



Department for  
Business, Energy  
& Industrial Strategy



Ministry  
of Justice

# REFORMING THE EMPLOYMENT TRIBUNAL SYSTEM

Taking forward the principles of wider court  
and tribunal reform in Employment  
Tribunals and the Employment Appeal  
Tribunal



December 2016

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Taking forward the principles of wider court and tribunal reform in Employment Tribunals and the Employment Appeal Tribunal

The consultation Regulatory Triage Assessment can be found on the BEIS section of GOV.UK under the Consultations menu:

<https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>

REFORMING THE EMPLOYMENT TRIBUNAL SYSTEM

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# Foreword from the Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility and the Minister of State for Justice



The Government is investing significant resources to transform the justice system to help people to navigate their way to the best resolution for them; reduce the complexity in language, process and systems; minimise the steps that people need to go through to obtain justice; and improve access to justice. This transformation will be underpinned by three basic reform design principles that the justice system will be:

- **Just** - the judiciary will continue to be independent and impartial in their decision-making. It will be supported by modern, transparent processes that are consistent, with no one disadvantaged when using the system and everyone bringing a case able to describe and defend it.
- **Proportionate** – more simple cases will be dealt with swiftly at the right level so that the cost and speed of the process is proportionate to the type of case under consideration. This will save people time, cost them less, and make working through the legal system less of a burden.
- **Accessible** – the service is affordable, understandable and available for use by all, convenient for those who cannot easily attend in person, and supportive of those not comfortable with the law or technology.

Tribunals were created to provide simple, proportionate means for individuals to challenge decisions of the state, public bodies and employers that affect their civil and regulatory rights. In this respect, Employment Tribunals have always been seen as unique.

However, while they were designed to be more accessible and informal than the courts to enable users to prepare and present their cases without legal representation, tribunals have not kept pace with changes in society or, in particular, with the way that users want and need to interact with our systems.

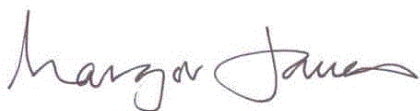
The Government's radical programme of reform to the courts and tribunal system will transform the way that tribunal users engage with the system. It will enable citizens to present their own cases easily and obtain justice more swiftly; reducing complexity in language, process and systems; and reducing the costs of the tribunal system to taxpayers. It will make better use of modern technology to create a system that is able to respond promptly, effectively and proportionately to the needs of its different users.

The wide-ranging reform programme will apply to all courts and tribunals managed by Her Majesty's Courts and Tribunals Service, including Employment Tribunals and the Employment Appeal Tribunal.

As we have said, though, Employment Tribunals and the Employment Appeals Tribunal were created for a specific purpose and any reforms need to be implemented in a way that preserves the current strengths of the Employment Tribunal system. This includes the specialist knowledge of the judiciary and the availability of free conciliation and advice from the Advisory, Conciliation and Arbitration Service (Acas).

We are very mindful that in progressing the reform programme we must not lose sight of other important changes. The Government is committed to transferring the functions of Employment Tribunals and the Employment Appeal Tribunal to Scotland in the future, as set out in the Smith Commission Agreement. This needs to be part of the ongoing considerations of how and when the reform package would best be implemented in the Employment Tribunals system.

We would welcome your views on the issues to be considered when implementing the wider justice system reform principles in the Employment Tribunal system.



**Margot James, MP**

**Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility**



**Sir Oliver Heald QC**

**Minister of State for Justice**

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# General information

## Purpose of this consultation

The Government is seeking views on the issues to be considered when implementing the wider justice system reform principles in the Employment Tribunal system. Views from all users of the system are particularly welcome, and responses from representatives and advisors of individuals and business, the legal profession, non-legal members and the judiciary are particularly encouraged.

**Issued:** 5 December 2016

**Respond by:** 20 January 2017

### **Enquiries to:**

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Email: [ET-Reform-Consultation@beis.gov.uk](mailto:ET-Reform-Consultation@beis.gov.uk)

Consultation reference: Reforming the Employment Tribunal System

### **Territorial extent:**

Great Britain

## How to respond

Your response will most useful if it responds directly to the questions posed, though further comments and evidence are also welcome.

You can reply to this consultation online at <https://beisgovuk.citizenspace.com/lm/reforming-the-employment-tribunal-system>

### **Additional copies:**

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>.

