

# Editorial

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**Daniel Barnett: editor**

My first act as editor is to thank Suzanne McKie for her sterling work over the last three years. Under her editorship, ELA has almost doubled the print-run of the *Briefing*, and the quality and breadth of articles has gone from strength to strength.

July and August are quiet times for employment lawyers. But as most of us know, the House of Lords heard argument in *Dunnachie v Kingston Upon Hull City Council*, and also in *Eastwood v Magnox* in May. Judgments, are cautiously hoped for before the summer recess.

Both of those decisions should resolve the many problems spawned by the Lords' fateful judgment in *Johnson v Unisys* (2001). Anecdotal comments from some of the lawyers involved suggest that it is quite impossible to predict which way the Judicial Committee was leaning, in either case, from the questions they asked.

The time bomb of impending legislation ticks on. In less than three months, the statutory disciplinary and grievance procedures will throw employment law into turmoil as advisers on both sides of the industrial equation grapple with some of the most complex legislation ever produced by the Department of Trade and Industry. The Employment Act 2002 (Dispute Resolution) Regulations 2004 are a far-flung cry from the simple and straightforward measures promised during parliamentary debates back in 2002. The DTI acknowledged how far the regulations have strayed from their aspiration in its Response to Public Consultation (20 January 2004), in which it said: "The government acknowledges that the regulations are not simple. However, this is unavoidable" (para 145).

Despite the Byzantine complexity of this new legislation, the DTI has now produced an excellent set of guidance notes ([http://www.dti.gov.uk/er/comprehensive\\_guidance.pdf](http://www.dti.gov.uk/er/comprehensive_guidance.pdf)), which provide a clear explanation of what the new legislation requires of employers, employees and tribunals. A word of caution: do not take the notes as gospel. They contain mistakes. For example, the regulations provide that the statutory DDP and grievance procedures will not apply if it is not "practicable" to follow them within a reasonable period (reg 11(3)(c)). But the notes (para 93) say that they will not apply if it is "effectively impossible" to follow them. This seems a higher test than that of practicability, and is therefore wrong.

Equally, those familiar with the new legislation will know that from 1 October this year there will be, in certain circumstances, an extension of time for presenting a tribunal claim provided a stage 1 grievance letter has been sent to the employer within one month of the normal tribunal time limit expiring (s.32 of the Employment Act 2002). The guidance notes get this wrong; setting out a time limit of 28 days rather than the statutory one month (para 128). At the time of writing, I am told that the DTI intends to correct this error in an updated version of the guidelines.

Moving on, in less than 12 months, the new laws requiring employers to inform and consult the workforce on business decisions which (among other things) have an impact on employment matters begin to operate. Readers are referred to the special feature by Christopher Walter which appeared in last month's *Briefing* (page 68) for comment on what employers should be doing to prepare.

I am hoping over the coming months to introduce several new features into the *Briefing* – the most manifest (and perhaps most entertaining) of which is picture bylines. The *Briefing* is always looking for new contributors, so if you have any ideas for an article, please send me an email with your thoughts.

**Daniel Barnett, editor**