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Chapter 1

Q.3 Although I note that the remit of the Review expressly refers to “the provision of civil justice by the courts in Scotland”, this artificially constrains the review. The role of tribunals is an essential part of the provision of civil justice. Moreover, the fact that the Court of Session’s monopoly on judicial review actions is now broken by s.20 of the Tribunals, Courts and Enforcement Act 2007 represents a major shift in the jurisdictional pattern which by itself would seem to call for a deeper consideration of the relationship between the courts and tribunals, as they have been and as they may develop under the 2007 Act (including the lessons to be learned for any reform of bodies within devolved jurisdiction). The absence of any consideration of the impact of the 2007 Act seems to be a significant omission from the Review.

Also missing from the Review is a consideration of some of the international obligations relevant to access to justice, in particular, the Aarhus Convention - see comments on Chapter 3, below.

Chapter 3

Providing access to justice is not just an ideal but a legal requirement on the United Kingdom as a result of the Aarhus Convention. The Convention on Access to Information, Public Participation in Decision-Making and Access Justice in Environmental Matters (UNECE, 1998) expressly requires the availability of procedures which provide “adequate and effective remedies, including injunctive relief as appropriate, and [are] fair, equitable, timely and not prohibitively expensive” (art.9(4)). On several occasions the extent to which the current reliance on judicial review proceedings satisfies this requirement has been questioned, most notably in relation to the affordability of access to the courts with the fear of having to bear the other side’s costs in the event of a lack of success. Either wider reforms or clarity on the extent to which the Scottish courts offer something akin to the recent developments in England relating to “protected costs orders” (*R (Corner House Research) v Secretary of State for Trade & Industry* [2005] EWCA Civ 192) seem desirable to meet this specific treaty obligation and more generally for public interest litigation.

Chapter 4

Q.4 From the perspective of environmental law, it is frequently argued that there would be merit in the creation of a specialist environmental court of some sort. There is plenty of scope for debate over what this would involve in terms of powers (full civil and criminal jurisdiction or essentially an appeal body for statutory appeals?), scope (just environmental (however defined) or extending to other regimes where there are similar regulatory issues requiring specialist knowledge?) and structure (further extension of the Land Court beyond that achieved by the Nature Conservation (Scotland) Act 2004 or a new body or linked to the reforms under the Tribunals, Courts and Enforcement Act 2007?). The issue requires proper examination since the consultation paper on this topic produced by the Scottish Executive a year ago,

Strengthening and Streamlining - The way forward for the enforcement of environmental law in Scotland - singularly failed to do justice to this well-studied topic by considering too limited an area of subject-matter and an exclusively criminal model which has very few, if any, champions.

Q. 15 See response to Q. 1.3, above

Q.22 See response to Q. 1.3, above.