## Confidentiality and data protection

This is a joint consultation undertaken by the Department for Business, Energy and Industrial Strategy (BEIS) and the Ministry of Justice (MoJ). All responses submitted will be available to relevant policy officials in both departments.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)

# Executive Summary

The Government is taking forward a major programme of reform to the justice system to transform the way that courts and tribunals provide justice, including Employment Tribunals and the Employment Appeal Tribunal.

1. On 15 September, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals published a joint statement setting out their intentions on transforming the justice system, outlining significant reforms to the courts and tribunal system<sup>1</sup> to make it **Just, Proportionate** and **Accessible**.
2. The aims of the wider justice reform programme are:
  - to support citizens to present their own cases simply and to obtain justice more swiftly;
  - to reduce complexity in language, process and systems; and
  - to reduce the costs of the tribunal system to taxpayers.
3. The reforms will be rolled out across all courts and tribunals managed by Her Majesty's Courts and Tribunals Service (HMCTS) tailored to the nature of the individual tribunals. This includes Employment Tribunals and the Employment Appeal Tribunal.
4. Tribunals have changed over the years but the system can still be complicated and inefficient with a heavy reliance on paper documents. Ageing IT systems and complex and bureaucratic processes are barriers to parties preparing and presenting their own cases. Tribunals need reform to support parties to present their own cases simply and to obtain justice more swiftly; to reduce complexity in language, process and systems; and to reduce the costs of the tribunal system to taxpayers. Changes include:
  - **digitising the whole claims process**, so that claims are able to be made and subsequently processed online, enabling electronic communication between the individuals and the tribunal, simplifying the process, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations convenient to them;
  - **delegating a broad range of routine tasks from judges to caseworkers** - this is about allowing procedural decisions that do not determine the outcome of the case to be made at a proportionate level so that judges can focus on those matters where their legal expertise and knowledge is needed thereby speeding up the resolution of cases;

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<sup>1</sup> See Transforming our justice system: <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>



- **tailoring the composition of tribunal panels to the needs of the case** - this is about ensuring that panel members without legal expertise are asked to sit on panels according to their expertise and the needs of the case. The aim is that this expertise will be available across a wider range of cases, so that claimants can be confident that the decisions will be fair and informed. It will also speed up the resolution of disputes allowing individuals to have swifter closure; and
  - **removing any unnecessary restrictions on how a particular type of case must be determined** – this is about ensuring that simple cases can be resolved by simple methods. It will be based on the specific needs of the dispute and the individual user, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations most convenient to them.
5. The reforms will be implemented in a way that preserves the current strengths of each of the tribunals. For example, in Employment Tribunals and the Employment Appeal Tribunal this would include the specialist knowledge of the judiciary and the availability of free conciliation and advice from the Advisory, Conciliation and Arbitration Service (Acas). The aim is that users who want to engage with the system on a digital basis will be able to do so.
  6. For most tribunals, the planned reforms can largely be delivered by secondary legislation within the existing powers contained in the Tribunals, Courts and Enforcement Act 2007. We will need to make some changes to the Employment Tribunals Act 1996 to implement the changes to Employment Tribunals and the Employment Appeal Tribunal.
  7. This means that Employment Tribunals and the Employment Appeal Tribunal are likely to be amongst the last major tribunals to be fully reformed. They will, therefore, benefit from improvements identified during the implementation of reforms in other tribunals.
  8. Procedural matters in all tribunals except for Employment Tribunals and the Employment Appeal Tribunal, and the civil and criminal courts, are the responsibility of statutory independent rule committees and/or the senior judiciary. **We want to bring all the tribunals in line and therefore we will transfer the responsibility for procedural rules in Employment Tribunals and the Employment Appeal Tribunal to the independent Tribunal Procedure Committee.** The Senior President of Tribunals will be responsible for determining panel composition. The Department for Business, Energy and Industrial Strategy will retain responsibility for employment law policy. The Ministry of Justice will be responsible for procedural policy in Employment Tribunals and the Employment Appeal Tribunal. This will ensure that the department responsible for funding and the operation of the system is responsible for business delivery.
  9. Where the Ministry of Justice carries out functions required by legislation owned by another department, it consults with that department before making changes. The Ministry of Justice will therefore consult the Department for Business, Energy and Industrial Strategy as the department responsible for employment law policy before making any changes to the rules in Employment Tribunals.
  10. This is a joint consultation by the Department for Business, Energy and Industrial Strategy and the Ministry of Justice. It sets out where specific changes to primary legislation are needed to make sure that the planned reforms can be successfully and appropriately

implemented in Employment Tribunals and the Employment Appeal Tribunal and seeks views on what factors should be considered when making changes and implementing them.

