



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION

A New Tribunal System for Wales: white paper

This consultation seeks views on proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales

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Ministerial foreword

The principles of justice with which we will all be familiar – including equality under the law and fair treatment – are key components to making Wales a just, equal, diverse and prosperous nation. Justice permeates so many aspects of the lives of the people of Wales, and the effective delivery of justice is crucial to the way in which each one of us can make our voices heard and can enforce our basic rights.

For many years, the Welsh Government has argued that justice should be devolved to Wales, and we continue to pursue this as part of our programme for government. We believe that taking decisions about justice here in Wales will lead to better outcomes, by properly aligning justice with our distinct and developing social, health and education policies and the growing body of Welsh law.

In **Delivering Justice for Wales**, we set out some of the many innovative ways in which justice is currently being delivered in Wales, and why securing change is of a fundamental concern to the Welsh Government.

As we pursue change, however, we must also use our existing areas of responsibility as benchmarks of what can be achieved. Whilst the courts and tribunals system that operates in Wales is generally not devolved; Wales has its own small but significant body of devolved tribunals. As the independent Commission on Justice in Wales chaired by Lord Thomas of Cwmgiedd noted:

“ ...the Welsh tribunals and their administration should be seen and treated as part of Wales’ own emergent judicial system” (**Commission on Justice in Wales report**). ”

A tribunal is an efficient and accessible forum for dispute resolution, in some cases offering important protections against unfair action by the state and in other cases a means for individuals to resolve their private legal disputes. Although often more informal than a court, they are no longer seen as an arm of

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government but rightly as an integral part of the judicial system.

Our devolved tribunals are each governed by stand-alone legislative frameworks. In practical terms, this has designed gaps and inconsistencies into the tribunal system in Wales as it stands today. This is not because that has been the intention. Rather, it is by default because tribunals have developed piecemeal over many years. Recent developments have seen the creation of the office of the President of Welsh Tribunals by the Wales Act 2017. But that legislation overlays the existing frameworks and does not create a coherent whole.

We are focused on ensuring devolved elements of the justice system are an exemplar of what Wales can achieve. Tribunal reform is fundamental to this ambition. The Law Commission has set out a blueprint for reform (**Devolved Tribunals in Wales**) and the proposals contained in this White Paper build on the Law Commission's findings and recommendations.

We propose to bring our separate devolved tribunals into a unified and coherent structure comprising of a First-tier Tribunal for Wales and – for the first time in Welsh legal history - an Appeal Tribunal for Wales. Our proposals will also build flexibility into the tribunal system, so that as devolved law continues to grow, further routes of appeal can be absorbed with very little disruption, enabling our tribunal justice infrastructure to grow and evolve over time.

We want to ensure everyone in Wales is treated fairly and equally, including in relation to access to justice. Our proposals for reform further these commitments. In implementing our proposals to create a new structure for Wales' tribunals our objective is twofold. First, to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously. Second, to lay the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

We look forward to hearing your views on our proposals, and we value your

opinion.

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS / MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad

Counsel General and Minister for the Constitution



Chapter 1: Introduction

Introduction

1. This white paper sets out the Welsh Government's aims to reform the

devolved tribunals and to create a First-tier Tribunal for Wales divided into chambers and an Appeal Tribunal for Wales.

2. The Commission on Justice in Wales, which issued its report in October 2019 ([Justice in Wales for the people of Wales](#)), and the Law Commission have both concluded the system of devolved tribunals in Wales requires reform. The Law Commission review focused in-depth on the reform of devolved tribunals, and its report ([Devolved Tribunals in Wales](#)), published and laid before the Senedd in December 2021, set out 53 recommendations which together made up a blueprint for a modern, unified and coherent structure for tribunals in Wales (the Law Commission recommendations are set out in Annex 2 to this white paper).

3. The Law Commission consulted on its findings and proposals between 16 December 2020 to 19 March 2021. The review found that the current legislation relating to the devolved tribunals is unfit for purpose and that a unified tribunal service should be created.

