

The Scotland Bill – Consultation on Draft Order in Council for

The Transfer of Specified Functions of the Employment Tribunal to the First-tier Tribunal for Scotland

January 2016

The Scotland Bill - Consultation on Draft Order In Council for:

The Transfer of Specified Functions of the Employment Tribunal to the First-tier Tribunal for Scotland.

1. This consultation seeks your views on a draft Order in Council that makes provision to transfer specified functions of the Employment Tribunal to the First-tier Tribunal for Scotland. The proposed transfer of functions would allow the First-tier tribunal to hear Scottish employment cases (as defined in the draft Order), along with a number of cases that do not fit within that category but which have a sufficient link to Scotland and should therefore be heard in a Scottish tribunal.

Background

2. Employment Tribunals are currently managed by Her Majesty's Courts and Tribunals Service; they sit as a separate pillar of the Unified Tribunals Structure established under the Tribunals, Courts and Enforcement Act 2007. Employment Tribunals deal with a number of different types of dispute arising from the employment relationship. Their jurisdiction is conferred by the Employment Tribunals Act 1996 and a range of other provisions contained in both primary and secondary legislation.
3. Recommendations were made at paragraph 63 of the Smith Commission Agreement stating that: "All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament..." Paragraph 64 clarified that "the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved..." Subsequently, Clause 37 of the Scotland Bill makes legislative provision for the qualified transfer of competence over functions of the reserved tribunals to be specified by Order in Council. The draft Order in Council illustrates the proposed approach to be taken in transferring competence over functions in respect of the Employment Tribunal.

Process for Drafting the Order

4. The Draft Order in Council has been prepared by the Department for Business, Innovation and Skills (BIS) in discussions with the Scottish Government and wider UK Government departments. The draft Order sets out the main framework for the legal and policy matters relevant to the transfer of the Employment Tribunals to Scotland. The main provisions in the draft Order concern the definitions of a Scottish case (article 5) and the criteria that establish when other cases should be heard by the Scottish tribunal, under the provisions governing concurrent jurisdiction (article 7).
5. This draft Order has been prepared to illustrate the general approach to transfer and as such may be subject to further substantive amendment as a result of on-going discussions between the Scottish and UK Government, the judiciary and other key

stakeholders. It is to be noted that the draft Order can only be laid for approval, once the Scotland Bill has received Royal Assent. Scrutiny of the Scotland Bill is on-going.

Policy Aims

6. The Scottish Government is fully supportive of the Smith Commission's recommendations to devolve all powers in relation to the management and operation of all reserved tribunals. This marks an important step in the evolution of devolved government in Scotland and it includes a major transfer of jurisdiction and caseload to the Scottish Tribunals.
7. The Scottish Government is keen to ensure that Scotland has a modern, efficient and effective tribunals system that meets the needs of the Scottish people. In taking control of the management and administration of the Employment Tribunals, we seek to contribute specifically to the following National Outcomes:
 - a. We have tackled the significant inequalities in Scottish society.
 - b. Our public services are high quality, continually improving, efficient and responsive to local people's needs.
8. In order to facilitate these policy aims, the Tribunals (Scotland) Act 2014 established a unified tribunals structure, through the creation of the First-tier Tribunal for Scotland and the Upper Tribunal (known as the Scottish Tribunals). It is envisaged that the Employment Tribunal and all subsequent reserved tribunal transfers will be fed into this new structure. Regulations will be made under the Tribunals (Scotland) Act to ensure that transferring tribunals are able to effectively discharge their business.
9. The Scottish Government is mindful of the need to ensure that individuals will be able to effectively enforce their employment rights, and that the underlying employment law and policy will remain reserved.