# Modernising and reforming the Employment Tribunal system

The Government intends to modernise and reform the Employment Tribunal system and the Employment Appeal Tribunal to provide proportionate and effective routes for resolving disputes through a streamlined and simplified process while ensuring access to expertise.

## The unique position of the Employment Tribunal

11. Since their introduction in the mid-1960s Employment Tribunals and the Employment Appeal Tribunal, or industrial tribunals as they were then known, have changed dramatically. From a single jurisdiction decision-making body, Employment Tribunals and the Employment Appeal Tribunal now have jurisdiction to determine over 70 different types of claim. Their unique position as a separate pillar or entity within the wider tribunal system was originally put in place to reflect the fact they were designed to resolve disputes between individuals rather than between an individual and the state. In common with other tribunals, they have been designed to be more informal and accessible than the civil courts, allowing individuals who do not have legal representation to present their cases effectively.
12. Uniquely amongst the tribunals managed by HM Courts and Tribunals Service, the Secretary of State for Business, Energy and Industrial Strategy has remained responsible for policy and legislation on procedural matters in Employment Tribunals. Over time, this has led to the development of differences in the way that these tribunals operate compared to other tribunals and the wider justice system.
13. There has been change in Employment Tribunals designed to help individuals, such as the simplification of the Employment Tribunal rules in 2013. However, overall Employment Tribunals and the Employment Appeals Tribunal have not kept pace with the drive towards simpler justice seen in other tribunals. We do want to change this and it can be done in a way that recognises the differences between Employment Tribunals and the Employment Appeal Tribunal and the rest of the tribunal system.
14. We also want to make sure that legal expertise in Employment Tribunals and the Employment Appeal Tribunal can be focused on those issues that require it. This means that administrative decisions will be given to those staff best placed to make them and if a case decision can be made online we should support this where appropriate.
15. But many of these reforms cannot be delivered under the current primary powers. So we need to make some changes to the legislative framework as set out in the Employment Tribunals Act 1996.

16. The Government recognises that the judiciary and non-legal members in Employment Tribunals and the Employment Appeal Tribunal bring particular specialist expertise and knowledge to their work which allows them to deal with the enormous breadth and complexity of claims heard. We are clear that any changes to current arrangements would need to be implemented in such a way as to ensure that appropriate expertise continues to be available whenever it is required for a case.
17. The Government, therefore, seeks views on which factors unique to Employment Tribunals and the Employment Appeal Tribunal should be considered when amending this legislation to make sure that it does not lose its current strengths.

### Modernising the handling of Employment Tribunal claims

18. Employment Tribunals and the Employment Appeal Tribunal are well developed in terms of digitally enabled services in comparison with the other tribunals, and already make extensive use of online applications. Around 90% of Employment Tribunal claims are lodged online, and applications for help with fees (formerly known as the remissions scheme) can also be made online. This contrasts with the rest of the tribunals where, generally speaking, claims continue to have to be submitted on paper. However, even in Employment Tribunals and the Employment Appeal Tribunal, once the claim is received it must still be printed off and thereafter processed in the same way as if it had been submitted on paper. This is a considerable waste of resources. Managing a claim electronically would be quicker and more efficient, providing a better service to users of the system, and better value for both users and the Government.
19. The reform programme specifically aims to increase the digitisation of process as a means of making the system more accessible, simple and cost-effective. This is about sharing essential information faster and safely leading to swifter resolution facilitated through a common digital portal. The processes for Employment Tribunals and the Employment Appeal Tribunal will need to be incorporated into the new system.
20. For Employment Tribunals the reform programme would not change the availability of the early conciliation process that occurs before a claim can come to tribunal. Where processes in a case can be automated, this will happen. We will ensure that cases are resolved in the way that is most appropriate and facilitating online correspondence between the individuals involved and the tribunal will reduce processing times and cost for all parties, streamline Her Majesty's Court and Tribunal Service administration and potentially significantly speed up the resolution of employment disputes.
21. An enhanced digital service offers wider opportunities. Some cases might be suitable for online decisions. There has been significant comment on this issue as raised by Lord

