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Consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland

Response from the Employment Lawyers Association

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EMPLOYMENT LAWYERS ASSOCIATION RESPONSE

Consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland

The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law and includes those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals. It is therefore not ELA's role to comment on the political merits or otherwise of proposed legislation, rather than to make observations from a legal standpoint. The ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A sub-committee, chaired by Paul Brown was set up by the Legislative and Policy Committee of the ELA, to consider and comment on the consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland.

ELA's response to this particular consultation is that at present, this does not directly relate to or affect employment tribunals in Scotland. At present Employment Law is not devolved and employment tribunals do not come under the jurisdiction of the current Scottish Tribunal System. In the event that this changes in due course, we would welcome the opportunity to comment further at that stage.

In the meantime, the only issues which we consider are of concern are:-

1. The proposed character of the New Tribunal System in Scotland in essence reflects the system which already exists for employment tribunals and therefore we do not consider that this would cause any immediate concern for those involved in Employment tribunals however, the inter-relationship between the New Tribunal System for Scotland and the employment tribunals' system, currently under the auspices of the Ministry of Justice will require to be carefully monitored in order to ensure that disparities of operation do not adversely affect the enforcement of legal rights in Scotland.
2. Members are concerned with the proposal that Judges could be appointed to the New Tribunal System and sit in any of the tribunals under that headline banner. Whilst we appreciate that individual Judges may have a particular area to which they are principally aligned, the indication that Judges who are not currently employment Judges or indeed experts in Employment Law could end up determining issues which are complicated employment matters is of particular concern. We consider that this is something which would require to be monitored carefully in order to ensure the integrity and expertise of the Employment Tribunal Judges.

Members of the Working Party

Paul Brown, Biggart Baillie LLP (Chair)
Stephen Connolly, Miller Samuel LLP
Laurence G Cunningham
Anya D. Duncan, Raeburn Christie Clark & Wallace
Sue Gilchrist, McGrigors LLP
Tony Hadden, Brodies LLP
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