



The Scottish Parliament  
Pàrlamaid na h-Alba

## FINANCE COMMITTEE

### AGENDA

**10th Meeting, 2014 (Session 4)**

**Wednesday 26 March 2014**

The Committee will meet at 9.30 am in Committee Room 3.

1. **Revenue Scotland and Tax Powers Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Heidi Poon, Tribunal Member and Tax Law Lecturer, The University of Edinburgh;

Justine Riccomini, Independent HR and employment taxes consultant.

2. **Courts Reform (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Ronnie Conway, Co-ordinator in Scotland, Association of Personal Injury Lawyers;

James Wolffe, QC, Dean of Faculty, Faculty of Advocates;

and then from—

Cameron Stewart, Bill Team Leader, Jan Marshall, Deputy Director Civil Law and Legal Systems Division, and Ewan Bruce, Finance Business Partner, Scottish Government.

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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk

FI/S4/14/10/1

**Agenda item 2**

Note by the Clerk

FI/S4/14/10/2

**Finance Committee**

**10th Meeting, 2014 (Session 4), Wednesday, 26 March 2014**

**Revenue Scotland and Tax Powers Bill – written submissions**

**Purpose**

1. The purpose of this paper is to provide background information for the Committee's evidence session with Heidi Poon and Justine Riccomini.

**Background**

2. The written submissions on the Bill from [Heidi Poon](#) and [Justine Riccomini](#) are attached.

3. The Committee's adviser has prepared a summary of the written submissions. This summary is attached as the annexe to this note.

**Conclusion**

4. Members are invited to consider the above information in relation to this evidence session.

**Parminder Kaur  
Committee Assistant**

## **Evidence submitted by Heidi Poon and Justine Riccomini**

This paper summarises the evidence submitted by Heidi Poon and Justine Riccomini under the headings suggested in the *Call for Evidence*.

### **The Scottish Government's overall policy objectives in introducing the Bill and whether the Bill reflects–**

**“Adam Smith’s four maxims with regard to taxes: certainty, convenience, efficiency and proportionate to the ability to pay”**

**Justine Riccomini:** She has concerns that the penalty levies and the timescale for their payment raise issues with the *proportionate to the ability to pay* principle. This and the administrative burden the penalty regime will place on RS are covered below under the relevant heading.

### **The proposed approach to the establishment and constitution of Revenue Scotland as a non-Ministerial Department and its membership**

**Justine Riccomini:** She agrees with RS being a non Ministerial Department and with its proposed membership.

### **The functions of Revenue Scotland**

**Justine Riccomini:** While noting the current small size of RS, she expects it to grow with further devolution of tax powers and she agrees with its proposed functions. With regard to the Charter, RS's requirement should be to *adhere*, not simply to *aspire*, to an objective code of conduct and behaviour [Section 10(2)(a)].

### **The independence of Revenue Scotland**

**Justine Riccomini:** In the interests of transparency and good government, the Bill should refer to whichever body will oversee it, presumably Audit Scotland. With regard to Ministerial Guidance, it should *all* be fully publicised in the spirit of open government [Section 8(3)]. None of RS's activities should be exempt from the Freedom of Information Act, as some of HMRC's are. There is no threat to national security - it is merely a taxation regime.

### **The investigatory powers of Revenue Scotland**

**Justine Riccomini:** With regard to the power granted to take samples of material from premises if they are reasonably required to verify a persons tax position, she asks for a short list of examples of such samples that might be anticipated [Section 140]. [I note that the SLfT Bill, at section 30, empowers Ministers to make provision about giving information to the Tax Authority relating to material at a landfill site. Samples may be required to verify that such information is accurate.]

## **The proposed approach to the Scottish tax tribunals**

**Justine Riccomini:** She agrees with the proposals.

**Heidi Poon:** Under the UK tribunal system an additional qualification for membership is where the Lord Chancellor is of the opinion that the person has gained experience in law which makes them suitable for appointment as if they satisfied these criteria. The absence of a similar provision in the Bill may be an omission or a deliberate exclusion for good reason. This needs to be examined. In Schedule 2, Part1, Scottish Ministers assess the qualifications, experience and training of candidates for President or membership of the tribunals. Is this role not more appropriate for the Lord President of the Scottish Judiciary?