Justice Briggs in his review into the civil courts<sup>2</sup>, and concerns about whether that would be appropriate in the context of the type of claims currently heard in Employment Tribunals and the Employment Appeal Tribunal. For example, some legal representative groups said in their response to the interim Briggs report that whilst some simple wage claims might be suitable for alternative approaches, complex claims such as discrimination would be wholly unsuitable for online determinations.<sup>3</sup> The Government agrees with this view.

22. The Government is, therefore, keen to ensure that the operation of Employment Tribunals and the Employment Appeal Tribunal is sufficiently flexible to allow this where it is proportionate and appropriate. The Government **is interested in stakeholder views on the factors that might make particular cases heard in Employment Tribunals and the Employment Appeal Tribunal suitable to be dealt with through a digital medium.**
23. Moving to a more digitally enabled system will pose challenges for some potential users of the system who cannot access or will have difficulty in accessing it without appropriate support. The Government acknowledges that this is an important consideration across the justice system and that appropriate targeted support will be required to ensure that those with limited or no digital capability are not disadvantaged.
24. We have already sought the views of users on potential solutions to this issue as part of the *Transforming our justice system* consultation published on 15 September<sup>4</sup>. This document sets out that in order to make sure that services can be used by everyone, the Government expects to include the following as part of its approach:
- Face-to-face assistance – for example, aiding completion of an online form. This type of service may be supplied by a third party organisations in some cases;
  - A telephone help service offering similar advice, which we would expect to be staffed by Her Majesty’s Court and Tribunal System;
  - Web chat to guide people through online processes; and
  - Access to paper channels for those who require it.
25. We expect to publish the response to that consultation in the next few months and **the Government is also interested to understand if there might be any specific factors that might need to be considered in the context of Employment Tribunals and the Employment Appeal Tribunal.**

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<sup>2</sup> Civil Court Structure Review: Interim Report. <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf> and Civil Court Structure Review: Final Report. <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>

<sup>3</sup> [http://www.elaweb.org.uk/sites/default/files/docs/ELA%20Response\\_Briggs%20LJ%20Review\\_13Nov15%20%281%29.pdf](http://www.elaweb.org.uk/sites/default/files/docs/ELA%20Response_Briggs%20LJ%20Review_13Nov15%20%281%29.pdf)

<sup>4</sup> See *Transforming our justice system: summary of reforms and consultation link* <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals>

**Question 1: Do you agree that with the right system in place the specific needs of users of Employment Tribunals and the Employment Appeal Tribunal can be accommodated in a more digitally based system?**

**Question 2: What issues do you think need to be considered when deciding whether a claim would be suitable for online consideration? Please give reasons.**

## Delegation of judicial functions to caseworkers

26. The proportionate resolution of disputes is one of the key principles of justice transformation. In line with this, the appropriate delegation of judicial functions to suitably legally qualified or trained Her Majesty's Court and Tribunal Service staff, under judicial supervision, is being applied across the civil and family courts and tribunals systems. The concept of delegation in the unified tribunals system and civil courts is not new - both the Tribunal, Courts and Enforcement Act 2007 and Civil Procedure Act 1997 have specific provision for procedural rules to permit functions to be delegated to Her Majesty's Court and Tribunal Service staff<sup>5</sup>.
27. For the unified tribunals, a new role of 'Tribunal Case Workers' has been created. The role of the Tribunal Case Workers and the type of work they are authorised to undertake is agreed with the senior tribunal judiciary and the Senior President of Tribunals. The types of work currently undertaken by Tribunal Case Workers in other tribunals are mainly procedural and include activities such as the consideration of the timeliness of appeals and applications, permitting a party to amend a document, and staying (or sisting in Scotland) proceedings.
28. These are just examples and far from the full range of delegated duties being undertaken across different tribunal jurisdictions. The extent to which some or all of these types of work are delegated differs from tribunal to tribunal depending upon the nature of the jurisdiction. All delegations are wholly dependent on the agreement of the relevant judiciary and are not simply a matter for Her Majesty's Court and Tribunal Service. An important safeguard is that a party unhappy with a decision taken under a delegated provision may apply to the tribunal in writing for the decision to be considered afresh by a judge.
29. This system works effectively and with appropriate safeguards throughout the tribunal system. It is the Government's view that case management functions should be delegated to relevant staff in Employment Tribunals and the Employment Appeal Tribunal accompanied by the same important safeguards. This will mean that delegations will be wholly dependent on the agreement of the judiciary.
30. We will need to make legislative changes to facilitate the proposed reforms. We need to ensure that the underpinning legislation is flexible enough to allow whichever model of delegation is considered appropriate by the judiciary. **It is the Government's intention to**