4. In this paper, we draw upon the Law Commission's review and have undertaken further analysis where this was appropriate. This paper is supported by an integrated impact assessment, which provides a summary of the impacts of the proposals. This will be developed further alongside the legislation that will be required to implement reform.

Historical background

5. The body of devolved tribunals in Wales are characterised by their piecemeal development over many years spanning the pre and post devolution periods. A number of our devolved tribunals were initially established before devolution by the then government for the United Kingdom and were administered by the departments that had established them. The Mental Health Review Tribunal for Wales, for example, was administered by the Health Department of the Welsh Office.

6. The Government of Wales Act 1998 devolved certain subject fields to the National Assembly for Wales, including functions for tribunals associated with those fields. Principally, this was because tribunals were then seen as being a function of the executive arm of government, established by government departments they were created to serve, rather than a judicial function.

7. In recognising that tribunals carry out judicial functions, steps have been taken to separate the devolved tribunals from the areas they are designed to exercise judgment over. The post of the President of Welsh Tribunals, the first senior judicial role relating solely to Wales, was created by the Wales Act 2017 to provide judicial leadership over a grouping of tribunals defined as the “Welsh Tribunals” (Section 59(1) of the Wales Act 2017). There are other tribunals, however, that operate in Wales, in devolved fields, but are not defined as Welsh Tribunals, and which fall outside the remit of the President of Welsh Tribunals.

8. In terms of the Welsh Tribunals, administrative steps have been taken to ensure day-to-day operational responsibilities are separate from the Welsh Government’s policy functions through the creation of a Welsh Tribunals Unit. The unit is responsible for administrative and operational support to the Welsh Tribunals. But structurally, the Welsh Tribunals Unit is part of and is embedded in Welsh Government.

9. The current approach has been made to work. We are not aware of any significant practical concerns about the effectiveness or fairness of the Welsh Tribunals. However, the existing arrangements are clearly not optimal. The legislation governing each tribunal in Wales does not recognise the way we treat them today. Consequently, we have a set of individual tribunals we are treating as a group or a unit, which were never intended to exist in anything other than in isolation.

10. The proposals set out in this white paper are informed by a significant body of work and by the reform undertaken in other jurisdictions, most notably:

- a. the report by Sir Andrew Leggatt ("[the Leggatt Report](#)") and proposals for reform for tribunals in England and Wales, excluding devolved tribunals,

were enacted by the Tribunals, Courts and Enforcement Act 2007 to put in place a unified First-tier Tribunal and an appellate Upper Tribunal, each divided into chambers

- b. the Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee review of tribunals operating in Wales (Administrative Justice and Tribunals Council Welsh Committee (2010) **Review of Tribunals Operating in Wales**, implementation of which the Welsh Government reviewed in 2014)
- c. the Committee for Administrative Justice and Tribunals Wales (“the CAJTW”) report on the administrative justice landscape in Wales (**Administrative Justice: A Cornerstone of Social Justice in Wales**)
- d. the Commission on Justice in Wales report (**Justice in Wales for the people of Wales**), and
- e. the Law Commission report (**Devolved Tribunals in Wales**).

11. The AJTC called for a consistent and unified approach across devolved tribunals, a recommendation echoed by its successor body the CAJTW which called for a standardised procedure for appointments, as well as a senior judicial lead for devolved tribunals. Some progress has been made, as set out in paragraphs 8 and 9 above. However, more can be done, and reform is needed.

Why reform is needed

12. The tribunal system in Wales provides a commendable service to the people of Wales, but the legislative frameworks which underpin it are outdated, inflexible and lack coherence. Work arounds have been found for various issues, but they are a sticking plaster rather than a cure. A clearer, simpler, more effective and coherent way of operating Wales’ tribunal system is essential to the cause of delivering justice for the people of Wales.

13. A reformed tribunal system will provide a solid foundation for future change and devolution of justice functions to Wales. This is not about a one size fits all approach, but a unified system capable of accommodating differences between jurisdictions.

