

Consultation analysis and response - draft regulations - transfer of the Police Appeals Tribunal to the First-tier Tribunal for Scotland

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Analysis report of the consultation on draft regulations regarding the transfer of the Police Appeals Tribunal. The consultation sought views on various aspects of the proposed transfer.

1. Background

1.1 The Tribunals (Scotland) Act 2014 (the 2014 Act) created a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing an organised structure for new jurisdictions.

1.2 The 2014 Act created two tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals. A programme of work to transfer devolved functions of the tribunals listed in schedule 1 of the 2014 Act is underway.

1.3 The Police Appeals Tribunal (PAT) is one of the tribunals listed in schedule 1 of the 2014 Act and views were sought on set of draft regulations to carry out the transfer.

1.4 The jurisdiction and functions of the PAT arise from section 56 and schedule 3 of the Police and Fire Reform (Scotland) Act 2012. At present, a police constable may appeal to the PAT against any decision to dismiss them or demote them in rank. The Police Appeals Tribunal (Scotland) Rules 2013 provides a set of procedure rules for the PAT, while membership of the Tribunal panel is drawn from a list of legally qualified members maintained by the Lord President.

2. Consultation

2.1 The consultation was designed to gather views from stakeholders and individuals in relation to a set of draft regulations to transfer the PAT into the Scottish Tribunals structure. The draft regulations included procedure rules for the PAT, composition regulations to determine the makeup of the PAT panel, and transfer regulations to enable the functions of the PAT to transfer into the Scottish Tribunals.

2.2 13 questions were asked in total. The first 10 questions were a mixture of open and closed questions on the set of draft regulations, while the remaining three questions asked about any potential impacts due to the transfer.

2.3 The consultation ran for 12 weeks from 30 October 2024 to 22 January 2025. The consultation was hosted on the Scottish Government Citizen Space website and interested parties could submit responses online, by email or by post.

3. Consultation analysis and Scottish Government response

3.1 There were seven responses in total to the consultation. Six were from organisations and one was from an individual. The organisations who responded

included the Scottish Police Authority, HM Inspectorate of Constabulary in Scotland, Police Scotland and the Faculty of Advocates. Not all respondents answered every question.

3.1.1 - question 1 – should current members of PAT transfer into Scottish Tribunals structure?

There was broad support for transferring current members with four responses commenting that there would be significant benefit in retaining members with experience of police appeals and that it would be a sensible course of action to add transfer these members. Comments were made that any transfer into the Scottish Tribunals structure should be restricted to those who have sat on a police appeal previously. A single response was not in favour of transferring current members of the PAT suggested that the Tribunal needs to reset and be independent from Police Scotland. 2 respondents did not answer this question.

The Scottish Government notes the comments around the benefit of transferring members with experience of the PAT into the Scottish Tribunals structure and considers that transferring members, should they wish to do so, would be of benefit to the Scottish Tribunals.

The current members of the PAT are independent of Police Scotland, as the current panel is drawn from a list of suitably qualified legal members maintained by the Lord President. The independence of the PAT and Scottish Tribunals more generally is a key feature of the Scottish Tribunals landscape, and upholding that independence is a statutory duty placed on Scottish Ministers. In addition, after the transfer of the PAT, any further recruitment exercises would be conducted by the Judicial Appointments Board for Scotland, which has statutory duties to recommend appointments solely on merit and to be satisfied that any individuals recommended for appointment are of good character.

3.1.2 - question 2 -do you have any comments on the draft regulations regarding the transfer of functions of the Police Appeals Tribunal to the First-tier Tribunal

There were two detailed responses to this question. One commented on the interaction between the draft regulation definitions and the Police Ethics, Conduct and Scrutiny) Bill and the Police and Fire Reform Act 2012.

The second response was supportive of the proposal to transfer any appeals not yet decided by the current PAT into the Scottish Tribunals and suggested it should be clarified that any such transferred appeals be regulated as far as reasonably practicable with the First-tier Tribunal procedure rules.