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<sup>5</sup>See paragraph 3(1) of Schedule 5 to the TCE Act 2007: <http://www.legislation.gov.uk/ukpga/2007/15/schedule/5>; and paragraph 2 of Schedule 1 to the CPA 1997: <http://www.legislation.gov.uk/ukpga/1997/12/schedule/1>



**ensure that the primary powers are sufficiently flexible to provide for wider delegation in Employment Tribunals and the Employment Appeal Tribunal.** Details of the activities to be delegated under the amended powers will be entirely a matter for senior tribunal judiciary on the basis of the specific needs and features of the Employment Tribunal system, but we would certainly expect any delegation to fall short of the substantive consideration and determination of an individual's employment rights.

**Question 3: What factors do you think should be taken into consideration when creating the scope to delegate judicial functions in Employment Tribunals and the Employment Appeal Tribunal? Please give reasons.**

**Question 4: Are there any specialist skills that a caseworker dealing with Employment Tribunals and the Employment Appeal Tribunal would need, distinct and different from those required for carrying our casework in other tribunals? Please give details.**

## Tailoring the panel to the needs of the case

31. In all areas of the justice system, the Government is reviewing whether the current approach to panel composition is proportionate and effective. In the unified system, decisions about panel composition (whether the judge sits alone or with non-legal members) are wholly a matter for the Senior President of Tribunals under the terms of the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 (the Composition Order).
32. The Government believes that an approach where non-legal members are called upon as a matter of course without considering the needs of the case is no longer appropriate or sustainable. We believe that the right approach is one where non-legal members are deployed where circumstances require it, and their expertise is relevant to the outcome of the case and this includes through online means if that is most appropriate.
33. The Government is currently consulting as part of the *Transforming our justice system* consultation on putting in place changes to allow the Senior President of Tribunals to determine panel composition purely on the needs of the modern reformed tribunal system and its users, rather than basing decisions on the historic needs of those tribunals.
34. Section 2(3) of the Tribunal, Courts and Enforcement Act 2007 states that the Senior President of Tribunals must consider the need for tribunals to be accessible, fair, and handled quickly and efficiently, for tribunal members to be experts in the law or subject matter of the tribunal, and to develop innovative methods for resolving disputes. This important safeguard will make sure that appropriate expertise from non-legal members will continue to be provided where it is necessary.
35. In Employment Tribunals, section 4(1) of the Employment Tribunals Act 1996 provides that a panel will generally consist of a judge and two non-legal members. However, section 4(3) of the Employment Tribunals Act 1996 sets out where a judge sitting alone may currently hear and determine a case (including breach of contract, holiday and redundancy pay, and since 2012, unfair dismissal). In each of these areas the Employment Tribunal judge retains

the discretion to convene a panel with additional members if he or she considers that the circumstances of the particular case merit this.<sup>6</sup>

36. Section 4(4) of the Employment Tribunals Act 1996 provides for the Secretary of State for Business, Energy and Industrial Strategy and the Lord Chancellor, acting jointly, to amend the list of cases that may currently be heard in Employment Tribunals by a single judge. This is therefore a ministerial decision which contrasts with the practice in the rest of the justice system, where decisions on judicial allocation and deployment are judicial functions.

37. The Government proposes, therefore, to bring the practice in Employment Tribunals and the Employment Appeal Tribunal in line with the practice elsewhere in the justice system, specifically the unified tribunals system (incorporating any reforms following the *Transforming our justice system* consultation), and provide for decisions on panel composition to be a judicial function that can be exercised by the Senior President of Tribunals. This will make sure that these decisions are taken by those who are best placed to understand the needs of the users and the operation of the system and that the same safeguards will apply. It will allow the better and more proportionate use of the expertise of non-legal members in industry specific or discrimination issues for example.

