The Supreme Court Review

Written Response of the Scottish Advisory Group to JUSTICE

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For further information contact:
Maggie Scott QC, Jodie Blackstock Senior Legal Officer, JUSTICE
Email: scottish.justice@advocates.org.uk Tel: 0131 260 5845

Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is the British section of the International Commission of Jurists. On Scottish matters it is assisted by its Scottish Advisory Group (Advisory Group)[1].

2. This response to the Consultation questions issued by the Review Group expands on our briefing prepared as an immediate response to the First Report of the Review Group.[2]

3. We reiterate our view expressed there that we do not agree with the suggestion made by Government and elsewhere that there has been 'interference' by the UKSC in Scots criminal law. By incorporating the European Convention on Human Rights and Fundamental Freedoms (ECHR) into domestic law, Scots criminal law has necessarily had to adapt and develop in order to ensure compatibility. Such changes inevitably arise – whatever Court enforces them. The Supreme Court (UKSC) has simply applied, and is obligated to apply, the minimum requirements of Convention rights to our law and procedures.

5. We also consider that the Review Group's initial conclusions are incoherent in that they recommend unifying leave to appeal across all UK jurisdictions, yet also recommend creating other specific procedures in relation to such appeals to the UKSC solely for Scotland.

1. Certification on Leave to Appeal

6. The conclusions of the Review Group in their initial report differed from the Expert Group set up by the Advocate General by identifying the procedural difference regarding leave to appeal to the UKSC between Scots procedure and the rest of the UK. The Review Group sees this distinction as demanding of amendment in the Scotland Bill in order to achieve parity with the other jurisdictions, thereby aiming to stem the flow of appeals which ought not to progress to the UKSC. The recommendation is therefore that the High Court of Justiciary (HCJ) certify a point of general public importance before a case can be heard by the UKSC.

7. It is correct that, in general circumstances, on appeals from England, Wales and Northern Ireland permission to appeal to the UKSC in a criminal matter may only be granted if it is certified by the court below that a point of law of general public importance is involved in the

[1] We are grateful to Lesley Irvine for research assistance she has provided in this response.

[2] Available at http://www.scotland.gov.uk/Resource/Doc/925/0118614.pdf

decision of that court, and it appears to that court or to the UKSC that the point is one that ought to be considered by the UKSC.[3]

8. The certification originated historically from the requirement for the fiat of the Attorney General to pursue a writ of error on appeal to the House of Lords. In 1907 section 1(1) of the Criminal Appeal Act established the Court of Criminal Appeal and, as presented, the Bill made no provision for an appeal against a decision of the proposed new court. This new court would therefore have been the final appeal court, replacing the writ to the House of Lords. However, following consideration of the Bill in Committee, the then Attorney General, Sir John Walton, successfully introduced what became section 1(6) of the 1968 Act, putting the fiat of the Attorney General onto a statutory footing. Pursuance of an appeal was now to require certification by the Attorney General of a point of *exceptional* public importance, together with the leave of either the court above or below. Notwithstanding the importance of finality that the new court created, he considered that 'cases of the greatest public importance' should be appealable to the House of Lords, the rationale being:

> ... In cases where strong public feeling was excited and jurists were divided in opinion, it was only the judgment of the highest Court of the realm that would be universally accepted.[4]

9. The amendment from 'exceptional' to 'general' was passed by way of the Administration of Justice Act 1960 'to ensure that points of law of general application requiring an authoritative decision'[5] would go to the House of Lords. In particular, it was:

> ... not intended that the House should be asked to pronounce upon points of law that are not likely to arise in more than an occasional isolated case, or on those points of general importance which are so well-established that they ought not now to be called in question... The purpose of allowing an appeal to the House of Lords is primarily to obtain a decision at the highest level on important points of law. It is not primarily to allow a convicted person to have one more chance of securing his acquittal.[6]

[3] Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Courts-Martial (Appeals) Act 1968 s39(2); Judicature (Northern Ireland) Act 1978 s41(2); Criminal Appeal (Northern Ireland) Act 1980 s31(2); Extradition Act 2003 ss 32, 114; Proceeds of Crime Act (Appeals under Part 4) Order 2003, SI 2003/458

[4] Hansard HC vol 178 col 1062 (19 July 1907) (The Attorney-General, Sir John Walton).

