The Right Honourable Elish Angiolini QC

LORD ADVOCATE'S CHAMBERS
25 CHAMBERS STREET
EDINBURGH EH1 1LA

Telephone: 0844 561 2000
Fax (GP3): 0844 561 4076

The Rt Hon the Lord Wallace of Tankerness QC
Advocate General
Dover House
Whitehall
London
SW1A 2AU

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Dear Jim,

I am writing in response to your further invitation to comment on the draft clauses which have now been published on your website.

I have of course already commented on an earlier version of these clauses. Other than the change from "omission" to "failure to act" (which, as I indicated in my letter, appears to be an improvement) I do not think there is any significant change in the new version. I would therefore repeat my earlier comments, and attach my letter of 25 February for convenience. In relation to the specific questions which you now ask on your website I have the following observations.

Your question about a process of certification by the High Court reflects an approach I proposed in my letter. I remain of the view that, if an appeal of any sort is to be provided, it must be subject to a filter which ensures that only appeals containing a point of significant and general importance are taken to the Supreme Court. In my view it is appropriate that the High Court should retain ultimate control over this process, which would be secured by the need for certification.

In relation to referrals it remains my view that, in a system with several tiers of appeal, there is a need for a power of reference to achieve faster decision-making in appropriate cases. I see no need for leapfrog appeals and would not be in favour of any such proposal.

In addition I have a couple of further observations. In *Cadder v HMA* Lord Rodger affirmed that the time limit on Convention claims under the Scotland Act which is currently enacted in section 100 of that Act applied equally to devolution issues arising in criminal cases as it did to civil cases. That proposition has however been questioned in a recent criminal case. The Scotland Bill of course proposes to re-enact the relevant provisions in clause 16. It would be extremely helpful if consideration could be given to ensuring that for the avoidance of doubt, the clause is drafted in a way which makes explicit that criminal matters are indeed included.

Finally, as I explained in my earlier letter, I remain concerned about the particular vulnerability of prosecutions in Scotland under Acts of the Scottish Parliament. The entirely natural consequence of devolution is that, in time, an increasing proportion of Scottish offences will be enacted in ASPs. Unlike Westminster statutes, provisions of ASPs are not protected by the declaration of incompatibility procedure in section 4 of the Human Rights Act; instead they are open to complete nullification where they are found to be incompatible with Convention rights.

Notwithstanding the potential and uncertain protection afforded by section 102 of the Scotland Act, the effect will be that prosecutions in relation to such offences, and everything following on from those prosecutions, will be more vulnerable than equivalent prosecutions in England, or indeed the same prosecution in Scotland under an identical provision contained in a pre-devolution Act or under common law. This appears to me to be a highly undesirable result of the present devolution arrangements and I would ask you again to consider whether something might be done to reduce or eliminate this unfortunate discrepancy in approach between the jurisdictions of Scotland and England and Wales

Yours sincerely,

ELISH ANGIOLINI