Underlying Legal Framework

10. Clause 37 of the Scotland Bill (as brought to the House of Lords on 10th November 2015) proposes an amendment to Part 3, Schedule 5 of the Scotland Act 1998. This clause allows for the *transfer of competence over tribunal functions* which relate to *reserved matters*, and which deal with *Scottish Cases*. Functions can be transferred to a *Scottish Tribunal* named in an Order in Council. The proposal arises from a recommendation made at paragraph 63 of the Smith Commission Agreement. The clause provides for a *qualified transfer of competence over specified functions*, by means of an Order in Council.
11. Clause 37 requires that the Order itself must specify the functions to which the transfer relates, and the Scottish tribunal to which those functions are being transferred. Specifically, the Order may specify the category of Scottish Cases to which the transfer will apply. Clause 37 allows for the Order to make any provision which is considered necessary or expedient for the purposes of, or in consequence of, the transfer of functions. Such provision is made in this draft Order to outline the conditions establishing concurrent jurisdiction.

12. The UK Government has undertaken to amend the Employment Tribunals Act 1996, to reflect that, post transfer, the Secretary of State will only be able to make procedural rules for the Employment Tribunal in England and Wales. The UK government will also, in consequence of the making of this Order, amend the substantive employment legislation to reflect that the First-tier Tribunal for Scotland will have jurisdiction to hear Scottish employment cases, and those cases that have a sufficient connection with Scotland, by virtue of concurrent jurisdiction.
13. The draft Order has yet to be fully populated with the consequential amendments that flow from the transfer of the tribunal. Schedule 2 sets out some of the amendments that will be made to the Employment Tribunals Act 1996, by way of illustration. Further amendments to relevant primary and secondary legislation will have to be included, as will specific transitional provisions, which will be subject to on-going intergovernmental discussions.
14. Whilst the draft Order does not deal specifically with the Employment Appeal Tribunal (EAT), it is envisaged that equivalent provisions for the EAT will be made in relation to Scottish cases, so that these can be heard in Scotland's Upper Tribunal.

Provisions in the Draft Order

15. The draft Order must be approved by the Scottish Parliament and by each House of the UK Parliament.
16. *Article 1* – sets out the definitions that have so far been identified. *Article 2* – sets out the relevant functions of the employment tribunal by reference to the functions conferred upon the tribunal under sections 2 and 3 of the Employment Tribunals Act 1996. *Article 3* – sets out that the functions are to be transferred to the First-tier Tribunal for Scotland.

Conditions and Restrictions

17. *Article 4* – refers to the specific conditions and restrictions that will apply to the transfer, these are set out in *Schedule 1* to the Order. The Scottish Government recognises that the conditions which have so far been identified reflect specific substantive aspects of the underlying employment legislation, which will remain reserved. These include:
 - a. That the Secretary of State be allowed to attend hearings concerning payments from the National Insurance Fund, (para. 1 (a)).
 - b. That all employment cases continue to be subject to early conciliation procedures conducted by ACAS, pursuant to article 18A of the Employment Tribunals Act 1996, (para. 1(b)).
 - c. That the First-tier Tribunal complies with the requirement to send certain documents under the Equality Act 2010 to the Commission for Equality and Human Rights, (para. 1(c)).
 - d. That specific rules are made to govern equal pay proceedings, pursuant to the current Employment Tribunals (Constitution and Rules of Procedure Regulations 2013), (para. 1(d)).

- e. That in national security proceedings, the First-tier Tribunal for Scotland, when dealing with employment cases, will be subject to rules of procedure made by the Secretary of State, (para. 1(e)).

Mutual Requirements to Consult

18. Paragraph 2 of Schedule 1 requires that the Lord President of the Court of Session should consult with the Secretary of State on the rules of procedure in Scottish cases and in relation to concurrent cases. The UK Government will make similar provision so that the Secretary of State should consult with the Lord President before making rules of procedure for employment cases in England and Wales, and in relation to concurrent cases. It is envisaged that these mutual consultation requirements will be exercised informally, for the purposes of sharing best practice. Importantly, the consultation requirements do not require that the rules of procedure to be the same in both jurisdictions.