[5] Hansard HC vol 625 cols 1696 (1 July 1960) (The Solicitor-General, Sir Jocelyn Simon).

[6] Hansard HC vol 625 cols 1696-97 (1 July 1960) (The Solicitor-General, Sir Jocelyn Simon). The 1960 Act also transferred the power of leave from the Attorney General to the Courts.

The fiat of the Attorney General was eventually removed by the 1960 Act, and the power of certification passed from the Attorney General to the court against whose decision the appeal was being sought.

10. The 1907 Act did not extend to Scotland. In 1924 a Criminal Appeal (Scotland) Bill was introduced into Parliament[7] in an attempt to establish the HCJ as a Scottish court of criminal appeal. The Act introduced a clause concerning appeals to the House of Lords:

> ... If in any case the Lord Advocate certifies that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, an appeal shall lie from that decision to the House of Lords...[8]

The Bill was set down for Second Reading on 9 May 1924 but was not called and there is no further mention of it in the debates for the remainder of that Parliamentary session.[9]

11. Thereafter, the Mackenzie Committee on Criminal Appeal in Scotland[10] was tasked to make recommendations as to the scope of criminal appeals and to tender advice as to the lines to be followed in framing the necessary legislation.[11] Introducing a summary of their proposals, the Mackenzie Committee considered that:

> ...With regard to the latter part of the remit...the legislation necessary to establish the Court should, so far as consistent with Scottish law and practice, follow the lines on which the English Act proceeds. The drafting of that Act has given rise to few questions of construction. The general opinion is that the Act has proved successful in its working.[12]

However, conclusion (5) was in the following terms:

> There should be no appeal from the Court of Criminal Appeal to the House of Lords. The High Court of Justiciary has for centuries been a Supreme Court. Section 72 of

[7] Hansard HC vol 172 col 43 (7 April 1924).

[8] Criminal Appeal (Scotland) Bill [HL 104] cl 1(6). Introducing the Bill on Second Reading, the Paymaster-General, announced that it conferred "rights of appeal in Scotland substantially similar to those enjoyed in England under the Criminal Appeal Act of 1907." Hansard HL vol 63 col 726 (23 March 1926).

[9] Absent any carry-over motion, the Bill would have lapsed and require to be reintroduced.

[10] Lord Mackenzie, 'Criminal appeal in Scotland: Report of the Committee on Criminal Appeal in Scotland appointed by the Secretary for Scotland' (Cmd 2456, 1925).

[11] Ibid at 2.

[12] Ibid at 10.

> the Act of 1887 provides—"all interlocutors and sentences pronounced by the High Court of Justiciary under the authority of this Act shall be final and conclusive, and not subject to review by any court whatsoever, and it shall be incompetent to stay or suspend any execution or diligence issuing forth of the High Court of Justiciary under the authority of same."[13]

As such, the Criminal Appeal (Scotland) Act 1926 did not allow for appeal to the House of Lords and it was not until the Scotland Act 1998 that an appeal route to the Judicial Committee of the Privy Council (JCPC) was created.

12. Paragraph 13 of schedule 6 of the Scotland Act provided that an appeal against a determination of a devolution issue by a court of two or more judges of the HCJ would lie to the JCPC, but only with leave of the HCJ or, failing such leave, with special leave of the JCPC. The rationale behind this new jurisdiction was that in circumstances where there may be divergence of opinion between the Scottish and UK executives of the powers of the Scottish Parliament, an impartial arbiter would be required.[14] Equally important would be ensuring that the UK's international obligations were given effect to.[15] With respect to obligations under the ECHR when imported into domestic legislation, where acts of the Scottish Executive were challenged for incompatibility, the JCPC would be the final arbiter in line with Government's general approach to devolution.[16] The House of Lords debates reveal that the jurisdiction of the JCPC was intended to minimise the risk of contradictory decisions and provide an ultimate common court of appeal on devolution issues.[17]

