Economy, Tourism and Energy Committee
Tuesday 22 September 2026
5th Meeting, 2026 (Session 7)

Note by the Clerk on the Employment Tribunals Extension of Jurisdiction (Amendment) (Scotland) Order 2026 [draft]

Overview

1. At this meeting, the Committee will take evidence from the Minister for Business and Fair Work and officials on the Employment Tribunals Extension of Jurisdiction (Amendment) (Scotland) Order 2026 [draft], before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.

2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below—

Title of instrument: Employment Tribunals Extension of Jurisdiction (Amendment) (Scotland) Order 2026 [draft]

Laid under: The Employment Tribunals Act 1996

Laid on: 31 August 2026

Procedure: Affirmative

Lead committee to report by: 9 October 2026

Commencement: If approved, the instrument comes into force on 9 November 2026

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.

4. Once laid, the instrument is referred to—

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

   - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee—

   - an evidence session with the Minister and officials, followed by;

   - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion to recommend approval is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 15 September 2026 and reported on it in its 4th Report, 2026. It made no recommendations in relation to the instrument.

9. On 3 September 2026, the DPLR Committee wrote to the Scottish Government asking when the letter from the UK Government inviting it to exercise the power had been received. The Scottish Government replied on 8 September 2026 that the letter had been received on 15 December 2025.

10. The DPLR Committee suggested that the Economy, Tourism and Energy Committee may wish to explore whether the change could have been prioritised and implemented sooner, given that the invitation from UK Ministers to exercise the power was received on 15 December 2025.

Purpose of the instrument

11. This instrument extends the time limit for employees in Scotland to bring certain contract of employment claims to an employment tribunal from three months to six months.

12. The instrument brings Scotland into line with England and Wales to create a consistent six-month limit for these claims. The longer period should give workers more time to resolve disputes, including through internal procedures and ACAS conciliation, potentially reducing the need for tribunal claims.

13. Scotland cannot meet the planned 1 October 2026 implementation date for England and Wales because of the Scottish Parliamentary election and summer recess. The Scottish Ministers have the power to make the change but require the agreement of the UK Secretary of State.

14. The Scottish Ministers have certified that the Order is compatible with the United Nations Convention on the Rights of the Child and concluded that it has no impact on children's rights. A full Equality Impact Assessment is not considered necessary; the change is expected to create a fairer, standardised system across protected characteristics. The Scottish Government expects no financial impact on government, local authorities or businesses because this is a technical amendment to the existing time limit.

15. The Scottish Government's Policy Note accompanying the instrument is included in the **Annexe**. A draft Child Rights and Wellbeing Impact Assessment (CRWIA) has been published.

Policy context

16. SPICe has provided the following information in relation to the instrument.

17. As noted above, there is an implementation delay between Scotland and England and Wales. The Scottish changes would not come into force until 9 November 2026. As a result, there would be an approximately five-week period when people will have six months to bring relevant breach of contract claims to an Employment Tribunal in England and Wales while the time limit remains at three months in Scotland.

18. In addition, the Policy Note suggests that there will be no costs associated with the change, meaning a Business and Regulatory Impact Assessment is not required. However, there are arguments both ways about the potential financial impact:

    - on one hand, it is argued that some Employment Tribunal claims are raised to meet the current three-month deadline when they would have otherwise been resolved by workplace dispute resolution options. This is less likely to happen if the time limit is increased;

    - on the other hand, it is argued that a proportion of otherwise valid breach of contract claims don't make it to an Employment Tribunal because of the current tight deadline. This would mean that claims, and costs related to them, would increase as a result of the change.

Report

19. Following today's proceedings, a draft report will be prepared by the clerks. **The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

Clerks to the Committee
September 2026

Annexe: Accompanying material

Scottish Government Policy Note

THE EMPLOYMENT TRIBUNALS EXTENSION OF JURISDICTION (AMENDMENT) (SCOTLAND) ORDER 2026 SSI 2026/XXX

The above instrument is made in exercise of the powers conferred by sections 3, 8(3) and 41(4) of the Employment Tribunals Act 1996. It is subject to the affirmative procedure.

Summary Box

The UK Employment Rights Act 2025 contains a measure to increase employment tribunal time limits from 3 to 6 months for the majority of claims in England, Scotland and Wales, as well as for industrial tribunals in Northern Ireland in certain circumstances. UK Government are taking forward secondary legislation to amend for England and Wales certain Employment Tribunal time limits that are contained in secondary legislation with an aim to have the changes take effect on the 1st October 2026.

There is separate secondary legislation which provides the ET time limit for employees' contract of employment claims brought by employees in Scotland - the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. Employees' contract of employment claims include claims for breach of a contract of employment, or for a sum due under such a contract, where the claim arises or is outstanding on the termination of the employment.

Under The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, the power to amend this legislation via Order sits with Scottish Ministers, however this power may only be exercised with the agreement of the UK Secretary of State.

UK Ministers have written to Scottish Ministers to invite them to exercise this power with the agreement of the Secretary of State to ensure parity with the time limits for contract of employment claims by employees in England and Wales.,

The SSI will extend the time for employees to lodge a contract of employment claim from three to six months thus allowing more time for internal procedures to conclude, potentially reducing the number of tribunal claims by resolving issues earlier, particularly through ACAS conciliation.

Scottish Government officials have discussed these proposals with UKG and highlighted that, due to the Scottish Parliamentary election and summer recess periods, there is insufficient time for this change to be implemented by 1 October 2026 in Scotland to align with the timeline for England and Wales.

Policy Objectives

This proposed change will allow parity across the three Nations (England, Wales and Scotland) and ensure consistency by applying the same time limit to contract of employment claims as applies to statutory redundancy and equal pay claims. The extension from 3 to 6 months will strengthen worker protections, make enforcement more accessible and give workers a stronger platform to challenge unfair treatment.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Employment Tribunal (Extension of Jurisdiction) (Amendment) (Scotland) Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This draft amending instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Tribunal time limit change was introduced via a UK government amendment to the then Employment Rights Bill, following political commitments made by Labour before and after taking office. These commitments centred on enhancing workers' rights, improving access to justice, making the employment tribunal system fairer and delivering the "Make Work Pay" agenda.

Impact Assessments

An impact assessment regarding Child Rights and Wellbeing (CRWIA) has been completed and the Scottish Government has concluded that the proposal will have no impact on children's rights.

An Equality Impact Assessment in full is not required. This change will standardise the time limit for submitting a claim to the ET across the majority of complaint jurisdictions, resulting in a fairer system for all employees across all protected characteristics. This is included within UKG's overall impact assessment Employment Tribunal Extended Times – **https://assets.publishing.service.gov.uk/media/67c5725416dc9038974dbd3c/Impact_a ssessment_employment_tribunals_time__limits.pdf**

Financial Effects

Overall it is envisaged there will be no costs as this proposal makes a technical amendment to the existing time limit for lodging contract of employment claims in Employment Tribunals.

The Minister for Business and Fair Work confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government Jobs and Wellbeing Directorate 25 August 2026