Scottish Cases

19. The provisions governing Scottish cases are designed to identify the cases that should only be heard by a Scottish Tribunal. The working definition provided in Article 5 of the draft Order, reflects the existing tribunal rules of procedure. It states that Scottish cases are:
 - a. Those where a respondent resides or carries on a business in Scotland; *and*
 - b. One or more of the acts or omissions complained of took place in Scotland; *and*
 - c. The claim relates to a contract under which the work is performed wholly or ordinarily in Scotland.
20. We believe that this definition adequately identifies the category of cases that should only be heard in the Scottish tribunal.

Concurrent Jurisdiction

21. This category of cases potentially has links with both Scotland and England and Wales. Under the current system they could potentially be heard either north or south of the border. Article 7 of the draft Order specifies that those cases which are not Scottish cases, but which nevertheless have a substantial connection with Scotland may be heard in Scotland. Accordingly, individuals may apply to the tribunal to have their case heard in Scotland where:
 - a. A respondent (or respondents) resides or carries on a business in Scotland; *or*
 - b. Where the acts or omissions complained of took place wholly or mainly in Scotland; *or*
 - c. Where the claim relates to a contract under which the work has been performed wholly or mainly in Scotland; *or*
 - d. Where the tribunal has jurisdiction to hear the claim by virtue of a connection with Great Britain, and the connection in question is wholly or mainly a connection with Scotland.

22. We believe that this definition adequately captures those cases that have a substantial connection with Scotland and therefore should be heard in the Scottish tribunal.

Transfer of Proceedings

23. *Article 8* of the Draft Order makes provision for the President of the relevant chamber of the First-tier tribunal for Scotland to transfer cases to England and Wales, by agreement with the President of the Employment Tribunal (England and Wales). Equally, the UK Government will make provision in the rules of procedure for England and Wales, for cases to be transferred to the First-tier Tribunal by agreement with the relevant chamber president. It is envisaged that a small number of cases will need to be transferred between jurisdictions each year and that this provision will facilitate the smooth operation of the respective tribunal systems.

Rules to regulate Practice, Procedure and Fees

24. *Article 9* sets out that the Scottish Parliament will have legislative competence to set rules of procedure for the tribunal, pursuant to the powers the Scottish Parliament has already established for making rules of procedure in the Scottish Tribunals, under the Tribunals (Scotland) Act 2014.
25. Article 9 further clarifies that legislative competence to set rules of procedure includes the power to impose fees, set relevant fee levels or indeed abolish the currently applicable fees in cases where the Scottish tribunal will exercise jurisdiction to hear the case. The Scottish Government is committed to abolishing fees in the Employment Tribunal in order to ensure that all employees have a fair opportunity to have their case heard.

Transitional Provisions

26. The relevant transitional provisions have not yet been settled. These will be the product of continuing negotiations between the two governments. Transitional provisions will be made with a view to facilitating the smooth transfer of the tribunal and to facilitate the effective disposal of its on-going caseload.

Questions on the Transfer of Specified Functions of the Employment Tribunal

Q. 1 Do you consider that the provisions in article 5 of the draft Order adequately reflect what is a Scottish case?

Q. 2 Do you feel that the provisions in article 7 appropriately define those cases that have a sufficient connection to Scotland?

Q. 3 Are you content with the draft Order's other provisions?

Q. 4 Do you have any further comments you wish to make on the opportunities provided by qualified transfer of the Employment Tribunal to Scotland?

[This instrument contains a draft outline of proposals for an Order in Council arising out of clause 37 of the Scotland Bill. It is a working draft and has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill. Further work and discussions will be required between the Scottish Government and other Government Departments in Westminster before any Order can be finalised. There will also be engagement with key stakeholders]

Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 of the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

201X No. X (L. X)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The [*Draft*] Scotland Act 1998 (Employment Tribunals) Order
201X

Made - - - - ***

Coming into force - - ***

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred by sections 113 and paragraph 2A(2), (4) (6) and (8) of Part 3 of Schedule 5 to the Scotland Act 1998(a).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act(b) a draft of this Order has been laid before and approved by a resolution of each House of Parliament; and laid before and approved by a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council makes the following Order:

(a) 1998 c.46. Paragraph 2A of Schedule 5 was inserted by section x of the Scotland Act 201X.