13. Furthermore, the debates in relation to the Governance of Wales Act lend further insight as to the choice of the JCPC over the House of Lords at that time. The Lord Chancellor identified, firstly, that the Judicial Committee already acted as the final constitutional court of appeal for the colonies and various parts of the Commonwealth. It therefore has experience of handling cases raising constitutional issues. Secondly, it would provide a flexible mechanism for disputes to be resolved promptly, which may not have been possible in the Appellate Committee of the House of Lords (ACHL), given its workload. Thirdly, the JCPC has the jurisdiction to draw its members from a wider remit across the colonies and Commonwealth as well as the UK.[18]

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[13] Ibid at 11.

[14] *Scotland's Parliament* (Cm 3658, 1997) paras 4.15 to 4.17 and Mr McLeish HC Deb 12 May 1998 vol 312 cc 210-211

[15] Ibid. para 4.18.

[16] *Rights Brought Home* (Cm 3782, 1997) paras 2.20 and 2.21.

[17] HL Deb 08 October 1998 vol 593 cc578-659

[18] HL Deb 09 June 1998 vol 590 col 986

14. Therefore, whilst a criminal jurisdiction with a certification procedure existed to the ACHL from England, Wales and Northern Ireland, in respect of devolution issues, the same special leave route to the JCPC was followed for Wales and Northern Ireland, as it was for Scotland.[19] Special leave has long formed and continues to form the appropriate method of appeal to the JCPC in cases from all jurisdictions in cases for which leave either cannot be granted below (as in most criminal cases)[20] or where leave has been refused.[21]

15. The Constitutional Reform Act 2005, section 40 transferred the jurisdiction of the JCPC to the UKSC for devolution issues from all devolved jurisdictions. The explanation for the new court is set out in the consultation paper *Constitutional Reform: A Supreme Court for the United Kingdom.*[22] It was felt necessary to ensure transparency and independence from the executive which the judges, who were also members of the House of Lords and Privy Council, could not be seen to achieve. It would equally avoid the danger of conflicting decisions on human rights points between the ACHL and JCPC.[23] The appellate procedures were to remain the same as under the former arrangements. This would mean in civil appeals from Scotland, no leave requirement at all, and in criminal appeals under the devolution jurisdiction, the leave procedure which applied to the JCPC. In respect of these arrangements there were differing views.[24] Nevertheless, a Sewel motion was passed in the Scottish Parliament, following consideration in the Justice 2 Committee, in favour of the Bill.[25] The Constitutional Reform Act, schedule 9, para 103(8)(e) provides that 'special leave' shall be substituted with 'permission' to the UKSC.

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[19] The JCPC was proposed as the constitutional forum of choice in the failed 1978 settlement, and has been similarly proposed as regards the rest of the UK since at least the Government of Ireland Act 1920. The Northern Ireland Act 1998, schedule 10 and the Government of Wales Act 1998, schedule 8, make the same arrangements for devolution issues to be decided.

[20] Judicial Committee of the Privy Council ("JCPC"), 'Practice Direction 1' ("JCPC PD1") sec 2.I.A para 2.1(2); available at: http://www.jcpc.gov.uk/docs/pd_01_JCPC.pdf. The circumstances in which leave to appeal to the JCPC can be granted by a local Court of Appeal will depend on the law of the country concerned.

[21] Ibid. See further Norman Bentwich, *The Practice of the Privy Council in Judicial Matters* (Sweet & Maxwell, London 1912), Peter A Howell, *The Judicial Committee of the Privy Council, 1833-1876: its origins, structure, and development* (CUP, Cambridge 1979) and David B Swinfen, *Imperial Appeal: the debate on the appeal to the Privy Council, 1833-1986* (MUP, Manchester 1990).

[22] Department for Constitutional Affairs (CP 11/03, July 2003)

[23] Which occurred in *County Properties Ltd v Scottish Ministers* 2000 S.L.T 965 and *R (on the application of Holding and Barnes Plc) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23 (otherwise known as *Re: Alconbury Developments*), in which the House of Lords considered the legality of the system whereby the Secretary of State was entitled to call in applications for planning permission for his own determination.