Similarly, Scottish Ministers are responsible under the Bill for the appointment of members of the tribunals. The trend in the UK has been towards greater separation of judicial and executive powers. Under the Constitutional Reform Act of 2005, the Judicial Appointments Commission was set up as an independent body to remove judicial appointments from the hands of the Lord Chancellor. The JAC now appoints the President, legal and ordinary members of the UK Tax Tribunals. The Bill is not clear as to whether the Scottish Ministers' responsibility for appointments to the Scottish Tribunals is to be delegated to a similar independent body. With further responsibility for taxes likely, whether by independence or further devolution, it is important to establish now the principle of separation of powers to ensure fairness and the perception of fairness in the tribunal system.

## **The General Anti-Avoidance Rule**

**Justine Riccomini:** She agrees with the proposals.

**Heidi Poon:** Her views on the GAAR are refreshingly different and well informed and should be read in full. This is a summary of her observations and conclusions:

- She does not accept that a narrower GAAR, such as the UK one, would offer greater certainty to the taxpayer or RS. What a GAAR does is to give judges a framework for their decisions and remove the perception that they are making tax law by creating judicial anti avoidance doctrines. Whether a GAAR is wide or narrow, it will ultimately be a matter for the courts' interpretation whether it applies in a particular instance;
- A potential benefit from a wider GAAR will be a reduction in the need for Targeted Anti Avoidance Rules (TAARs). The UK legislation currently has over 300 TAARs. If the Scottish GAAR makes the future introduction of TAARs unnecessary, it will be a significant benefit;
- The potential interaction between the Scottish and UK GAARs needs to be explored and consideration given to whether the Bill adequately provides for these issues;

- The taxes to which the UK GAAR applies are listed in statute. Currently, it would appear that the Scottish GAAR applies only to LBTT and SLfT but clarity in the Bill on the taxes to which the GAAR applies would be a helpful foundation for the future;
- The UK GAAR is given legislative priority over all other provisions, even those expressed as taking priority over all else. Similar priority provision should be considered for the Bill; and
- The introduction of a Scottish DOTAS at Stage 2 would help promote openness between tax authorities and taxpayers and its extension to an accelerated payment scheme for tax under dispute in connection with DOTAS or the GAAR should be considered [cf. HMRC consultation document of 24 January 2014].

### **The proposed approach to tax returns, enquiries and assessments**

**Justine Riccomini:** Section 69, on the duty to keep and preserve records, has subsections 5-8, which are specific to land transactions rather than devolved taxes generally. She suggests that the matters specific to land transactions be segregated in a separate section (as has been done in section 72) to remove the need for amendment when further taxes are devolved. The heading of section 98, *claim for relief for overpaid tax*, is misleading as the section does not deal with overpayments in general but cases where the taxpayer believes that the tax paid, whether under assessment, determination or not, was not due. She suggests that the heading of Chapter and section refer to cases where *the taxpayer believes the assessment or collection to be excessive or not due*.

### **The proposed approach to penalties**

**Justine Riccomini:** While agreeing in general with the penalty determinations, she has concerns about the requirement to pay a penalty within 30 days. Appeals, penalties and enforcement are exceptionally time consuming and difficult to automate. HMRC have postponed the penalty regime for failures under the PAYE *Real Time Information*, presumably because of the difficulty of coping with volumes of small, automatically levied penalties. The risk is that RS may be swamped by volumes of unpaid penalties which will divert it from more important tasks. The penalty regime and enforcement need to be carefully thought through to avoid this.

