

SUBMISSION ON GENERAL PRINCIPLES OF THE

Courts Reform (Scotland) Bill

BY UNISON

Introduction

- **This response is by UNISON Scotland, the largest public sector trade union in Scotland with 160,000 members. UNISON members work in the health service, local government, police and fire services, national regulatory bodies and the community and voluntary sector.**
- The provision of a legal service has always been a key and core benefit of trade union membership. We recognise that accidents, injury and disease impact not only upon our members who are injured but also their families. We recognise that obtaining redress for members who suffer workplace accidents, injury or disease is vitally important for the individual but also serves an essential role in terms of wider workplace health and safety. Our experience shows that bringing claims for workplace accidents, injury and disease can and does have a positive impact upon workplace safety.
- Accordingly the civil justice system and access to civil justice are key concerns for us and for all of our members.
- We accept that civil court reform is necessary and have engaged fully with the process from the outset when the original civil court review was chaired by Lord Gill
- However, the current drafting of the Bill will do more damage than good. It will:
 - Reduce access to justice
 - Have a negative impact on workers' safety
 - Increase the damage caused by Section 69 of the Enterprise Act to workers' rights when the Bill could and should lessen its impact.

Access to civil court compensation claims and the effect on workplace health and safety

- This link has always been known to the trade union movement and was demonstrated during the debate on Section 69 of the Enterprise Act
- 0.5% of breaches of health and safety regulations result in any form of enforcement action being taken by the Health and Safety Executive (HSE)

- Civil court actions are the only meaningful way of policing and enforcing health and safety breaches. This means of ensuring safety will be lost if the civil court system does not provide proper access to justice
- The civil court review, chaired by Lord Gill, said “In our view the Court of Session should deal only with the most complex and important cases and that most routine litigation should be conducted in the Sheriff Court”. Workplace accident cases are always important, not only to the injured worker, but to the health and safety of all workers. It would be inappropriate to consign such cases to a Summary Court.

The Impact of Section 69

- The impact of Section 69 of the Enterprise Act is to significantly reduce protection for workers suffering workplace injuries.
- It will make it substantially more difficult for every victim of a workplace accident and injury to secure just recompense and many victims who previously would have been able to obtain compensation will have lost that right
- It is therefore essential that workplace cases are heard by specialist Sheriffs in the specialist personal injury court with the benefit of Counsel.

Mitigating the Impact of Section 69

- The Scottish Parliament may not have the legislative competence to reverse Section 69 of the Enterprise Act but the civil court reform Bill presents the Scottish Parliament with a clear choice:
 - The Scottish Parliament can use the powers that it has to ensure that the impact of Section 69 is limited as much possible;
 - or
 - If the Scottish Parliament allows the Bill to pass in its current format it will make the impact of s.69 worse for workers.

Necessary amendments

- Victims of every workplace injury and disease must be entitled to raise their actions at the specialist personal injury court

- Victims of workplace accidents and disease must have the automatic right to employ Counsel.