[24] Constitutional Affairs Committee, *Judicial Appointments and a Supreme Court (court of final appeal),* HC 48-1 (TSO, 2004) pp 12 – 16.

[25] Scottish Parliament, Official Report, 19 January 2005, Col 13657.

16. Accordingly, in JUSTICE's view, the HCJ does not certify a point of general public importance because it was rejected in Parliament as an unnecessary mechanism. Nor is a certification procedure appropriate due to the UKSC holding a jurisdiction solely for devolution matters which raise Convention or EU law issues in criminal cases from Scotland. These by definition involve a point of general public importance because, where an incompatibility is found, it will affect all subsequent cases. It is hard to think of a case that the UKSC would hear from Scotland which would not involve a general point of public importance. Indeed, Practice Direction 3 provides:

> 3.3.3 Permission to appeal is granted for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal. An application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground. The Appeal Panel gives brief reasons for refusing permission to appeal.

As such, no appeals will be heard by the UKSC unless a point of general public importance arises in any event. Therefore, there is no reason to require a certification procedure in the HCJ in order to achieve parity with other UK jurisdictions.

Dealing with caseload

17. If the need for a certification procedure is presented in order to stem the flow of cases to the UKSC, it should be recalled that there are relatively few cases in which the UKSC has granted leave to appeal. From the inception of the JCPC jurisdiction in 1998 to date, only 11 applications for special leave/permission have been granted.[26]

18. As such, we consider the supposed anomaly to be a distinction without a difference and that the lack of certification to the UKSC has not caused an influx of cases which ought not to be heard.

19. Moreover, we would have serious concerns that the inclusion of a public importance test could have a significant impact on the ability of people in Scotland to receive effective access to justice. The essential problem which the history of devolution issues demonstrates is the repeated failure of the HCJ to apply Convention rights and develop appropriate remedies. Repeatedly the UKSC has found the Scottish courts wanting.

[26] See appendices for these statistics.

20. The HCJ has repeatedly refused leave on the basis that the application for leave is incompetent – a view with which the UKSC has differed in a number of important cases.[27] It is likely that Scottish courts will continue to hold this view in spite of a public interest test but the UKSC would be denied the jurisdiction to review the case. There would seem to be therefore a material risk that, had certification provisions of the sort proposed existed at the time of cases such as *Cadder* and *Fraser*, the UKSC would have been denied the opportunity to hear the cases. In *Cadder* the application for appeal on the devolution minute was refused by the sift procedure and therefore leave to appeal to the UKSC was refused as incompetent because this was not considered a 'determination' for the purposes of paragraph 13 of Schedule 6 of the Scotland Act.[28] However, as Lord Hope explained in the judgment of the UKSC:

> [T]here is no doubt that this resulted in the refusal of the appeal and that, for the reasons that were explained in *McDonald v HM Advocate* [2008] UKPC 46, 2008 SLT 993, it amounted to the determination of a devolution issue for the purposes of para 13 of Schedule 6 to the Scotland Act 1998.'

This was a pure procedural error, which without the review by the UKSC, would have led to criminal proceedings in Scotland continuing to be pursued in a way which was incompatible with article 6(3)(c) ECHR for a much longer period until either a subsequent case was certified under the proposed procedure, or *Cadder* was eventually heard by the European Court of Human Rights some six years later. This would have caused even more disruption to the criminal case load than has occurred through the UKSC ruling.

20. While the Court of Appeal in England and Wales is prepared to refuse leave to appeal to the UKSC but nonetheless to certify a point of general public importance, there is little evidence that the Scottish courts would approach these questions in a way which would allow for the possibility of the UKSC hearing any cases. Indeed, on the evidence so far, the Scottish courts have attempted to prevent the UKSC from considering points of general public importance. In the application for leave to appeal the refusal of the devolution minute to the JCPC in *Fraser*, the appellant specifically argued that there was a point of general public importance that should be heard. The HCJ rejected this argument and refused leave:[29]

> [W]e have come to the conclusion that the appellant's application for leave to appeal to the Privy Council should be refused as incompetent. The identification of the devolution issue which, it seems, must now be deemed to have been determined, in our opinion necessarily depends upon the content of the devolution issue minute

[27] In particular *Cadder v HM Advocate* [2010] UKSC 43 and *Fraser v HMA* [2011] UKSC 24

[28] Note 27 above, para 9.