### **The proposed approach to interest on payments**

**Justine Riccomini:** She generally agrees with the proposals.

### **The proposed approach to enforcement**

**Justine Riccomini:** She broadly agrees with the proposals.

### **The proposed approach to reviews and appeals**

**Justine Riccomini:** She agrees with these proposals.

**Heidi Poon:** Mediation as an intermediate stage between internal review and appeal to the tribunal is welcome. It is particularly appropriate where the dispute is over the quantum of tax or penalty rather than over a point of law. Lengthy hearings regarding how an officer arrived at the quantum of an assessment using his best judgment can build up costs quite disproportionate to the amount of tax at stake. To be seen as a cost effective alternative to a tribunal hearing, the mediator must be seen to be independent and not simply be a second stage *internal review*. More is needed in the Bill on the independence of the mediator who is currently to be appointed by RS. There may be appropriate expertise on the operation of independent mediation in the Sherriff Court where a mediation service is currently coordinated by the Citizens Advice Bureau.

### **The financial implications of the Bill as estimated in the Financial Memorandum**

**Justine Riccomini:** She has not had the opportunity to review the FM in depth but would like to see some reference to how accountability, effectiveness and efficiency are to be measured and who will do this on behalf of Ministers, eg. Audit Scotland.

**Heidi Poon:** From her experience, she judges the budget estimate of two days sitting a month for the tribunals as reasonable. However, it is not clear whether the budget takes account of the associated time spent by the presiding member in case management hearings, pre-case reading and writing up decisions. At a minimum the presiding member's fees should be budgeted at a further two days per month. The current system allows the reimbursement of travel, subsistence and accommodation expenses of presiding and panel members. She suggests that the estimated annual costs of £315k need examining to determine whether they adequately provide for these fees and expenses and whether adequate allowance for inflation over the five years of the budget has been made.

Gavin McEwen  
21 March 2014

## Finance Committee

10th Meeting, 2014 (Session 4), Wednesday, 26 March 2014

### Courts Reform (Scotland) Bill – written submissions

#### Purpose

1. The purpose of this paper is to provide background information for the Committee's evidence sessions on the Courts Reform Bill's Financial Memorandum with—

- Session One: The Association of Personal Injury Lawyers (APIL) and the Faculty of Advocates; and
- Session Two: The Scottish Government Bill Team.

#### Background

2. The [Courts Reform \(Scotland\) Bill](#) (the Bill) was introduced on 6 February 2014. As with all bills, it was accompanied by a Financial Memorandum ("FM") (page 51 of the [Explanatory Notes](#)) which set out the estimated financial implications of the Bill's provisions.

3. According to the FM, "the Bill takes forward many of the recommendations of Lord Gill's Scottish Civil Courts Review". The FM explains that the Bill represents an enabling framework and that many of the detailed changes will be delivered through court rules.

4. The Committee issued a call for written evidence on the FM on 19 February giving a deadline of 19 March for submissions. [Ten pieces of written evidence were received](#) and these are attached as an annexe.

#### Summary of the FM and of key issues raised in written evidence

5. The FM states that the Bill is "expected to make the civil justice system in Scotland more efficient by ensuring that cases are heard at the appropriate level in the system and at a proportionate cost to the state and to individuals." (paragraph 9)

6. To that end, the Bill increases the privative jurisdiction (to be retitled the exclusive competence) of the sheriff court from £5,000 to £150,000 "as a pragmatic driver to shift business from the Court of Session to the sheriff courts" (paragraph 66)

7. In written evidence, the Faculty of Advocates questioned whether greater efficiency would result from the Bill, stating that—

"the involvement of counsel is often central to early and efficient settlement of cases. Removing Counsel from cases and assuming the same efficient settlement will be achieved is not a proposition supported by any evidence from any respondent to the consultation."



8. The Faculty went on to state that—

“Unlike criminal cases, civil litigation is predominantly privately funded. It would accordingly be an error to see the principal benefit of these reforms as saving money to the public purse. The greatest saving, at least in the context of personal injury litigation, will be to insurance companies.”

9. The FM states that “the main reforms are being taken forward through projects under the Making Justice Work Programme.” It provides detailed descriptions of the basis for its estimates of the Bill’s financial impacts with regard to each of these reforms as set out below.