14. Similar processes of reform have already been undertaken in the other nations of the UK, where there is a greater degree of devolution and a longer history of responsibility for their own legal institutions and infrastructure. In following in the footsteps of other parts of the UK, Wales can learn from their successes and also in some areas go further to promote the fair, effective and independent delivery of justice.

Proposals for reform – in summary

15. We propose to create a modern, structurally independent and unified system to absorb the jurisdictions of existing devolved tribunals, and to take on further functions over time. Our proposals are to create a single First-tier Tribunal for Wales divided into chambers, and an Appeal Tribunal for Wales. This will enable the tribunal justice system in Wales to better accommodate developments arising from future legislation, creating a structure that is flexible by design and capable of absorbing new jurisdictions with relatively little disruption.

16. The main proposed elements of our reform agenda are:

- a. a statutory framework for a single, unified and coherent tribunal system organised by type of jurisdiction with clear and consistent onward rights of appeal and capable of accommodating additional jurisdictions over time
- b. statutory duties to uphold the independence of the new tribunal system and greater structural independence for the way in which it is administered
- c. judicial leadership for the new tribunal system under the aegis of the President of Welsh Tribunals and Chamber Presidents and Deputy Presidents
- d. clear and efficient processes for setting procedural rules for the new tribunal system, and
- e. consistent arrangements for appointing tribunal members and clear processes including for determining remuneration, deployment and dealing with complaints and/or disciplinary matters.

17. The chapters that follow set out our proposals in more detail.

Chapter 2: Scope of our reforms

Proposal

We propose the scope of our proposals to create a unified and coherent tribunal system for Wales extends to “the devolved tribunals” in Wales as defined by the Law Commission’s review of devolved tribunals in Wales.

Introduction

18. Our proposals are aimed at improving and regularising the structure and operation of the devolved tribunals in Wales. This not only applies to those tribunals that are currently referred to in law as “the Welsh Tribunals”, but other devolved tribunals in Wales too. This will strengthen the system of devolved tribunals under the leadership of the President of Welsh Tribunals.

Determining the devolved tribunals

19. Being clear as to what is, and what is not, a tribunal is a first step towards identifying what functions should come within the scope of a modern tribunal system. In the future some functions currently undertaken elsewhere will move into the tribunal system, and some functions currently undertaken by tribunals may move into other forums for dispute resolution; but our starting point must be to look at the existing functions of devolved tribunals, and ensure they are undertaken as effectively as possible.

20. There is no single, generally accepted definition of a “tribunal”. The Law

Commission identified the general characteristics of “tribunals”, namely that they are bodies that hear disputes between parties and adjudicate upon them by making binding decisions. The Law Commission concluded that devolved tribunals were those that fell within the definition of “devolved tribunal” as set out in paragraph 9(2) of Schedule 7A to the Government of Wales Act 2006, namely a tribunal all of whose functions are exercisable only in relation to Wales and do not relate to reserved matters.

21. Based on its analysis, the Law Commission considered those bodies that fell within, and consequently fell without, the scope of their review of devolved tribunals in Wales.

22. We generally agree with the Law Commission as to those bodies that are devolved tribunals and are therefore in scope as existing devolved tribunals, namely:

- a. the Agricultural Land Tribunal for Wales
- b. the Mental Health Review Tribunal for Wales
- c. the Residential Property Tribunal for Wales (with 3 constituent tribunals: residential property; leasehold valuation; and rent assessment committees)
- d. the Education Tribunal for Wales (also managing the jurisdictions of tribunals constituted to hear appeals relating to the registration of school inspectors and nursery education inspectors)
- e. the Adjudication Panel for Wales
- f. the Welsh Language Tribunal
- g. the Valuation Tribunal for Wales
- h. school admission appeal panels and
- i. school exclusion appeal panels

23. The tribunals at sub-paragraphs (a) to (f) above are, collectively, defined as “the Welsh Tribunals” by section 59 of the Wales Act 2017, under the President of Welsh Tribunals who has powers relating to training, guidance and welfare. The tribunals at sub-paragraphs (g) to (i) above are devolved tribunals falling outside of the President’s supervisory oversight. Annex 3 sets out further detail about the constitution and history of each of these devolved tribunals which we

consider fall within the scope of this tribunals reform project.