(b) Paragraphs 1 and 2 of Schedule 7 have been modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the *[Draft]* Scotland Act 1998 (Employment Tribunals and Employment Appeals Tribunal Functions) Order 201[X] and comes into force on *[date]*.

(2) In this Order—

“the 1996 Act” means the Employment Tribunals Act 1996(a),

“the 1998 Act” means the Scotland Act 1998(b),

“the 2014 Act” means the Tribunals (Scotland) Act 2014(c),

“employment claim” means any claim, complaint, reference, application or appeal in respect of which jurisdiction is exercised as mentioned in Article 2(2),

“Scottish case” has the meaning provided for in Article 5,

“employment tribunal” means a tribunal established under section 1(1) of the 1996 Act,

“First-tier Tribunal for Scotland” means the First-tier Tribunal for Scotland established under section 1(1)(a) of the Tribunals (Scotland) Act 2014,

[other definitions].

Specified functions of employment tribunals

2.—(1) The functions mentioned in sub-paragraph (2) are specified for the purposes of paragraph 2A(5) of Part 3 of Schedule 5 to the 1998 Act.

(2) The functions are the functions of exercising the jurisdictions exercised by employment tribunals by virtue of sections 2 and 3 of the 1996 Act.

The specified tribunal

3. The Scottish tribunal specified for the purposes of paragraph 2A(5) of Part 3 of Schedule 5 of the 1998 Act in relation to the functions mentioned in Article 2(2) is the First-tier tribunal for Scotland.

Conditions and restrictions on the transfer of functions

4. The conditions and restrictions in Schedule 1 apply to the transfer of the functions mentioned in Article 2(2) and any exercising of them by the Scottish tribunal.

Scottish Cases

5.—(1) The cases mentioned in sub-paragraph (2) are “Scottish cases” for the purposes of paragraph 2A(2) of Part 3 of Schedule 5 to the 1998 Act.

(2) Those cases are employment claims where the following apply—

(a) the respondent resides or carries on business in Scotland,

(b) the acts or omissions complained of took place in Scotland, and

(c) the claim relates to a contract under which the work is or has been performed wholly or ordinarily in Scotland.

Concurrent jurisdiction

6.—(1) Where there is a transfer of functions in accordance with this Order, the First-tier Tribunal for Scotland may also exercise the functions mentioned in Article 2(2) in relation to concurrent cases.

(a) 1996 c.17

(b) 1998 c.46

(c) 2014 asp 10.

7. A “concurrent case” is an employment claim which is not a Scottish case but in relation to which one or more of the following conditions is met—

- (a) the respondent or one of the respondents, resides or carries on business in Scotland,
- (b) the acts or omissions complained of took place wholly or mainly in Scotland,
- (c) the claim relates to a contract under which the work is or has been performed wholly or mainly in Scotland, or
- (d) the tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is wholly or mainly a connection with Scotland.

[The provisions in relation to Scottish cases and concurrent cases in Articles 5 and 6 above will establish the jurisdiction of the Scottish tribunal once the functions are transferred. Work on finalising the extent of the jurisdiction and any consequential changes to the approach in relation to England and Wales is still ongoing and will be subject to further discussion with stakeholders.]

Transfer of proceedings

8. The President of the relevant Chamber of the First-tier Tribunal for Scotland or the *[an alternative appropriate person]* may at any time, on their own initiative or on the application of a party, with the consent of the President of Employment Tribunals (England and Wales), transfer to an employment tribunal any concurrent cases started in Scotland which could have been presented in England and Wales and in that person’s opinion would more conveniently be determined there.

