

CAS Briefing

Debate - 'The Scotland Bill' (Fourth Day)

Westminster Parliament

6th July 2015



generations of good advice

Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizens Advice Consumer Service helpline form Scotland's largest independent advice network. Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. Our website, Adviceguide, also provides the public with up to date information on a range of topics. We are champions for both citizens and consumers and in 2013/14 we helped over 330,000 people deal with over a million issues. We want a fairer Scotland where people as citizens and consumers are empowered and their rights respected.

Clause 33 - Tribunals

Summary

This briefing focuses on the devolution of reserved Tribunals. Citizens Advice Scotland considers that clause 33 does not reflect the recommendation made by the Smith Commission that all powers over the management and operation of all reserved tribunals (which includes administrative, legislative and judicial functions) will be devolved to the Scottish Parliament¹.

Citizens Advice Scotland is concerned that as the Bill stands, power over all aspects of tribunals will continue to be subject to any change imposed by the Westminster government and in effect, devolution is undermined. The current Bill risks ongoing uncertainty for tribunal users and those who advise them.

Key Points

- Citizens Advice Scotland fully supports the alternative clause 33 proposed by the Scottish Government
- CAS believe that the reserved tribunals identified by the Smith Commission should be fully devolved with no residual control retained by Westminster
- Jurisdictional issues about the definition of a 'Scottish case' must be resolved

Outline of Provisions

Currently, there are two categories of tribunal in Scotland – reserved tribunals and Scottish Tribunals. Scottish Tribunals are subject to the control of the Scottish Parliament in every aspect of their function and operation from rules of procedure to the appointment of their judges.

While clause 33, s2A(1) does make the transfer of functions in relation to Scottish cases, this is qualified by s2A(6)(a) which reserves to Westminster the power to:

¹ With the exception of the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission. Recommendation 63.

- modify the function of a tribunal,
- impose conditions or restrictions (including conditions or restrictions relating to the composition or rules of procedure, or its staff or accommodation), and
- specify the categories of case included in the transfer

Power of the most fundamental aspects of tribunals will be subject to uncertain residual control: true devolution is not facilitated which means the devolved tribunals cannot fully become Scottish Tribunals.

The drafting of this clause has the effect of enabling Westminster to make changes at any time by Order in Council: a process by which legislation is drafted by a Government Department, approved by the Privy Council and signed by the Monarch. The definition of a 'Scottish case' would also be made by this process.

Implications

Recent changes to reserved tribunals have had a marked and detrimental effect on consumers in Scotland, despite calls from the Scottish Government and Parliament that these changes should not happen. After the introduction of substantial fees² in Employment Tribunals, there was a 79% decline in the number of cases lodged in Scotland for the period January to March 2014 compared to the same period in 2012.

The introduction of mandatory reconsideration in DWP processes has had a similar effect on the number of appeals to the Social Entitlement Chamber (welfare tribunal). This process brings with it significant access to justice issues – not least the fact that the DWP are under no time limit to make a decision thus preventing appeal to an independent decision maker for, often, prolonged periods of time.

The consequence of clause 33 in the Scotland Bill is that any future changes such as this could not be vetoed by the Scottish Parliament. In real terms this could mean that if, for example:

- Westminster were to introduce fees for the Social Security Chamber (Welfare Tribunal) then Scotland would have no choice but to introduce the same and additionally, fees could be made to apply to any equivalent tribunal set up in respect of devolved welfare benefits.
- The power to set fees in Employment Tribunal cases could remain within the control of Westminster.
- If it was decided that there were too many rural tribunal venues then a decision could be taken on a UK basis to restrict the number of venues, regardless of the consequences for Scotland.

Conclusion

The best situation for Scotland would be devolution where there is a clean break from Westminster influence. This Bill does not allow that to happen as there will be constant uncertainty over what changes Westminster might make.

² The total costs for going to full hearing are: Type A claims (including unpaid wages) £390 and Type B claims (including unfair dismissal and discrimination claims) £1,200.