24. We agree with the Law Commission as to those bodies that are not devolved tribunals because they make recommendations rather than binding decisions, they do not follow an adjudicative process and/or their functions are not only exercisable in relation to Wales. The Law Commission identified ombudsmen (including the Public Services Ombudsman for Wales), the Planning Inspectorate (whose functions in Wales transferred to Welsh Government on 1 October 2021 and are dealt with by a division called Planning and Environment Decisions Wales / Penderfyniadau Cynllunio ac Amgylchedd Cymru), continuing NHS health care review panels, and Forestry Committees for Wales.

25. Our one point of difference is with the Law Commission's conclusion that Social Care Wales panels are “devolved tribunals” for the purposes of the tribunal reform project. Our view is that these panels are part of the internal mechanisms in place to ensure Social Care Wales makes fair and balanced decisions on registration-related issues, which decisions are subject to a route of appeal to the UK First-tier Tribunal (Part 8 of the Regulation and Inspection of Social Care (Wales) Act 2016).

26. In addition to existing devolved tribunals we consider to be in scope, our intention is to ensure the new tribunal system is flexible and able to accommodate future jurisdictions that should or could be undertaken by a tribunal. We consider the proposed structure for the new tribunal system in Chapter 3 and in Chapter 4 we consider the jurisdictions transferring into the new system.

Consultation question 1

Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

Chapter 3: A new structure for Wales' tribunal system

Proposal

We propose the scope of our proposals to create a unified and coherent tribunal system for Wales extends to “the devolved tribunals” in Wales as defined by the Law Commission’s review of devolved tribunals in Wales.

Introduction

27. We have set out in this white paper the historical background of the body of devolved tribunals in Wales. The piecemeal nature of their development, with each tribunal governed by its own legislative framework, means our tribunal system as a whole is characterised by a lack of consistency and coherence in both administration and practices and procedures. As we explore in this white paper, most tribunals are administered by central government, while others, such as school admission and exclusion appeal panels, remain closely tied to local government, and membership structures vary.

28. Whilst our tribunal system does generally provide effective access to justice for tribunal users, the current structure can be difficult for users to navigate and can be better framed for the judiciary to manage cases and resources.

29. The Law Commission saw a number of advantages to unifying the devolved tribunals in a single statutory structure:

- a. greater coherence through amalgamation, allowing tribunals to pick the best of existing arrangements while reducing complexity for tribunal users and members
- b. increased profile for the body of devolved tribunals as a means of facilitating

- access to justice for the people of Wales, and
- c. the ability to accommodate future developments within devolved tribunals over time, particularly new or additional jurisdictions.

30. We consider a unified tribunal system for Wales will lay the foundation for a future where justice is increasingly devolved, and Wales administers its own wider system of courts and tribunals.

A unified tribunal system for Wales

31. Extensive reform of the reserved tribunals and their administration was undertaken following the review by Sir Andrew Leggatt (“the Leggatt Report” - see Chapter 1: Introduction, paragraph 10), who concluded

“ If it is to be capable of handling its workload effectively, and ensuring the consistent development of the law, the Tribunal system must have a coherent structure to enable the effective management of workload, encourage consistency, and further a common approach in decision-making and case handling and management. ([Report of the Review of Tribunals](#), paragraph 6.2) ”

32. As a result of the Leggatt Report, combined with the reform to the reserved tribunals under the Tribunals, Courts and Enforcement Act 2007 which provided the legislative framework for many of the recommendations of the Leggatt Report, many reserved tribunals were separated from their sponsoring government departments and given a separate judicial structure. A separate administration was also created initially under the responsibility of the Ministry of Justice. A large number of tribunals were replaced with just 2: a unified First-tier Tribunal hearing cases of different jurisdictions; and the Upper Tribunal hearing appeals from the new lower tribunal. Both First-tier Tribunal and Upper Tribunal are organised into chambers to manage particular functions or jurisdictions of their respective tribunal. The post of Senior President of Tribunals was created

to head the tribunals judiciary.

