a start, a vulnerable client may not seek legal assistance soon after the decision has been made. Once they come to us we then need to assess the client's prospects of success. This includes carrying out research, getting an advocate's opinion, applying for legal aid and presenting the options to the client for them to make a decision on whether to proceed. All this work must be carried out before the judicial review application is lodged. By imposing a three month limit on the raising of judicial review claims there is a significant risk that vulnerable clients would be left without redress, having been left unable to establish their right to a permanent house, for example. We note that the court may decide to hear a case which falls outside the three month limit. This would be an added barrier for clients seeking to assert their rights, and it would be important that clarity over the grounds for an 'extension' of the three month limit is reached. Implementing a three month time limit could also encourage more judicial review actions to be lodged – to protect clients from having their claim time-barred. This could lead to the clogging up of the courts.

Q20. Do you agree that the introduction of the leave to proceed with an application for judicial review will filter out unmeritorious cases?

Yes No

It is important that leave to proceed does not merely become an added layer of administration for someone asserting their rights. A defender may be inclined to await the result of the leave to proceed process, rather than changing their decision when they are notified that judicial review is an option being considered. In some situations the current system encourages early resolution of legal issues – it is important that this added step does not tempt defenders to wait, rather than resolve the complaint early in the legal process. In addition homeless cases, for example, are very urgent. It is important this additional step does not unnecessarily prolong early resolution of an issue arising from the decision of a public body, which was reached incorrectly.

Q21. Do you agree that these proposals to amend the judicial review procedure will maintain access to justice?

Yes No

As previously stated it is important that any reforms do not lead to

unnecessary delays for vulnerable clients.

Q22. What impact do you think these proposals will have on you or your organisation?

We would need to factor in this process when considering a judicial review action. Possibly alerting our client to the possibility that the process is more time-pressured than usual.

CHAPTER 6

Facilitating the modernisation of procedures in the Court of Session and sheriff courts

Replace the existing rule making powers with more general and generic powers

Q23. Do you agree that the new rule making provisions in sections 85 and 86 of the draft Bill will help improve the civil procedure in the Court of Session and sheriff courts?

Yes No

Q24. Are there any deficiencies in the rule making provisions that would restrict the ability of the Court of Session to improve civil procedure in the Court of Session and sheriff courts?

Yes No

Q25. What impact do you think these proposals will have on you or your organisation?

The creation of new powers in the Inner House of the Court of Session to sift and dispose of appeals with no reasonable prospects of success.

Q26. Do you agree that a single judge of the Inner House should be able to consider the grounds of an appeal or motion?

Yes No

Q27. What impact do you think these proposals will have on you or your organisation?

The abolition of the distinction between ordinary and petition procedure in the Court of Session.

Q28. Do you agree that the distinction between ordinary and petition procedure should be abolished?

Yes No

Q29. Do you foresee any unintended consequences for this change?

Yes No

Q30. What impact do you think these proposals will have on you or your organisation?

New procedures for dealing with vexatious litigants.

Q31. Do you agree that the new procedure will ensure that courts are able to deal appropriately with vexatious litigants?

Yes No

Q32. What impact do you think these proposals will have on you or your organisation?

Scotland-wide enforcement of interdict and interim orders

Q33. Do you agree that an order for interdict should be capable of being enforced at any sheriff court in Scotland?

Yes No

Q34. Should interim orders and warrants have similar all-Scotland effect and be capable of enforcement at any sheriff court?

Yes No

Q35. What impact do you think that these proposals will have on you or your organisation?

CHAPTER 7: THE PROPOSALS: Alternative Dispute Resolution

Q36. Do you think that ADR should be promoted by means of court rules?

Yes No

Where appropriate alternative dispute resolution (ADR) can play a role, however, it is limited in its scope. Both parties will need to agree to its use and agree to the outcome of, for example, mediation. More formal dispute resolution will always be necessary for some cases. If ADR is to play a formal role it should be recommended as early as possible in the dispute process. This is why we support the setting up of a full housing tribunal which would promote the use of ADR, such as mediation.

Q37. What impact do you think these proposals will have on you or your organisation?

ASSESSING IMPACT

Equality

Q38. Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

Business and Regulatory

Q39. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any or all of the proposals in this consultation may have.

The introduction of time limits on judicial review actions could result in fewer cases of this type being taken on by our law service.

Legislation

Q40. Please give any comments on the legislation as set out in the Draft Bill. Are there any omissions or areas you think have not been covered.