**Question 5: Are there specific issues relating to Employment Tribunals and the Employment Appeal Tribunal that need to be taken into consideration in relation to making changes to the law regarding panel composition? Please give details.**

### Wider considerations of a reformed system

38. The Ministry of Justice is currently reviewing the impact of the introduction of Employment Tribunal fees. The review is considering the impact of the introduction of fees in Employment Tribunals against the original objectives, which were:

- To transfer a proportion of the cost of the tribunals to those who use them where they can afford to do so;
- To encourage people to use alternative dispute resolution services, such as Acas's conciliation service; and
- To protect access to justice.

39. We will publish the conclusions of the review in due course and any adjustments to the current fee structure will be brought for consultation.

40. An important factor for consideration in relation to decisions about reforming the Employment Tribunal system, is the UK Government's commitment to transfer the functions of reserved tribunals to Scotland as part of the implementation of the Smith Commission

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<sup>6</sup> See section 4(5) of the Employment Tribunals Act 1996:<http://www.legislation.gov.uk/ukpga/1996/17/section/4>



Agreement. This will take effect through the process set down in section 39 of the Scotland Act 2016. Following the transfer of responsibility for managing reserved tribunals in Scotland, the Scottish Government will be responsible for deciding how those tribunals are managed in future. The precise timing of that transfer has not yet been agreed by the UK Government and the Scottish Government.

41. While the UK Government will continue to be responsible for managing the operations of Employment Tribunals and the Employment Appeal Tribunal until they are transferred to Scotland, we recognise that any reform of those tribunals could have implications for that transfer. The UK Government and the Scottish Government have been working closely on plans to implement the Smith Agreement and will continue to do so in light of decisions made following this consultation.

# Proposed approach to implementing reform in Employment Tribunal System

An important prerequisite to the successful implementation of the planned reforms in Employment Tribunals and the Employment Appeal Tribunal is that the underpinning legislation needs to be flexible enough to support their application in a way that is appropriate to Employment Tribunals and Employment Appeal Tribunal user needs.

42. The Government considers that the restrictive nature of the provisions in the Employment Tribunals Act 1996 is a barrier to the application of transformational reform in Employment Tribunals and the Employment Appeal Tribunal.
43. There has been some public discussion about the future of Employment Tribunals and the Employment Appeal Tribunal in the justice system by, for example, the Law Society and Employment Lawyers Association, as well as by Lord Justice Briggs in his review of the Civil Court Structure published on 27 July. Whilst the Government has decided that action is needed to bring the processes in Employment Tribunals and the Employment Appeal Tribunal in line with the rest of the justice system, it does not consider that radical structural change is necessary to achieve this. However, the powers to make provisions setting out procedures and processes contained in the Employment Tribunals Act 1996 should be updated and brought into line with those applicable to the wider tribunals system. It will keep the separate nature of Employment Tribunals and the Employment Appeal Tribunal under review and consider if more substantive benefits could flow from further change
44. Under this approach, Employment Tribunals and the Employment Appeal Tribunal would continue to retain separate rules from the unified system but the power to make rules would be transferred to the independent Tribunal Procedure Committee (rather than a Minister in the Department for Business, Energy and Industrial Strategy or the Lord Chancellor as is currently the case). When making procedural rules, the Tribunal Procedure Committee is required to appropriately address the specific user requirements of the individual tribunal and has the power to bring in external expertise to support the development of rules where necessary. **The Government proposes to revise the membership of the Tribunal Procedure Committee to reflect its wider remit. Appropriate representatives from the employment sector such as an employment judge and a suitably experienced practitioner should be appointed to the committee for this purpose. This will enable the rules to be kept under review and provide a statutory underpinning to the sector's participation in the process.**

**Question 6: What criteria should be used to determine the appointment of the new employment practitioner member of the Tribunal Procedure Committee? Please give reasons.**