33. The devolved tribunals in Wales did not fall within the scope of the Leggatt Review and were not within the scope of the 2007 Act.

34. Similarly, the Leggatt Report did not consider devolved tribunals in Scotland. It was not until 2014, following the Tribunals (Scotland) Act 2014 (“the 2014 Act”) being passed, that a new tribunal structure which aimed to bring together individual tribunals (listed in Schedule 1 to the 2014 Act) into a first-tier tribunal, the “First-tier Tribunal for Scotland”, was provided for. The 2014 Act also provides for subdivision of the work of the First-tier Tribunal for Scotland into chambers.

35. The Commission on Justice in Wales, chaired by former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, (“the Thomas Commission”) recommended that the courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales ([Justice in Wales for the people of Wales](#), recommendation 22 paragraph 5.56, page 260). The Thomas Commission was also of the view that the Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation ([Justice in Wales for the people of Wales](#), recommendation 27 and paragraphs 6.59, 6.59.1 and 6.49.2, page 284).

36. Building on all of these experiences, as well as its own consultation, the Law Commission has recommended the creation of a structurally independent tribunal service for Wales, comprising 2 new generic tribunals - a single unified First- tier Tribunal for Wales and an Appeal Tribunal for Wales (See Annex 2, Law Commission recommendations 1 and 11). Our proposals for structural independence are discussed further in Chapter 5 of this white paper.

37. We propose a unified tribunal system for Wales comprising 2 new generic tribunals:

a. the First-tier Tribunal for Wales, the tribunal of first instance organised into

chambers based on jurisdiction to assume the jurisdictions of the tribunals that will transfer into the new unified structure and to accommodate and preserve judicial expertise, and

- b. the Appeal Tribunal for Wales, the appeal tribunal to hear appeals from the First-tier Tribunal for Wales, also organised into chambers as appropriate as appeal jurisdictions are transferred to it and the volume of appeal work develops.

38. We propose the structure of the unified tribunal system is flexible by design and able to accommodate:

- a. the jurisdictions transferred in on establishment
- b. the creation of new chambers to take on additional existing jurisdictions or routes of appeal that are transferred in, or are new routes of appeal created by future legislative change
- c. the addition of jurisdictions to existing chambers, and
- d. the transfer of jurisdictions between chambers,

and to do so with relatively little disruption.

39. We propose the initial chamber structure is created on the face of the Bill to absorb the jurisdiction of specified tribunals transferred into the First-tier Tribunal for Wales, as set in Chapter 4. Thereafter, we propose there should be flexibility relating to the chamber structure to further organise the work of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, without further primary legislation being required. This would include a power to create new chambers and to allocate work to and transfer jurisdictions into and between those chambers, including the transfer of appellate jurisdiction to the Appeal Tribunal.

40. We propose the power in relation to the chamber structure should be exercised by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals. The power is to build flexibility into the new tribunal system and how its work is organised.

41. It is intended the power will be exercised, for example, on establishment of

the First-tier Tribunal for Wales, to organise the jurisdictions of existing Welsh Tribunals into an organisational structure. To preserve specialist expertise and improve the service to tribunal users, jurisdictions will be grouped so that similar work is dealt with by judges and members with the relevant skills to deal with it. The chambers system is intended to be flexible so that changes can be made easily to those boundaries as the workload of the tribunals changes.

42. We propose the power is subject to a duty to consult with, for example, Chamber Presidents, Deputy Presidents, other members of the First-tier Tribunal for Wales/Appeal Tribunal for Wales, members of the broader judiciary, practitioners and tribunal users, before making the statutory instrument. We welcome views as to whether (and if so which) consultees should be compulsory and therefore named on face of the Bill, or whether it is sufficient to require that ministers consult with whomever it appears to them is appropriate.