The Scottish Government is grateful for these helpful comments and welcomes the positive feedback on proposals to transfer any existing appeals

3.1.3 - question 3 - do you agree with the proposed steps for an appellant to submit a Notice of Appeal and for the Respondent to reply? (Rules 6 and 7)

Six responses to this question agreed with the proposed steps in the draft regulations at rules 6 and 7 while the other respondent did not answer. Comments stated that the proposed steps covered what is required and that the proposals were fair to both sides to an appeal. In addition, it was remarked that the proposed steps would allow clarification of the parties' position, while building in scope amendments to be made to a party's position at a later date. There was also support for the proposals around signing of the reply by the respondent – draft rule 7(3)(a).

The Scottish Government is grateful for the positive feedback and intends to proceed with the steps outlined at draft rules 6 and 7.

3.1.4 - question 4 - do you agree with the proposal to allow the Tribunal to make an order for expenses, where the actions of one party resulted in another party incurring an expense that it would be unreasonable to expect them to pay?

Six responses to this question agreed with the proposals and were supportive overall. The comments indicated that respondents felt any order for expenses be very much case dependent and that any award of expenses should reflect the particular circumstances of each appeal case, with the Tribunal requiring to be particularly alert to the funding arrangements of the parties before coming to a view on any award of expenses. Some responses highlighted that the award of expenses should not be 'normal' practice.

One response had concerns around proposals for the award of expenses, noting that in most cases appellants will have likely lost their source of income and would be appealing against this. It was stated that it would be fairer if appellants who were successful with their appeal received expenses, and with expenses only awarded against an appellant in frivolous cases

One response helpfully commented that paragraph 3 of Schedule 3 of the 2012 Act provides for an award of expenses and that this may need to be revoked. We are grateful for these comments and will look to incorporate in the final drafting.

3.1.5 - question 5 - do you agree with the proposal that decisions of the Tribunal should be published?

There was strong support for this proposal. Seven respondents agreed that decisions should be published but many were focused on there being suitable safeguards and exceptions to full publication, with a party's privacy and safety needing to be respected and fully considered before publication.

Responses focused on the requirement that sensitive matters be respected, while accepting that publication of decisions is a key aspect of open justice and transparency. There was therefore general support for the principle of publishing decisions so long as there are appropriate measures in place in respect of anonymisation and decisions not being publicly disclosed in exceptional circumstances. Publication of decisions and any redactions would be a matter for the Tribunal after considering all the facts of the case.

One response was in favour of decisions being published on the Scottish Courts and Tribunal Service's website.

The Scottish Government is grateful for the considered responses to this question and will consider all the points raised before finalising the draft regulations. The Scottish Government believes that decision should be published but recognises the need for suitable safeguards to be in place and will develop the draft regulations with this in mind.

3.1.6 - question 6 - do you have any comments on the proposed routes to challenge decisions of the Tribunal?

Comments received to this general question were broadly supportive of the proposed route to challenge decisions of the Police Appeals Tribunals, with respondents stating that the proposed appeal routes seemed reasonable and proportionate.

Respondents noted that the current operation of the Police Appeals Tribunal allows for challenge of a decision by way of judicial review. The proposed routes to challenge would result in the Police Appeals Tribunals having similar arrangements for challenge as other Tribunals, which was welcomed by some respondents. There were no responses to this question which disagreed with the proposed routes to challenge decisions, although not all respondents answered this question.

The Scottish Government welcomes the positive feedback around the proposed routes to challenge decisions and intends to proceed as per the draft regulations.

3.1.7 - question 7 - do you have any other comments on the draft procedure regulations?

Responses to this general question varied, with respondents providing feedback on several areas.

One response commented that the Conduct Regulations for Officers and Senior Officers were under review and that the draft procedure regulations may need to be revised following this.

Other responses commented on specific draft regulations and made suggestions around clarifying and addressing certain matters in respect of the procedure rules and the interplay of the 2012 Act when a police officer is reinstated following a Tribunal decision. It was suggested that there should be no element of unjustifiable enrichment should a police officer's pay and pension entitlement be backdated following a successful appeal against dismissal.

There was support for the principle of the supporter role as outlined in the draft procedure rules. This principle is common across the Scottish Tribunals landscape and responses indicated it could help provide support to appellants during the appeal process. There was also general support for the Police Appeals Tribunal to be administered by the Scottish Courts and Tribunal Service, as it was felt that this

would provide reassurance that appeal hearings are conducted independently from Police Scotland/the Scottish Police Authority.