Powers to regulate practice, procedure and fees

9.—(1) The powers referred to in paragraph (2) may, in relation to the functions mentioned in Article 2(2), be exercised in order to make provision which relates to a reserved matter.

(2) Those powers are the powers of—

- (a) the Court of Session under sections 68 to 70 (tribunal rules)(a) and 71 to 73 (particular matters) of the 2014 Act,
- (b) Scottish Ministers under section 76 of the 2014 Act (tribunal fees).

Amendments to primary and subordinate legislation

10.—(1) Part 1 of Schedule 2, which contains amendments to the 1996 Act, has effect from the coming into force of any transfer, by virtue of this Order, of the functions mentioned in Article 2(2).

(2) Part 2 of Schedule 2, which contains consequential and minor amendments to other primary legislation, has effect from the coming into force of any transfer, by virtue of this Order, of the functions mentioned in Article 2(2).

(3) Part 3 of Schedule 2, which contains consequential and minor amendments to secondary legislation, has effect from the coming into force of any transfer, by virtue of this Order, of the functions mentioned in Article 2(2) .

Transitional provision

11. Transitional provisions relevant to Scottish cases are set out in Schedule 3 to this Order.

(a) To note – these provisions have not yet been commenced. In the meantime, Scottish Ministers have existing rule making powers for the First Tier Tribunal pursuant to paragraph 4 of Schedule 9 of the 2014 Act.

Signatory text

Name
Clerk of the Privy Council

DRAFT

SCHEDULES

SCHEDULE 1

Ref

Conditions and restrictions on the transfer of functions from employment tribunals

1. —(1) Rules of procedure of the First-tier Tribunal must, in relation to that Tribunal's exercising of its functions in Scottish cases and concurrent cases, include provisions—

- (a) to ensure that the Secretary of State shall be entitled to appear and be heard at any hearing in relation to proceedings which may involve a payment out of the National Insurance Fund and shall be treated as a party for the purposes of those proceedings,
- (b) for determining whether a claimant has complied with the early conciliation provisions under section 18A of the 1996 Act (Requirement to contact ACAS before instituting proceedings),
- (c) to ensure that the Tribunal shall send to the Commission for Equality and Human Rights copies of all judgments and written reasons relating to complaints under section 120, 127 or 146 of the Equality Act 2010,
- (d) to govern proceedings in an appeal against an unlawful act notice under section 21 of the Equality Act 2006,
- (e) to govern proceedings in equal value claims,
- (f) to enable the transfer of proceedings in concurrent cases from the First-tier Tribunal for Scotland to employment tribunals, and from employment tribunals to the First-tier Tribunal for Scotland,
- (g) to ensure that where proceedings concern an enactment which provides for conciliation, the Tribunal shall—
 - (i) send a copy of the claim form and the response to an ACAS conciliation officer; and
 - (ii) inform the parties that the services of an ACAS conciliation officer are available to them,
- (h) [*others*]

(2) The requirement in paragraph (1)(c) does not apply to national security proceedings where either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to the proceedings.

(3) National security proceedings in the First-tier Tribunal are to be subject to tribunal procedure regulations made by the Secretary of State.

(4) In this Schedule—

“equal value claim” means a claim relating to a breach of a sex equality clause or rule within the meaning of the Equality Act 2010 in a case involving work within section 65(1)(c) of that Act,

“national security proceedings” means proceedings in relation to which a direction is given, or order is made, under subsections (3) or (4) of section 10 of the 1996 Act.

“[*others*]”

2. The Lord President of the Court of Session must consult with the Secretary of State before making procedure rules for the First-tier Tribunal in respect of proceedings in Scottish cases and concurrent cases with a view to maintaining and promoting, as far as practicable, consistency in matters of practice and the procedure to be followed in proceedings in the employment tribunal and the First-tier Tribunal in relation to employment claims.

