

Lord McCluskey issues Review Group's first report

First Minister Alex Salmond has welcomed the publication of the first report of the Review Group examining the relationship between the High Court of Justiciary and the UK Supreme Court in criminal cases.

[The group](#) – chaired by Lord McCluskey – has focused on the role of the UK Supreme Court under existing constitutional arrangements and is published in order to inform the Scottish Parliament debate taking place this Thursday. [The report](#) agrees with the conclusion of the Advocate General's own Expert Group Report that the courts have given a wide interpretation to the concept of acts of the Lord Advocate. The report states the consequence of this is that 'unexpectedly' many aspects of Scots criminal proceedings have been brought under review in the UK Supreme Court, and that this 'widening of jurisdiction, as exercised by the Supreme Court, whatever the intention of the UK legislature when the Scotland Act was passed, had surprised everyone and had created real problems'.

The McCluskey report agrees that the existing statutory basis for bringing human rights issues to the Supreme Court is 'seriously flawed'. It finds that the High Court of Justiciary 'has been placed under a broader and, in the light of developing practice since 1998, a more intrusive jurisdiction than has been created for the rest of the UK in relation to applying the law governing human rights issues in criminal cases.' However, the McCluskey Review Group goes further than the Advocate General's group report in terms of the specific remedies it proposes in its interim conclusions.

The report recommends a new provision, with proposed amendments to the Scotland Bill, which would place the High

Court of Justiciary 'on an equal footing with its counterparts elsewhere in the UK, by enabling the Supreme Court to grant permission to appeal only if the High Court of Justiciary has granted a certificate that the case raises a point of general public importance'.

The McCluskey report also recommends that it should be made clear that 'the jurisdiction of the Supreme Court should be exercised in such a way that it identifies clearly the law that the criminal courts have to apply, but that the application of the law to the case in which the issue is being litigated should be remitted to the High Court of Justiciary'. This would help preserve the traditional role of the High Court of Justiciary under current constitutional arrangements by ensuring "that the Supreme Court, in dealing with its human rights jurisdiction in criminal cases, would concentrate on identifying and articulating clearly the relevant law contained in The Human Rights Act and would not proceed to decide the case as if it were the High Court of Justiciary."

It is expected that the Group will publish a final report by the autumn prior to amendments requiring to be made to the Scotland Bill.

Mr Salmond said:-"This first report is extremely welcome, and I am grateful to Lord McCluskey and his group for producing such a considered piece of work so promptly and in good time to inform this week's Scottish Parliament debate.

The report focuses on the relationship between the UK Supreme Court and the High Court of Justiciary under the current constitutional arrangements. There is now a consensus that the UK Supreme Court plays a much broader role in Scottish criminal law than had been envisaged when the Scotland Act was passed, and that it is more intrusive within Scots Law than is the case for the other jurisdictions within the UK – with serious implications for the certainty and integrity of our distinct legal system.

We now have the interim analysis and conclusions of the McCluskey Group, and I particularly welcome its recommendations for amendments to the Scotland Bill to limit the role of the UK Supreme Court by placing referrals from Scotland's highest court of criminal appeal – the High Court of Justiciary – on the same footing as is the case for the justice system south of the Border. It also makes positive suggestions for the UK Supreme Court to operate clearly and consistently as a court of interpretation of human rights law, and not 'as if it were the High Court of Justiciary'."

In doing so, the report goes further than the Advocate General's Expert Group, but I believe these interim recommendations should be capable of attracting support and consensus across Parliament, and among the wider legal and other important interests involved."

The Society has released the following statement on the interim report reviewing the Supreme Court issued by Lord McCluskey this afternoon:

Commenting on the report, Christine O'Neill, Convener of the Society's Constitutional Law Committee said: "We are interested to read the interim report at this stage. The Society has been active in responding to the various consultations on this issue and we have given written and oral evidence on the proposals contained in the current Scotland Bill.

"We are considering interim report published by the Review Group and will endeavour to meet with Lord McCluskey over the summer months to discuss the review and the initial recommendations in more detail, ahead of the final report being published later in the year.

"The Society's consistent position has been that the UK Supreme Court should play an important role in constitutional and human rights issues affecting Scotland. We are pleased

that the Review Group has also taken that view. Any proposals for reform of the mechanisms used to allow the Supreme Court to play that role need to be considered carefully and the implications properly understood.

“We are pleased that the Review Group has recommended that they consult further with interested parties and we will take up that opportunity over the coming months.”