Summary

- The National Union of Rail, Maritime and Transport Workers is Britain's largest specialist transport union representing around 80,000 members in the transport sector with 10,044 members in Scotland alone.
- 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, either because there is a lack of understanding of trade union funding models, an unwillingness to recognise the profound impact of Section 69 of the Enterprise and Regulatory Reform Act 2013 (the “Enterprise Act”), or both, the current drafting of the Bill will do more damage than good, certainly in relation to workers’ rights. It shall:
  - 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.

Trade union funding

- The trade union funding model relies on costs recovery. Trade unions cannot fund court outlays such as employing Counsel if that cost cannot be recovered at the end of the day, even if the defenders are using Counsel.
- We have no doubt that insurers will employ Counsel in all cases before the specialist personal injury court, particularly in the next five years ahead while the courts require to grapple with the impact of Section 69 of the Enterprise Act.

A clear link between civil court compensation claims and workplace health and safety

- This clear link has always been known to the trade union movement and was brought into sharp focus during the debate around 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 therefore the only meaningful way of policing and enforcing health and safety breaches but this means of ensuring safety will be lost if the civil court system does not provide an appropriate means of bringing cases.
- 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”. As far as we are concerned, there is no case more important than a case involving a workplace.
accident and those cases have no place in the lowest tier of the court system being presided over by Summary Sheriffs.

**There are no simple workplace cases because of Section 69**

- The impact of Section 69 of the Enterprise Act cannot be understated
- 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
- More than ever, it is essential that workplace cases are heard by specialist Sheriffs in the specialist personal injury court with the benefit of Counsel.

**If not Reverse Section 69 - Mitigate its Impact as Fully as Possible**

- The Scottish Parliament may believe that they do 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 very simple, black and white, political choice:
  - Will the Scottish Parliament use the powers that it does have to ensure that the impact of Section 69 is fully as mitigated as possible; or
  - Allow the Bill to pass in its current format which will actually make the impact 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.

National Union of Rail, Maritime and Transport Workers
13 March 2014