

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: CONSULTATION ON THE SCOTTISH GOVERNMENT'S PROPOSALS FOR A NEW TRIBUNAL SYSTEM FOR SCOTLAND
From: HEAD OF LEGAL SERVICES		
Date: 23 May 2012	Ref: AL CO OPN 0033/RMM	

1. PURPOSE OF REPORT/INTRODUCTION

- 1.1.1. The purpose of this report is to seek homologation by Committee for the Council's response to the Scottish Government Consultation Paper on Consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland
- 1.1.2. A copy of the Paper is in the Members' Library and further details are available at:-
www.scotland.gov.uk
- 1.1.3. The closing date for responses to the Paper is 15th June 2012.

2. BACKGROUND

The Scottish Government are of the view that the current financial restraints and the drive for public sector reform in Scotland highlight the need for an integrated tribunal system in Scotland and that integration delivers improved access and consistency of service to users and reduces running costs thus providing a more efficient administration.

The tribunals initially subject to transfer into the proposed new structure would be the Mental Health Tribunal for Scotland, the Private Rented Housing Panel, Additional Support Needs Tribunals for Scotland, Scottish Charities Appeal Panel and the Lands Tribunal for Scotland, all of which relate to devolved matters.

The Scottish Government believes there is scope for even greater efficiencies by expanding the Scottish Tribunals system further to include the reserved tribunals whose jurisdictions operate across Scotland. A fully integrated system to integrate reserved tribunals and devolved tribunals would require a legislative package in both Westminster and the Scottish Parliament.

3. PROPOSALS/CONSIDERATION

In summary the proposal is:

- To make provision for a statutory framework enabling the separate devolved Scottish tribunals to be brought into a single unified system, internally organised according to case type and with clear onward rights of appeal established in accordance with the principles of civil justice.

- To ensure impartial decision-making in the unified Scottish tribunal system by guaranteeing in statute the independence of tribunal judiciary and also by establishing new arrangements for appointing tribunal members, determining tribunal processes and providing tribunals with the necessary administrative resources.
- To establish a common judicial leadership across the Scottish tribunal system, under the senior leadership of the Lord President of the Court of Session, with powers of delegation for leadership functions, including to a new President of Scottish Tribunals with responsibility for the efficient disposal of business.
- To make statutory provision for a devolved Scottish tribunal system which will provide scope for integration with the system of UK reserved tribunals operating in Scotland and so enable the common execution of judicial and administrative functions in respect of both devolved and reserved law, in a joint system.
- To review judicial remuneration arrangements across the Scottish tribunal system with the purposes of standardising arrangements and in appropriate cases linking the arrangements for the Scottish tribunal judiciary to the arrangements for offices listed in the judicial salaries and pensions scheme.

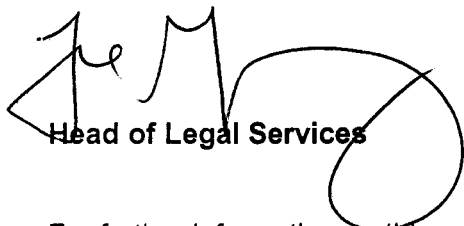
The creation of an integrated tribunal system in Scotland, as described above, opens up the possibility to review the relationship between the tribunals administration and the independent Scottish Court Service, which is responsible for providing administrative support to Scotland's courts and the judiciary of those courts. In other jurisdictions, court and tribunal administrations have achieved efficiencies through merging into a single administration. The Scottish Court Service and Scottish Tribunals Service are already exploring opportunities for potential efficiencies through, for example, shared accommodation. Any more significant changes to the status of the courts and tribunals administrations would be subject to dialogue with the judicially-led Scottish Court Service and with the courts and tribunals judiciary.

4. SUMMARY OF THE COUNCIL'S RESPONSE TO THE CONSULTATION PAPER

The proposals have no direct impact upon the Council and accordingly there is no substantive response to the questions raised excepting a brief comment to question 3 as seen within Appendix A to this report.

5. RECOMMENDATIONS

- 5.1. The Committee is asked to homologate the report and the Council's draft response, as detailed in Appendix A to this report.


Head of Legal Services

For further information on this report please contact Ruth M. McCormick, Solicitor on telephone number 302729.

APPENDIX A

SECTION 7: THE SCOTTISH GOVERNMENT'S PROPOSAL FOR A NEW TRIBUNAL SYSTEM FOR SCOTLAND



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

North Lanarkshire Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Civic Centre		
Windmillhill Street		
Motherwell		
Postcode ML1 1AB	Phone 01698 302729	Email

3. Permissions - I am responding as...

<input type="checkbox"/> Individual	/	<input checked="" type="checkbox"/> Group/Organisation
Please tick as appropriate		

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?
Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?
Please tick as appropriate Yes No

SECTION 6: CONSULTATION QUESTIONS [continue on separate sheet of paper as required)

Question 1: Should the distinctive tribunals system be capable of reconsidering decisions and hearing appeals and, if so, what grounds of appeal from the First-tier Tribunal to the Upper-tier should be allowed?

Comments:

No Comment.

Question 2: Which functions of judicial leadership in the tribunals system should be exercised by the Lord President, the President of Scottish Tribunals and the Chamber Presidents, respectively?

Comments:

No Comment.

Question 3: Should any restrictions be placed on the ability of an appointed member to sit and hear cases in a chamber other than the chamber of their primary assignment? If so, what restrictions?

Comments:

Clearly this question will be dependant upon availability of resources.

However, the complexity and nature of the specific case will require to be considered together with the legal background and area of expertise of the appointed member. There are implications for fairness etc. and the potential for unnecessary appeals.

As stated within the Consultation paper at p. 21: "The particular expertise of tribunal members in a specific area of law is an essential component of an effectively functioning tribunals system. It assures tribunal users of the expert quality of judicial decision making and it allows a more active , inquisitorial style of dispute resolution. It reduces the need for participants to be legally represented, in keeping with the normal expectation of unrepresented parties appearing before tribunals."

Question 4: Is this the most appropriate option for judicial remuneration and if not, what other options are there to remunerate fairly the judicial members of the Scottish tribunal system?

Comments:

No Comment.

Question 5: How should procedural rules for the new tribunal system be made?

Comments:

No Comment.

Question 6: What issues/opportunities do the proposed changes raise for people with protected characteristics (e.g. age, disability, gender reassignment, race, religion or belief, sex and sexual orientation) and what action could be taken to mitigate the impact of any negative issues or to capitalise upon opportunities?

Comments:

No Comment.