43. We consider our proposals will bring coherence, simplicity and efficiency to the existing system, increase the public profile of the tribunals, enhance the tribunal user's experience and importantly improve access to justice. We particularly wish to ensure that the structure adopted is fit for purpose today and has the flexibility to be fit for the future, with the ability to accommodate future developments within the devolved tribunals in Wales.

44. The devolved tribunal jurisdictions to be transferred into the new system on establishment and the proposed scheduling of such of this is set out in Chapter 4 ("Scheduling Reform").

Consultation question 2

Do you agree with the proposed structure of the unified tribunal system for Wales?

Tribunal judiciary and membership

45. There is lack of consistency in terms of membership across existing devolved tribunals.

46. In practice, all of the Welsh Tribunals (Section 59(1) of the Wales Act 2017 lists the tribunals known collectively as “the Welsh Tribunals”) have a membership that comprises an office holder with a judicial leadership role, and a wider membership that can be divided into legal and non-legal members. However, the legislative framework and the description of the categories of tribunal member varies for each tribunal. It also varies across those other tribunals not falling within the ambit of section 59 of the Wales Act 2017 but falling within scope of the tribunal reform project.

47. For example, most of the Welsh Tribunals have presidents who are judicial members (barristers or solicitors with experience of specified periods). However, the Residential Property Tribunal for Wales has both a president and a vice-president. Members of the Education Tribunal Wales are eligible to deal with any cases which arise in the jurisdiction of the Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal. Members of the Valuation Tribunal for Wales are volunteers, whereas members of the section 59 tribunals are generally fee paid, with a small number of salaried members. No member of the School Admission Appeal Panels and School Exclusion Appeal Panels is required to be a barrister or a solicitor.

48. We propose that there should be coherence in terms of tribunal membership in the unified structure for the new tribunal system. Whilst judicial leadership in each chamber will undoubtedly maintain a separate identity for that chamber and the day-to-day operation of its discrete jurisdiction, we consider that this should be framed by the structural coherence of the unified system consistent with good practice across the system as a whole.

49. We, therefore, propose that both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be under the judicial leadership of the

President of Welsh Tribunals as presiding judge and that the President of Welsh Tribunals is able to sit as a judge in both tribunals. We also propose there should be a consistent structure of membership for each chamber:

- a. We proposed the structure for the membership of each chamber of the First-tier Tribunal for Wales be as follows:
 - i. Chamber President
 - ii. Deputy Chamber Presidents (where necessary, dependent upon factors such as the volume of applications)
 - iii. Legal members, and
 - iv. Non-legal members, with requisite qualification, skill and experience based on the requirements of the particular jurisdiction.
- b. We propose the structure for the membership of the Appeal Tribunal for Wales be as follows:
 - i. Chamber Presidents of the First-tier Tribunal for Wales, *ex officio*
 - ii. existing members of the Upper Tribunal for England and Wales cross deployed as members of the Appeal Tribunal for Wales as required, and
 - iii. members appointed, as set out in Chapter 7.

There should be scope to amend the membership, for example as the Tribunal is organised into chambers as appropriate as appeal jurisdictions are transferred to it and the volume of appeal work develops.

50. A sustainable tribunal membership reflective of Wales' demography and diversity is a key component of the new tribunal system, and Chapter 7 of this white paper outlines our proposals for appointments to each of the above offices.

Consultation question 3

Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

Chapter 4: Jurisdictions transferring into the tribunal system

Proposal

We propose:

- the jurisdictions of the Welsh Tribunals, together with those of the Valuation Tribunal for Wales and school exclusion appeal panels are transferred to the First-tier Tribunal for Wales and organised into chambers as shown in Figure 1
- the further transfer of jurisdictions, be they existing ones or ones created by future legislation, should be considered on a case-by-case basis, and
- the Appeal Tribunal for Wales should be organised into chambers as appropriate and as appeal jurisdictions are transferred to it and the volume of appeal work develops.