45. The Tribunal Procedure Committee is also specifically required, under paragraph 28(1) of Schedule 5 to the Tribunal, Courts and Enforcement Act 2007, to undertake appropriate consultation before making tribunal rules.<sup>7</sup> This requirement would also apply to the making of separate rules for Employment Tribunals and the Employment Appeal Tribunal. Any rule changes affecting the Employment Tribunal system would, of course, be made in consultation with the Department for Business, Energy and Industrial Strategy as the department responsible for employment law policy. These requirements, together with the proposed changes to the membership of the Tribunal Procedure Committee, would ensure that stakeholders and users of Employment Tribunals and the Employment Appeal Tribunal would continue to have appropriate involvement in the process.
46. Similarly, responsibility for determining the composition of tribunal panels in Employment Tribunals and the Employment Appeal Tribunal would be brought in line with the approach taken in the unified tribunals system and would be delegated from the Lord Chancellor to the Senior President of Tribunals. As already noted, the Senior President of Tribunals is subject to certain requirements when exercising statutory functions which would ensure that necessary expertise would be provided where necessary in Employment Tribunals and Employment Appeal Tribunal cases.
47. Maintaining the current structural arrangements for Employment Tribunals and the Employment Appeal Tribunal will ensure that the familiar, understood and trusted brand would remain, but the transfer of responsibility for procedural matters would also make sure that a common approach could be taken, where appropriate, across the tribunals system. Moreover, stakeholders themselves would have a greater and more direct involvement in the development of rules for Employment Tribunals and the Employment Appeal Tribunal through the expanded membership of the Tribunal Procedure Committee allowing them to make sure that issues were promptly and appropriately addressed.

**Question 7: Do you agree that the proposed legislative changes will provide sufficient flexibility to make sure that the specific features of Employment Tribunals and the Employment Appeal Tribunal can be appropriately recognised in the reformed justice system? Please give reasons.**

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<sup>7</sup> See paragraph 28(1) of Schedule 5 to the Tribunal, Courts and Enforcement Act 2007  
<http://www.legislation.gov.uk/ukpga/2007/15/schedule/5>

# Impact and Equalities Impact Assessments

48. To accompany this document we have published Impact and Equalities Impact Assessments.

**Question 8: Do you anticipate the impacts of the proposed reform to be disproportionately large for small or micro sized businesses? Please explain your answer supported by evidence**

**Question 9: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessment, resulting from these proposals? Please give reasons.**

**The attached Impact Assessment contains the Government's preliminary analysis setting out in detail the costs and benefits of the proposals. Further detailed consideration of impacts will feature in relevant impact assessments when the reform design principles are applied to Employment Tribunals and the Employment Appeal Tribunal. If you can provide any information and/or data that would inform the evidence base and assist with monetisation in future, please send it alongside your response to this consultation.**

## Consultation Questions

1.	Do you agree that with the right system in place the specific needs of users of Employment Tribunals and the Employment Appeal Tribunal can be accommodated in a more digitally based system?
2.	What issues do you think need to be considered when deciding whether a claim would be suitable for online consideration? Please give reasons.
3.	What factors do you think should be taken into consideration when creating the scope allow increased flexibility to delegate judicial functions to caseworkers in Employment Tribunals and the Employment Appeal Tribunal? Please give reasons.
4.	Are there any specialist skills that a caseworker dealing with Employment Tribunals and the Employment Appeal Tribunal would need, distinct and different from those required for carrying our casework in other tribunals? Please give reasons.
5.	Are there any specific issues relating to Employment Tribunals and the Employment Appeal Tribunal that need to be taken into consideration in relation to making changes to the law regarding panel composition? Please give reasons.
6.	What criteria should be used to determine the appointment of the new employment practitioner member of the Tribunal Procedure Committee? Please give reasons.
7.	Do you agree that the proposed legislative changes will provide sufficient flexibility to make sure that the specific features of Employment Tribunals and the Employment Appeal Tribunal can be appropriately recognised in the reformed justice system? Please give reasons.
8	Do you anticipate the impacts of the proposed reform to be disproportionately large for small or micro sized businesses? Please explain your answer, referring to evidence as

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	necessary.
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| <b>9</b> | Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessment, resulting from these proposals?<br>Please give reasons. |
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The Impact Assessment contains the Government's preliminary analysis setting out in detail the costs and benefits of the proposals. Further detailed consideration of impacts will feature in relevant impact assessments when the reform design principles are applied to Employment Tribunals and the Employment Appeal Tribunal. If you can provide any information and/or data that would inform the evidence base and assist with monetisation in future please send it alongside your response to this consultation.

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