

Prisons and Courts Bill

Reforming the Employment Tribunal system

Introduction

1. The Government consulted on its plans for applying the principles of wider court and tribunal reform to the employment tribunal system as part of the *Reforming the Employment Tribunal System* consultation¹.
2. The reforms are underpinned by three design principles to ensure an employment tribunal system that is just, proportionate and accessible to provide maximum certainty for all parties.
3. The Employment Tribunals Act 1996, which determines how cases are managed in the Employment Tribunal system (ETs), needs updating to allow these reforms to be delivered and allow a more flexible legislative framework to address future developments.

What is the current position?

4. The powers in the Employment Tribunals Act 1996 are more restrictive than the equivalent powers in the Tribunals, Courts and Enforcement Act 2007 which apply to most other tribunals and, in contrast with the First-tier and Upper Tribunals, the Secretary of State for BEIS and the Lord Chancellor, respectively, have remained responsible for policy and legislation on procedural matters in the employment tribunals and Employment Appeal Tribunal. 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.
5. Although there has been change in Employment Tribunals designed to help individuals, such as the simplification of the Employment Tribunal rules in 2013, overall the employment tribunals system not kept pace with the drive towards simpler justice seen in other tribunals.
6. The full scope of planned reforms would not be able to be implemented under this current framework. The Government recently consulted on proposals to make necessary changes to the 1996 Act to bring the employment tribunal system more closely in line with the flexibility of the rest of the unified tribunals system, whilst enabling the preservation of its unique strengths.

What are the proposed changes?

7. The Tribunal Procedure Committee will be able to determine how cases are managed in employment tribunals and the Employment Appeal Tribunal more flexibly and responsively. As with the First-tier Tribunal and the Upper Tribunal, the power to make procedural rules will be conferred on the independent, judicial-led Tribunal Procedure Committee whose membership will be expanded to reflect the Committee's wider remit. This will enable any necessary new rules to be scoped, developed and implemented promptly based on user feedback.

¹ <https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>

8. The Lord Chancellor will be responsible for determining panel composition and will be able to delegate this to the Senior President of Tribunals to carry this out as a judicial function. This will provide necessary flexibility to make sure that decisions on panel composition can be determined objectively, taking account of the future needs of tribunal users based on the requirements of the case and the way that cases are resolved in a reformed tribunal system.
9. The Tribunal Procedure Committee is modelled on the separate rule committees which make rules of court and it already makes Procedure Rules for the First-tier Tribunal and Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007. The revised powers in respect of procedure rules and panel composition for the Employment Tribunal system are modelled on those contained in the Tribunals, Courts and Enforcement Act 2007 which apply to the First-tier Tribunal and Upper Tribunal.
10. These measures will not directly change the way the ETs operates, but rather will provide more flexible and responsive rule-making powers. Whilst specific decisions relating to the operation of the tribunals will rest with the TPC and the senior judiciary, examples of how these powers might be used would include the delegation of routine judicial tasks to caseworkers, and greater flexibility to adapt panel composition according to the needs of the case. This will ensure that the wider justice reforms can be effectively implemented, whilst preserving the many unique strengths in the ETs. In general, users of the ETs can expect the reformed system to be quicker, more efficient and more suitable to individual needs, with simpler processes, greater use of digital technology and more user choice in their interaction with the tribunal.

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