[29] *Fraser v HMA* [2009] HCJAC 27, para 13.

> tendered and rejected on 13 November 2007. That is a necessary consequence of the observations of Lord Hope of Craighead in paragraph [16] of his opinion in *McDonald and Others* v *HM Advocate*. It follows from that that, in any appeal for which leave might be granted by us, the appellant would seek to canvass exactly the same issues as were canvassed in the course of his appeal under section 106 of the 1995 Act, but this time before the Judicial Committee of the Privy Council. What decision they might or might not reach in any such appeal can only be a matter of conjecture at this stage. However, what is clear is that the allowance of leave for such an appeal as this would authorise a procedure under which the Judicial Committee, in the circumstances of this case, would, quite simply, review the merits of the decision reached by this court on 6 May 2008. Whatever was contemplated by Parliament in enacting paragraphs 1(c) and 13 of Schedule 6 to the Scotland Act 1998, we do not think that it was intended to achieve such a result as that.

However, as Lord Hope explained in the UKSC decision in *Fraser*:[30]

> 11. As I recently sought to emphasise, this court must always be careful to bear in mind the fact that the High Court of Justiciary is the court of last resort in all criminal matters in Scotland: see section 124(2) of the Criminal Procedure (Scotland) Act 1995; McInnes v HM Advocate 2010 SLT 266, para 5. Our appellate jurisdiction in relation to its decisions extends only to a consideration of a devolution issue which has been determined by two or more judges of that court: para 13 of Schedule 6 to the Scotland Act 1998. It goes no wider than that. If, therefore, the effect of the appellant's application for special leave was that we were simply being asked to review the determination under section 106 of the 1995 Act of his appeal by the Appeal Court, as Lord Osborne indicated at 2009 SCCR 500, para 13, we would have been bound to refuse the application for special leave.
>
> 12. The appellant's application for special leave was granted by this court for two reasons. The first was that the decision by the Appeal Court to refuse to allow the devolution issue to be received amounted to a determination of that issue for the purposes of para 13 of Schedule 6 to the Scotland Act 1998: see McDonald v HM Advocate [2008] UKPC 46, 2009 SLT 993; Allison v HM Advocate [2010] UKSC 6, 2010 SLT 261, para 6 per Lord Rodger; Cadder v HM Advocate [2010] UKSC 43, 2010 SLT 1125, [2010] 1 WLR 2601, para 11. The second was that it appeared to this court, applying the tests set out in McInnes v HM Advocate, 2010 SLT 266, paras 19-20 and 28-30, that it was seriously arguable that material had been withheld from the appellant which ought to have been disclosed to him and his advisers with the consequence the appellant did not receive a fair trial and that the unfairness had not

[30] *Fraser*, note 27 above, paras 11 and 12.

been remedied by the approach taken by the Appeal Court. In this context and given the level of refusals of leave by the HCJ to date, the practical consequence is that people in Scotland are less likely to have their human rights protected or secured, as distinct from the application of the present procedure or in comparison to the rest of the UK.

21. Lord Hope went on to propound that because the Appeal Court refused to hear the devolution minute on the appeal (for reasons of it coming too late, sufficient cause not being shown and the matters sought to be raised being adequately covered by the existing grounds of appeal[31]), the correct test under *McInnes* had not been considered. As such, the UKSC was not simply carrying out a review of the decision below, rather it was ensuring that the question of whether the article 6 ECHR right to a fair trial had been breached was answered correctly by the court below. The test that is to be applied to determine this issue is whether, taking all the circumstances of the trial into account, there is a real possibility that the jury would have arrived at a different verdict if the withheld material had been disclosed to the defence.[32] Again, it is quite clear that were the proposed procedure to have applied in the case of *Fraser* the application of the *McInnes* test would not have been properly considered.

