POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER POLICE APPEALS AND UPPER TRIBUNAL FOR SCOTLAND (COMPOSITION) REGULATIONS 2025

SSI 2025/383

1. The above instrument was made in exercise of the powers conferred by sections 10(2), 38(1) and 40(1) of the Tribunals (Scotland) Act 2014 ("the 2014 Act"). The instrument is subject to affirmative procedure.

2. In accordance with paragraph 11(2) of the 2014 Act, the President of the Scottish Tribunals and other persons considered appropriate have been consulted.

Summary Box

The purpose of the instrument is to make provision for the composition of the First-tier Tribunal for Scotland General Regulatory Chamber and the Upper Tribunal for Scotland when hearing Police Appeals Cases.

Policy Objectives

3. The First-tier Tribunal for Scotland ("the First-tier Tribunal) and the Upper Tribunal for Scotland ("the Upper Tribunal") were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case.

4. The functions of the Police Appeals Tribunal have been transferred by the First-Tier Tribunal for Scotland (Transfer of Functions and Members of The Police Appeals Tribunal) Regulations 2025. Police Appeals Cases are to be transferred and heard at first instance in the General Regulatory Chamber of the First-tier Tribunal. It is proposed that there be an onward right of appeal on a point of law to the Upper Tribunal.

5. These regulations make provision for the composition of the First-tier Tribunal and the composition of the Upper Tribunal when hearing Police Appeals Cases.

6. Regulation 2 provides that when deciding a Police Appeals Case, the First-tier Tribunal must consist of three legal members.

7. Regulation 3 provides that when deciding a Police Appeals Case, the Upper Tribunal must consist of:

(a) a member of the Upper Tribunal acting alone;
(b) two or three members of the Upper Tribunal;
(c) the Chamber President (except a temporary Chamber President), acting either alone or with no more than two members of the Upper Tribunal;
(d) the President of Tribunals, acting alone or with the Chamber President or with no more than two members of the Upper Tribunal; or

(e) the Lord President, acting alone or with the Chamber President or with no more than two members of the Upper Tribunal.

8. For the purposes of regulation 3, members of the Upper Tribunal may be legal members or judicial members of the Upper Tribunal. A judicial member means a judge of the Court of Session or a sheriff. The authority to determine the composition of the Upper Tribunal is delegated to the President of the Scottish Tribunals.

9. Further details of the policy objectives relating to the 2014 Act are set out in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum:
https://www.parliament.scot/bills-and-laws/bills/s4/tribunals-scotland-bill

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

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

11. 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 First-Tier Tribunal For Scotland General Regulatory Chamber Police Appeals And Upper Tribunal For Scotland (Composition) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

13. A public consultation regarding these regulations took place from 30 October 2024 to 22 January 2025. There were seven responses to the consultation and five respondents gave permission to publish their responses. These responses are available on the Scottish Government website:
https://consult.gov.scot/tribunals-and-administrative-justice/draft-regulations-police-first-tier-tribunals/consultation/published_select_respondent

14. There was support for maintaining the pre-existing composition arrangements of the Police Appeals Tribunal of three legally qualified members. Those responses in favour of the current arrangements commented that the current composition is seen to work well. On the other hand, there was also support for the view that the First-tier Tribunal would benefit from a member with policing experience or expertise when deciding a Police Appeals Case. One response felt a lay member could add value to the First-tier Tribunal. The policy intent in having a composition of three legally qualified members is to maintain the composition arrangements of the Police Appeals Tribunal. This is perceived to be working well and allows proceedings to be determined by an appropriately qualified body.

15. Of the responses that offered a view, there was general support for the proposed Upper Tribunal composition arrangements.

Impact Assessments

16. An Equality Impact Assessments ("EQIA") has been completed for the suite of instruments regarding the transfer of the Police Appeals Tribunal. The EQIA found that transfer of the Police Appeals Tribunal will have a neutral impact on all service users of the tribunal. The impact is not expected to differ for different equality groups or for those with protected characteristics.

17. An impact assessment regarding Child Rights and Wellbeing has been completed.

Financial Effects

18. A Business and Regulatory Impact Assessment ("BRIA") has been completed for the suite of instruments regarding the transfer of the Police Appeals Tribunal. This highlighted no impact on businesses. The published BRIA can be found on the Scottish Government website.

Scottish Government
Justice Directorate

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