

Freedom of Information request 341/2013

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Information request

The principle of the separation of powers is the cornerstone of an independent and impartial justice system. Everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law as defined by European Court of Human Rights Article 6 and EU Charter of Fundamental Rights Article 47.

Although there shall not be any inappropriate or unwarranted interference with the judicial process by either of the parties or the executive, the DWP by the use of its own legislation are able to oblige the tribunals to conform to their requirements.

Sections 12 to 20 of the Social Security Act 1998 and other DWP legislation gives statutory obligations to the tribunals, i.e. procedural instructions and directions on how the tribunals must carry out their functions, the construction of the tribunals and also as to their obligations regarding who they must use for medical examinations and consequently the type of medical evidence to use. The Secretary of State who is also a party to the proceedings, is thus able to encroach on the tribunals independence.

- What measures are being taken by the DWP to make its legislation compatible with the requirements of EU legislation as mentioned above.
- What measures are being taken by the DWP to reduce the impact of its own legislative interference on the independence of the tribunals.

DWP response

The Department is not taking any measures as noted in the request because (i) the Department's legislation is compatible with the EU legislation cited; and, (ii) this means that there is no adverse impact which it would be necessary to review. If you were correct in your concerns this would have been identified by Parliament when the Social Security Act 1998 was being debated; would have been challenged by the Ministry of Justice, who now has responsibility for benefit tribunals; or would have been challenged by Europe itself, which has heard numerous UK benefit appeals in the last decade. In addition, taking into account the outcomes of benefit appeals down the years, the statistics clearly indicate that the independence of tribunals has not been compromised by the actions of this department.