2. Judicial Decision Maker on Certification

22. The Consultation poses the question as to whether it is appropriate for the same judges who have refused the appeal to consider whether, in spite of this, a point of public importance is engaged to require a decision of the UKSC.

23. If such a pre condition were established we would advocate the need for an impartial decision maker to decide whether the case raises a point of public importance. We would therefore suggest that the petition for leave to appeal be heard by a differently constituted bench of three High Court Judges.

3. Non-unanimous Decision

24. In our view it would clearly be right to treat the pre-condition as satisfied where at least one of the judges considers the case worthy of certification. The question posed by the review is whether *leave/permission* should automatically be granted. However, it is important to clarify, if the pre-condition is to enable uniformity of procedure with the rest of the UK (notwithstanding our observations above that the assumption of parity is erroneous), that it

[31] *Ibid,* para 8.

[32] *Id*, paras 13 to 17.

does not follow from certification that leave will be automatically be granted by the HCJ. Where the Court, despite certifying a point nevertheless refuses leave in a particular case, leave of the UKSC would then be open for petition.

4. Re-defining the jurisdiction of the UKSC

(a) Restriction of cases to those which are completed

25. We agree that in most cases it would be appropriate to only seek the consideration of the UKSC once the usual appeals route has been exhausted. The Court is a court of appeal for most purposes. However, there will be occasions where it is appropriate to resolve a preliminary issue concerning a Convention or European Union law issue prior to trial commencing. This is the purpose of paragraphs 33 to 35 of Schedule 6 to the Scotland Act. Whether a referral is appropriate is a matter for the referring courts, to be considered upon the raising of a devolution minute on a case by case basis.

(b) A reference from the HCJ of its own volition

26. We consider the ability of the court to raise a minute of its own volition to be an important judicial role. The reference function set out under the Scotland Act Schedule 6, paras 9 and 11 specifically ensures that even where the appellant does not raise the issue, the court can do so. There will be cases where legal aid has not been granted to the accused who cannot be expected to appreciate that a devolution issue exists. Where there is legal representation but the advocate does not raise the issue, the accused should not be penalised. Clearly where a judge has concerns about a Convention or EU issue they should be able to raise it notwithstanding the failure of the parties to do so. A failure to do so may give rise to non compliance with international obligations.

(c) UKSC to rule on point of law only, not consequences

27. We do not agree that this is appropriate. The UKSC is a final appellate court for the whole of the UK on points of interpretation and its powers should extend to ensuring that remedies are effective. In our view the UKSC is more than capable of understanding the relevant procedural consequences of its decisions, assisted by counsel appearing before it (including in Scots cases, the Lord Advocate and Advocate General themselves). Moreover, in the interests of ensuring parity, this limitation does not exist for cases from other UK jurisdictions.

28. We cannot see what need there is for an amendment such as this, other than to give effect to unmeritorious concerns expressed in the media that a ‘London’ court is passing judgment on Scots matters. If it is accepted that the UKSC has a role in Scots law at all, it should be able

to give effect to an appropriate remedy (and indeed is obligated to ensure one is available), otherwise the appellant's rights under article 13 ECHR may be violated.

(d) Reformulating the question appealed

29. Should the UKSC determine that it is necessary to reformulate a question in order to ensure that the Convention or EU issue addresses the general point of public importance, in JUSTICE's view this is entirely a matter for the Court which is uniquely placed to make that decision.

6. Value of Providing for UKSC to sit in Scotland

30. In principle there is no impediment to the UKSC sitting in Scotland. The primary value of seeking the UKSC to sit in Scotland would be to avoid the parties having to go to London to be heard. Paragraph 36 of Schedule 6 already enables these costs to be considered. However, in order for the court to function properly, a suitably equipped court building in Scotland at which the UKSC could sit independently of the Scottish courts would need to be provided. This would require robing rooms for counsel and conference rooms for the parties. It would need a catering facility for the breaks. The Justices would need to be accompanied by their judicial assistants and be supported by a registrar, ushers, security officers and other administrative personnel as well as a fully stocked legal library. Presumably the court would sit in Edinburgh, at some distance from many parts of Scotland and nevertheless still require travel and accommodation costs for many parties seeking to attend the hearing.