SCHEDULE 2

Ref

[Amendments to primary legislation and secondary legislation]

PART 1

Amendments to the Employment Tribunals Act 1996

1. Part 1 of the 1996 Act (employment tribunals) is amended as follows.
2. In section 1(1), after “tribunals” in the first place it occurs, insert “in England and Wales”,
3. In section 2 (enactments conferring jurisdiction on employment tribunals) and in the heading, for “employment tribunals” substitute “appropriate tribunals”.
4. In section 3 (power to confer further jurisdiction on employment tribunals)—
 - (a) in the heading, for “employment tribunals” substitute “the appropriate tribunal”,
 - (b) in subsections (1) and (4), for “an employment tribunal” substitute “the appropriate tribunal”.
 - (c) In subsection (5), after the definition of “appropriate Minister” (but before the “and” following it) insert—

““appropriate tribunal”—

 - (a) in relation to proceedings in England and Wales, means an employment tribunal,
 - (b) in relation to proceeding in Scotland, means the First-tier Tribunal for Scotland,”
 - (d) After subsection (6) insert—

“(7) As to the jurisdiction of the First-tier Tribunal for Scotland in relation to employment claims see the Scotland Act 1998 (Employment Tribunals and Employment Appeals Tribunal Functions Order 201X (S.I. 201X/XXX)).”
5. In section 5 (remuneration, fees and allowances)—
 - (a) omit subsection (1)(b),
 - (b) in subsection 1(c), after “Employment Judge” insert “in England and Wales”.
6. In section 5B (members of employment tribunals: removal from office)—
 - (a) omit subsection (2),
 - (b) omit subsection (3)(a),
 - (c) in subsection (3)(b) omit the words “if paragraph (a) does not apply”,
 - (d) omit subsection (6).
7. In section 5C (Oaths)—
 - (a) omit subsection (1)(a)(ii),
 - (b) omit subsection (4)(c).
8. In section 5D (judicial assistance)—
 - (a) *[any amendments need further policy development in relation to position of Scottish ET judges]*
9. In section 6 (conduct of hearings) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”.
10. In section 7 (employment tribunal procedure regulations)—

- (a) in the heading omit “employment”,
- (b) after subsection (2) insert—
 - “(2A) The Secretary of State must consult with the Lord President of the Court of Session before making employment tribunal procedure rules with a view to maintaining and promoting, as far as practicable, consistency in matters of practice and the procedure to be followed in proceedings in employment tribunals and the First-tier tribunal for Scotland (in relation to the exercising of the First-tier Tribunal for Scotland’s jurisdictions in relation to employment claims).”
- (c) after subsection (3)(a) insert—
 - “(aa) for enabling the transfer of proceedings from employment tribunals to the First-tier Tribunal for Scotland, and from the First-tier Tribunal for Scotland to employment tribunals,”
- (d) in subsection (3)(e)(i)—
 - (i) omit the words “in England and Wales”,
 - (ii) after “proceedings before it” omit the word “or”.
- (e) omit subsection (3)(e)(ii),
- (f) after subsection (6) insert—
 - “(7) In this Act “Scottish procedure regulations” means regulations made by the Secretary of State with respect to proceedings before the First-tier Tribunal for Scotland.”.

11. In section 7A (practice directions)—

- (a) In subsection (1)(a) and subsection (3) omit “territorial”,
- (b) In subsection (3)(a) omit “or”,
- (c) Omit subsection (3)(b).

12. In section 8 (procedure for contract cases) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”.

13. In section 10 (national security)—

- (a) in subsection 1, for “employment tribunal” substitute “appropriate tribunal”,
- (b) After “employment tribunal procedure regulations”, in each place, insert “or Scottish procedure regulations”,
- (c) in subsection (2) for “the tribunal” substitute “the appropriate tribunal”,
- (d) in subsection (9)—
 - (i) omit subsection (9)(c),
 - (ii) *[need further amendment here to assign to appropriate judge in Scotland]*.

14. In section 12A (financial penalties)—

- (a) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”,
- (b) *[may need further drafting here in respect of payment into consolidated fund]*.