The Scottish Government is grateful for the considered response to this question and will take these into account when developing the regulations.

3.1.8 - question 8 - do you have any comments on the proposed composition of the First-tier Tribunal Police Appeals Tribunal within the General Regulatory Chamber?

There were six substantive responses to this question. The proposed composition in the draft regulations was for the Police Appeals Tribunal to comprise of three legally qualified members.

Three responses were supportive of the proposed composition of the Police Appeals Tribunal outlined in the draft regulations, commenting that this mirrors the current arrangements. Support for the proposed composition of three legally qualified members focussed on the fact that current arrangements appear to function well.

Three responses commented that they would prefer there to be a member of the Tribunal with policing experience or expertise, or for changes to the draft regulations more generally. These responses commented that a member with policing experience could enhance the credibility of decisions of the Tribunal, with the addition of a police experienced member being a valuable resource to the tribunal when considering complex or nuanced matters of policing. There was also support for a lay member of the Tribunal, who it was felt could provide an independent and impartial view from outside the policing profession. Comparison was also made to the composition of Police Appeals Tribunals in England and Wales, where the Tribunal consists of a legally qualified chair taken from a list maintained by the Home Office, a serving senior officer (when the appellant is not a senior officer) and a layperson.

The responses regarding the composition of the panel were therefore split, with support for both a panel consisting of three legally qualified members and support for the panel to consist of a legally qualified chair with police experienced member and a lay person.

The Scottish Government is very grateful for the detailed responses to this question and is aware of the arguments and rationale for having police experienced and lay members serving on the Tribunal. After careful consideration the Scottish Government is in favour of maintaining the status quo and having three legally qualified members serving in a PAT appeal. This will ensure that proceedings are seen to be impartial and that appeal hearings will be determined by an appropriately qualified body.

3.1.9 - question 9 - do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing appeals from the General Regulatory Chamber?

There were limited responses to this question. One response stated they were content with the proposed arrangements. Another response highlighted that draft

regulation 3(1)(a) appeared to be at odds with paragraph 27 of the consultation document but that they were supportive of the composition outlined in draft rule 35(1)(a). There were no further comments on the proposed composition of the Upper Tribunal.

The Scottish Government is grateful for the responses and intends to proceed with an appeal route to the Upper Tribunal.

3.1.10 - question 10 - do you have any other comments you wish to make?

There was single further comment to this question. The response highlighted that the Police (Ethics, Conduct and Scrutiny) Bill, as passed on 15 January 2025, includes for provision for a police advisory list and police barred list and that, depending on the outcome of an appeal, decisions of the Tribunal would need to be reflected on the advisory and barred lists.

The Scottish Government are grateful for the feedback on this question..

3.1.11 - question 11 - are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

There were three responses to this question, and they all reflected and commented on the need to be aware of data protection or privacy issues when decisions of the Tribunal are published.

The Scottish Government is grateful for the responses and is mindful of the comments received.

3.1.12 - question 12 - are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

There were four responses to this question. One response commented on the cost of administering the appeals in general. One response stated that the proposals had not made mention of any costs that may be incurred by an appellant. These could be pre-Tribunal hearing support or qualifications for any lay representative.

Another response commented on the cost of Tribunal hearings to the respondent. While some of the respondent's appeal work would be anticipated to be carried out by in-house legal services, there may be a cost in instructing third party solicitors or advocates. This response also remarked that there has been, to date, a fairly stable and consistent number of appeals made to the Police Appeals Tribunal. As such, and all things being equal, there should not be an increase in costs by transferring the Police Appeals Tribunal into the Scottish Tribunals landscape.

The Scottish Government is grateful for the responses to this question.

3.1.13 - question 13 - are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

Four responses stated they were not aware of any examples in respect of the question asked. One response commented that the proposals would result in procedures being top-heavy with upper-level professionals and felt the Tribunal would be better served by a jury-type structure. Another response suggested that while no data to support any positive or negative effects, an Equality and Human Rights Impact Assessment may be helpful.

The Scottish Government is grateful for the responses and will consider all points raised.



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