31. If the sole purpose of such a sitting would be for the UKSC to be seen as a Scottish court for the purposes of Scottish appeals, we have to question the vast expense it will incur during a time of economic austerity and cuts in legal aid funding.

7. Additional points

32. If the presiding principle is parity with the position elsewhere in the UK then by the same reasoning, Scots should be given the right of appeal under the Human Rights Act 1998 in respect of judicial acts of the Scottish courts (not just those of the Lord Advocate) which breach Convention rights - a right of appeal which all other UK citizens enjoy, pursuant to section 6(3) Human Rights Act. To paraphrase paragraph 51 of the Interim Report - why should the HCJ not be placed under the same regime as elsewhere, whereby, there is a right of appeal against the acts of the court under the Human Rights Act?

JUSTICE

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Appendix 1

Petitions for special leave heard, granted & refused by the JCPC under the Scotland Act 1998**

Year	Petitions granted	Petitions refused	Total no. petitions heard
1998[1]		None recorded	
1999[2]		None recorded	
2000[3]	1	9	10
2001[4]	2	2	4
2002[5]	1	3	4
2003[6]	-	3	3
2004[7]	-	3	3
2005[8]		None recorded	
2006[9]		None recorded	
2007[10]	1	1	2
2008[11]	4	3	7

**The official JCPC statistics for petitions heard under the Scotland Act 1998 do not specify whether the appeal is against the decision of a court of civil or criminal jurisdiction.

Appendix 2

Applications to the UKSC for PTA against a decision of the HCJ:

1 October 2009 to 14 April 2011[12]

	Case name	Case ID	Panel	Order date	Decision
1.	*McIlvanney v HM Advocate*	UKSC 2011/0013	Lord Phillips Lord Hope Lord Kerr	14 April 2011	Refused
2.	*Harris v HM Advocate*	UKSC 2011/0006	Lord Phillips Lord Hope Lord Kerr	14 April 2011	Refused
3.	*Beggs v HM Advocate*	UKSC 2010/0209	Lord Hope Lord Rodger Lord Kerr	16 December 2010	Refused
4.	*Sutherland v HM Advocate*	UKSC 2010/0181	Lord Phillips Lord Hope Lord Rodger	22 November 2010	Refused
5.	*Allison v HM Advocate (No. 2)*	UKSC 2010/0139	Lord Phillips Lord Hope Lord Rodger	30 July 2010	Refused
6.	*Campbell v HM Advocate*	UKSC 2010/0089	Lord Phillips Lord Hope Lord Rodger	23 July 2010	Refused
7.	*Kropiwnicki v HM Advocate*	UKSC 2010/0109	Lord Phillips Lord Hope Lord Rodger	23 July 2010	Refused

	Case name	Case ID	Panel	Order date	Decision
8.	*Gordon v HM Advocate*	UKSC 2010/0117	Lord Phillips Lord Hope Lord Rodger	23 July 2010	Refused
9.	*Engler v HM Advocate*	UKSC 2010/0113	Lord Phillips Lord Hope Lord Rodger	23 July 2010	Refused
10.	*Murtagh v HM Advocate*	**U**KSC 2010/0023	Lord Phillips Lord Hope Lord Rodger	20 May 2010	Refused
11.	*Fraser v HM Advocate*	UKSC 2010/0192	Lord Phillips Lord Hope Lord Rodger	20 May 2010	Granted
12.	*Doyle v HM Advocate*	UKSC 2010/0010	Lord Phillips Lord Hope Lord Rodger	22 February 2010	Refused
13.	*Henry v HM Advocate*	UKSC 2010/0021	Lord Phillips Lord Hope Lord Rodger	22 February 2010	Refused
14.	*Jones v HM Advocate*	UKSC 2010/0016	Lord Phillips Lord Hope Lord Rodger	22 February 2010	Refused
15.	*McAllister v HM Advocate*	UKSC 2010/0020	Lord Phillips Lord Hope Lord Rodger	22 February 2010	Refused
16.	*O'Neill v HM Advocate*	UKSC 2010/001	Lord Phillips	22 February	Refused