15. In section 15 (enforcement) omit subsection (2).

16. In section 16 (power to provide for recoupment of benefits)—

- (a) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”,
- (b) for “employment tribunals”, wherever it appears, substitute “the appropriate tribunals”,

17. In section 18 (conciliation: relevant proceedings etc)—

- (a) for “employment tribunal proceedings”, wherever it appears, substitute “proceedings in the appropriate tribunal”,
- (b) in subsection (7) for “an employment tribunal” substitute “the appropriate tribunal”.

18. In section 18A (requirement to contact ACAS before instituting proceedings) after “employment tribunal procedure regulations”, in each place substitute “or Scottish procedure regulations”.

19. In section 18C (conciliation after institution of proceedings) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”.

20. In section 19(1) (conciliation procedure)—

- (a) after “employment tribunal regulations” insert “and Scottish procedure regulations”,
- (b) for “employment tribunal proceedings” substitute “proceedings in the appropriate tribunal”.

21. In section 19A (conciliation: recovery of sums payable under settlements)—

- (a) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”,
- (b) in subsection (9) after “employment tribunal procedure regulations” insert “or Scottish procedure regulations”.

22. The Employment Tribunals Act 1996 (Part 2) is amended as follows.

23. *[Amendments in relation to the Employment Appeal Tribunal to be inserted here]*

24. Part 2A of the 1996 Act (financial penalties for failure to pay sums ordered to be paid or settlement sums) (as inserted by section 150 of the Small business Enterprise and Employment Act 2015) *[yet to be commenced]* is amended as follows.

25. In section 37A (sums to which financial penalty can relate), in subsection (2)(a), for “an employment tribunal” substitute “the appropriate tribunal”.

26. In section 37G (appeal against penalty notice) for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”.

27. In section 37O (modification in particular cases), in subsection (1)(a), for “an employment tribunal” substitute “the appropriate tribunal”.

28. Part 3 of the 1996 Act (supplementary) is amended as follows.

29. In section 39 (Parliamentary staff), in subsection (2) for “an employment tribunal” substitute “the appropriate tribunal”.

30. In section 42 (interpretation) at the appropriate places insert the following definitions—

““appropriate tribunal” shall be construed in accordance with section 3(5);”;

““employment tribunal” means a tribunal established under regulations made under section 1(1) of this Act;”;

““First-tier Tribunal for Scotland” means the First-tier Tribunal for Scotland established under section 1(1)(a) of Tribunals (Scotland) Act 2014.”.

PART 2

Amendments to other primary legislation

The Employment Rights Act 1996

[The amendments here are to demonstrate how the Employment Rights Act 1996 and other substantive employment law will be amended to reflect that jurisdiction in Scotland will be exercised by the relevant Scottish Tribunal after the functions of the employment tribunal in Scotland are transferred in accordance with this Order.]

31. The Employment Rights Act 1996 is amended as follows—

32. In section 11 (references to employment tribunals)—

- (1) In the heading for “employment tribunals” substitute “appropriate tribunals”,
- (2) For “an employment tribunal” wherever it appears, substitute “the appropriate tribunal”.

33. In section 12 (determination of references), for “an employment tribunal”, wherever it appears, substitute “the appropriate tribunal”.

34. *[amendments to the rest of the rights to bring an employment tribunal claim conferred by the 1996 Act will be inserted here and subsequent paragraphs]*

35. In section 235(1) (other definitions), in the appropriate place, insert—

““appropriate tribunal” has the meaning given by section 3(5) of the Employment Tribunals Act 1996,”

PART 3

Amendments to secondary legislation

[This Part of the Schedule will contain similar amendments to any secondary legislation currently conferring jurisdiction on the employment tribunal, as well as any other consequential amendments.]

SCHEDULE 3

Transitional provisions

[This schedule will contain provisions to deal with the transition required following a transfer of functions between employment tribunal and the First-tier Tribunal for Scotland. Any such provisions will need to be developed between the Scottish and UK Governments.]



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