*Judicial Structures (paragraphs 33-61)*

10. The Bill establishes a new judicial office, that of summary sheriff. The [Policy Memorandum](#) (PM) explains that summary sheriffs “will sit in the sheriff court and will hear summary criminal business (and the initial stages of solemn cases) and civil claims of a modest value” (paragraph 39) with the intention of ensuring that cases are heard at the appropriate level.

11. Tables setting out the expected financial impact of the judicial structures project (both one-off costs and recurring costs and savings) are provided after paragraph 58 of the FM.

12. The FM estimates that the Bill will result in a potential reduction in the judicial pay bill of £0.2 million (in time, rising to £2million) per annum by using summary sheriffs in lieu of sheriffs. One-off costs of around £200,000 are anticipated for the Scottish Courts Service (SCS) and the Judicial Appointments Board Scotland along with annual costs of around £200,000 relating to the appointment of stipendiary magistrates are also predicted.

13. This assumption was questioned in some of the written evidence received, with the Law Society of Scotland, for example, stating—

“There are two broad areas in which we believe that there may be cost implications: first, around whether the existing FTE judicial office-holders at the Sheriff Court level, at around 140, will be sufficient; second, a possible increase in expenditure on judicial training as a result of the move towards greater judicial specialisation.”

*Personal Injury Court (paragraphs 62–98)*

14. The Bill establishes the personal injury court and states that “the clear majority of cases that will be affected by the raising of the exclusive competence will be personal injury cases.” (paragraph 69)

15. A table setting out the expected financial impact of the judicial structures project (both one-off costs and recurring costs and savings) is provided after paragraph 97 of the FM. This indicates that savings of up to £1.2 million per annum are anticipated for the Scottish Legal Aid Board (SLAB).

16. Some of the written evidence questioned the basis for this estimate, with the APIL, for example, stating that —

“The costs in the financial memorandum are barely penetrable and appear, we submit, to be based almost entirely on guesswork. At the very least, these figures require clarification as the discussion about when counsel should be available is not assisted by what we suspect is a misleading suggestion that there are substantial savings to the public purse to be made.”

17. The Faculty of Advocates also suggested that—

“The estimated impact on the Legal Aid Board (paras 94-97) is unlikely to be accurate. As the Financial Memorandum indicates, at present straightforward cases with a high chance of success proceed on a speculative basis and SLAB receives applications for legal aid only in the more difficult cases. By their nature, the more difficult cases are likely to require the instruction of counsel (which appears to be where the savings are envisaged).”

18. The Law Society also stated that it was “unclear about how the stated salary savings for the new personal injury court will be achieved.” It further stated that with regard to savings arising from reduced use of publicly funded (legal aid) counsel at personal injury courts, it was “unclear whether these savings include the recoupment from clawback, contributions and judicial expenses or not and we believe it would be helpful to clarify this.”

19. In its written submission, SLAB acknowledged that the estimating of legal aid savings was “fairly complex” and could be disproportionately impacted by small numbers of very expensive cases. However, it did confirm that, in its view, the FM’s estimated savings were reasonable and reflected its estimates on the basis of information available at the time.

20. North Lanarkshire Council questioned the intention to establish in Edinburgh Sheriff Court a specialist, central Personal Injury Court to hear certain specified cases, suggesting instead that “access to justice would be better delivered by conferring all-Scotland jurisdiction for personal injury cases to other Sheriffdoms from the outset.” It also expressed concerns that local sheriff courts might not schedule personal injury cases to be heard over consecutive days, resulting in sporadic hearings and potentially delaying the resolution of cases.

21. This concern was echoed by APIL which stated that—

“Everyone who practises in the sheriff court knows the time pressures and constraints under which they currently operate. Criminal work takes priority, then any case involving the welfare of children, and rightly so. But these create precisely the problems of delay, adjournment and inefficiencies identified by Lord Gill in the Scottish Civil Courts Review. The idea that a system already creaking can seamlessly accommodate nearly 3,000 additional cases is hopelessly optimistic. The proposition could very well result in the complete collapse of the new system.”