	Case name	Case ID	Panel	Order date	Decision
		9	Lord Hope Lord Rodger	2010	
17.	*King v Mirian Watson, Procurator Fiscal, Ayr*	JCPC 2009/0078	Lord Phillips Lord Hope Lord Rodger	26 November 2009	Refused
18.	*Cadder v HM Advocate*	UKSC 2010/0022	Lord Hope, Deputy President Lord Rodger Lord Walker Lord Brown Lord Mance Lord Kerr Sir John Dyson, SCJ	26 October 2010	Granted (grounds 4, 5 and 8); refused (grounds 6, 7)

UKSC Permission to Appeal applications from Scotland:

Breakdown by Month/Year and Respondent

Month/Year	PTA applications (Scotland)	PTA applications with HMA as respondent (criminal appeals)
October 2009 to February 2010[13]	1	1
February 2010 to March 2010[14]	6	5
March 2010 to April 2010[15]	0	0
May 2010[16]	2	2
June 2010[17]	0	0
July 2010[18]	5	5
August 2010	None recorded	
September 2010	None recorded	
October 2010[19]	0	0
November 2010[20]	2	1
December 2010[21]	1	1
January 2011[22]	0	0
February 2011[23]	0	0
March 2011[24]	0	0
April 2011[25]	3	2
May 2011[26]	0	0
June 2011[27]	0	0

[1] Privy Council Office, *Judicial Committee Petition Statistics 1998: Petitions for special leave to appeal: heard, granted and refused 1998*; available at http://webarchive.nationalarchives.gov.uk/20101103140224/http://www.privy-council.org.uk/files/pdf/JC_Key_Statistics_Petitions_98.pdf.

[2] Privy Council Office, *Judicial Committee Petition Statistics 1999: Petitions for special leave to appeal: heard, granted and refused* 1999; available at: http://webarchive.nationalarchives.gov.uk/20101103140224/http://www.privy-council.org.uk/files/pdf/JC_Key_Statistics_99.pdf).

[3] Privy Council Office, *Judicial Committee Petition Statistics 1999*: *Petitions for special leave to appeal: heard, granted and refused 2000* (NB: This has been incorrectly headed. The sub-heading is correct); available at: http://webarchive.nationalarchives.gov.uk/20101103140224/http://www.privy-council.org.uk/files/pdf/JC_Key_Statistics_Petitions_2000.pdf.

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[10] Ministry of Justice, *Judicial and Court Statistics2007* (Cm 7467, 2008). The petition statistics are in chapter 1, page 18 at table 1.2.

[11] Ministry of Justice, *Judicial and Court Statistics 2008* (Cm 7697, 2009). The petition statistics are (as with those from 2007) in chapter 1, page 18 at table 1.2: http://www.justice.gov.uk/publications/docs/judicial-court-statistics-2008-01-chapt1.pdf.

[12] Details of all PTA applications which have been decided by the UKSC are available to view online at http://www.supremecourt.gov.uk/news/permission-to-appeal.html. See below for links to each individual archived report.

[13] UKSC, 'Applications for Permission to Appeal' [October 2009 - February 2010] (News archive) http://www.supremecourt.gov.uk/docs/pta-0910-1002.pdf.

[14] UKSC, 'Applications for Permission to Appeal' [February - March 2010] available at: http://www.supremecourt.gov.uk/docs/pta-1002-1003.pdf.

[15] UKSC, 'March/April 2010: Applications for Permission to Appeal' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1003-1004.pdf.

[16] UKSC, 'Applications for Permission to Appeal, May 2010' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1005_V2.pdf.

[17] UKSC, 'Applications for Permission to Appeal, June 2010' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1006.pdf.

[18] UKSC, 'Applications for Permission to Appeal, July 2010' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1007.pdf.

[19] UKSC, 'Applications for Permission to Appeal, October 2010' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1010.pdf.

[20] UKSC, 'Applications for Permission to Appeal, November 2010' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1011.pdf.

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[22] UKSC, 'Applications for Permission to Appeal, Results January 2011' (News archive); available at: http://www.supremecourt.gov.uk/docs/PTA-1101.pdf.

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