

Supreme Court judgement could mean change in Scots law needed

A decision handed down by The Supreme Court today may mean that a change in Scots Law is needed – and it could also mean a little more work for Scottish criminal solicitors.

The case of Cadder v Her Majesty's Advocate was referred to The Supreme Court and included a review of the law which allows the police in Scotland to detain someone in custody for up to six hours and to interview them without a solicitor being present.

This is currently permissible where the person detained has done something which may be punishable by imprisonment, and means that a person can be interviewed by police without legal representation present, although a solicitor has to be advised of their detention in police custody.

The question put to The Supreme Court was whether that is a breach of the right to a fair trial, recognised in Article 6(1) and 6(3)(c) of the European Convention of Human Rights ("the ECHR"). Their Lordships decided that it was and that Scots Law breaches human rights law.

Responding to the decision of the Supreme Court in relation to the case, Justice Secretary Kenny MacAskill said:

"I note today's decision by the Supreme Court. It is a decision we did not seek but it is one to which we must respond.

"The decision overturns decades of criminal procedure in Scotland, a proud, distinctive, justice system, developed over centuries, and predicated on fairness with many rigorous

protections for accused persons. It is rightly admired by other jurisdictions. This issue is about legal advice at one step in the investigatory process.

“Today’s judgement in the Supreme Court has gone against the unanimous decision last October by seven Scottish High Court judges at the Scottish Appeal Court that determined that an aspect of Scottish criminal procedure does not comply with the European Convention on Human Rights.

“We are concerned that the current devolution arrangements have created an anomaly that seems to put Scottish law at a disadvantage in comparison to elsewhere in the EU. I want to see steps taken to address this anomaly. But we cannot ignore the Supreme Court’s decision.

“And while it necessitates changes to Scotland’s justice system, these are changes that have been anticipated and planned for. For over a year, the Scottish Government, Crown Office, Scottish Legal Aid Board (SLAB), ACPOS and the Scottish Court Service have been preparing contingency plans to deal with all possible eventualities arising from this case. The Lord Advocate – in anticipation of an adverse judgement – issued interim guidance earlier this year.

“With Parliament’s support we will be making swift legislative changes to protect the victims of crime and safeguard communities. The main changes will mean introducing a right of access to legal advice before being questioned, extending the period during which a person may be detained under section 14 of the Criminal Procedure (Scotland) Act 1995, powers to adjust legal aid eligibility rules and measures to ensure certainty and finality in concluded cases.

“We will be introducing this emergency legislation to Parliament on Tuesday – and with the support of the other political parties we can complete the parliamentary scrutiny and debate process during the course of Wednesday. We

anticipate the Bill receiving Royal Assent by Friday.

“In addition to these necessary legislative changes, I am today announcing that Lord Carloway, a senior High Court judge, will lead a review of Scottish criminal law and practice in the aftermath of the Cadder decision. I have asked Lord Carloway to make swift progress with his review and report to me within months – certainly in time to allow legislation to be considered for the 2011-12 Parliamentary session.

“Our distinctive justice system is one which protects accused persons. However human rights also extend to victims and to all of the people of Scotland, and the Scottish Government and justice partners will continue to fight to ensure that the rights of the victims and indeed wider society remain at the forefront of the Scottish justice system.”