*Sheriff Appeal Court (paragraphs 99-155)*

22. The Bill establishes the sheriff appeal court which, the FM states, is intended to “reduce the number of criminal and civil appeals which require to be dealt with in the High Court and Inner House respectively.” (paragraph 100)

23. A table setting out the expected financial impact of the creation of sheriff appeal courts (both one-off costs and recurring costs and savings) is provided after paragraph 144 of the FM. This indicates that one-off costs of £258,000 are expected for the SCS whilst recurring savings totalling £368,000 are expected to be shared between the Government, SLAB, Crown Office Procurator Fiscal Service and the SCS.

24. The Faculty of Advocates questioned the basis of the assumed number of sitting days for the Sheriff Appeals Court in its written evidence. It also queried the basis of the estimated savings, stating that—

“It is said that the savings will be realized through the different in salaries paid to the judges of the Inner House and sheriffs principal and appeal sheriffs. It is not clear how there can be any saving in the salaries of judges in the Inner House unless the number of judges in the Inner House is to be reduced. Even if there is a longer term intention to reduce the complement of judges in the Court of Session, it seems unlikely that the number of judges in the Inner House could be reduced.”

25. The Sheriff’s Association also stated that it considered that “the projections for the Sheriff Appeal Court may not reflect the level of cases which will require to be heard.”

*Rules Rewrite (paragraphs 156-169)*

26. As implementation of the Bill’s provisions will require changes to existing rules and procedures, the FM explains that a drafting team is expected to be established to take forward this project. The FM estimates that this team is likely to result in costs of £427,000 in both 2014/15 and 2015/16.

*The Scottish Courts and Tribunals Service (paragraphs 170-187)*

27. The FM also states that another key aim of the Bill is to provide for the merger of the SCS and the Scottish Tribunals Service (STS) to create the Scottish Courts and Tribunals Service (SCTS). It explains that “merging the STS with the SCS would create a joint independent administration for both courts and tribunals with one board chaired by the Lord President as head of the judiciary for both courts and tribunals.” (paragraph 170)

28. The FM estimates the total cost of merging the STS with the SCS to be between £700,000 and £1,200,000 spread over two years. It also acknowledges that, whilst the merger “has been primarily driven by a desire for operational independence” and is not cost-driven, there may be scope for the delivery of some future efficiencies.

**Summary of Estimated Financial Implications**

*Costs on the Scottish administration (paragraphs 14-15)*

29. The FM predicts that the Scottish administration will incur one-off costs of between £700,000 and £1,200,000 in 2013/14 to 2014/15. Cumulative costs totalling £1,434,000 are predicted for the SCS over the three years from 2013/14 to 2015/16. The Judicial Appointments Board Scotland is expected to incur minor costs of £4,000 in 2014/15.

30. The FM estimates that the Bill will result in potential savings of up to £2,168,000 per annum for the Government's judicial salaries budget. SLAB is expected to make potential savings of £1,320,000 per annum whilst the SCS and COPFS are expected to make annual savings of £26,000 and £29,000 respectively.

*Costs on local authorities (paragraph 16)*

31. The FM does not expect local authorities to incur any costs, suggesting instead that they might make some savings as a result of the Bill.

32. North Lanarkshire Council, however, stated that it “did not agree that the proposals will have no cost implications on local authorities.” It went on to state that—

“Whilst it is acknowledged that the Council may make some savings as a result of fewer personal injury cases being heard in the Court of Session, it remains to be seen whether any savings made would be offset by additional resources incurred by defending personal injury cases in the national court in Edinburgh.”

*Costs on wider court users (paragraphs 17-18)*

33. The FM predicts that the Bill will have a positive impact on court users. It does note, however, that certain law firms are likely to be negatively affected as a result of the lower fees they will be able to charge. It further notes that the Faculty of Advocates has expressed concerns relating to the Bill's impact on its members.

34. Certain concerns relating to the Bill's impact on wider court users and the legal profession have been highlighted in some of the written evidence submitted, particularly from APIL, the Faculty of Advocates and the Law Society of Scotland.

**Conclusion**

35. Members are invited to consider the above information in relation to this evidence session.

**Alan Hunter**  
**Assistant Clerk to the Committee**