Introduction

51. This chapter sets out which jurisdictions of the devolved tribunals should transfer to the new tribunal system on its establishment. In chapter 2 we identified “the devolved tribunals” we consider are in scope of our proposals to create a unified tribunal system, and in chapter 3 we set out the proposed structure of that unified system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

The First-tier Tribunal for Wales

52. The transfer of the jurisdictions of individual devolved tribunals to the new

First-tier Tribunal for Wales will need to be carefully managed. First, amalgamation of existing tribunals into the new tribunal must avoid disruption to the operation and business of those tribunals as they transfer. Second, the way in which the new tribunal is organised must reflect the specialisation of each jurisdiction and place the interests of tribunal users, and their access to justice, at the forefront of reform.

The Welsh Tribunals

53. The Law Commission recommends that the Welsh Tribunals defined by section 59 of the Wales Act 2017 (Chapter 2: Scope of our reforms, paragraphs 22 and 23) should be consolidated into a single unified tribunal. We have set out why reform is needed (Chapter 1: Introduction, paragraphs 12 to 14) and our proposals for a unified and coherent tribunal system for Wales are informed by a significant body of work (Chapter 1: Introduction, paragraph 10). As long ago as 2010, the Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee’s recommendations for reform in relation to tribunals operating in Wales were “...designed to promote a more integrated, user-focused system” (Administrative Justice and Tribunals Council Welsh Committee, 2010. [Review of Tribunals Operating in Wales](#), page 3). We agree with the Law Commission that the Welsh Tribunals should be transferred into the First-tier Tribunal for Wales.

Consultation question 4

Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

The Valuation Tribunal for Wales

54. The Law Commission concluded that, in the absence of practical issues and

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obstacles indicating a contrary course of action, the jurisdiction of the Valuation Tribunal for Wales (“the VTW”) should be transferred to the First-tier Tribunal for Wales.

55. We agree with the Law Commission that the VTW should be absorbed into the new tribunal system. The nature of its jurisdiction is not such that it is markedly different to the Welsh Tribunals and does not warrant it continuing as a separate standalone tribunal.

56. There are, however, practical issues to aligning the VTW with the Welsh Tribunals in the First-tier Tribunal for Wales that will need to be overcome. The model for adjudicating on disputes, for example, is different in the VTW compared to the Welsh Tribunals. The VTW panels are structured in a similar way to the lay magistracy, and comprise lay members advised by a specialist clerk. Moreover, those lay members are volunteers and are not remunerated, unlike members of the Welsh Tribunals who are almost universally fee paid (the Ministry of Justice [Judicial Daily Sitting Fees](#) - effective 1 April 2022 - and [Judicial Daily Sitting Fees for Sitting in Retirement Posts](#) - effective 1 April 2022 - include rates for members of the Welsh Tribunals). In addition, any liabilities that may arise from the VTW transferring to the new tribunal system will need to be assessed (a process which we have begun), together with the implications for staff of proposals in this white paper to create a single arm's-length body to administer the new tribunal system.

57. We do not consider these practical issues to be insurmountable. It is feasible that, as the Law Commission commented, the VTW’s current model for adjudicating on disputes could be carried into the First-tier Tribunal on its establishment and the need for reform of it could be considered in time as part of the ongoing development of tribunals justice in Wales. But we will need to work through the issues to determine if any negate the proposed transfer of the VTW into the new tribunal system or suggest it might better happen at a later stage.

58. If the jurisdiction of the VTW was not transferred to the new tribunal system on its establishment, and ahead of its future transfer into the structure, the Law Commission recommended it should nonetheless be subject to the supervision

of the President of Welsh Tribunals who we propose will have new statutory duties and functions. This will strengthen judicial independence, increase cohesion with the broader devolved tribunal system and represent the tribunal's interests to the Senedd. We agree with this. In this scenario, the President's relationship with the Governing Council of the Valuation Tribunal would have to be considered.

Consultation question 5

Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

Consultation question 6

Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

School exclusion appeal panels

59. The Law Commission recommended the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales. This followed a similar recommendation from the Committee for Administrative Justice and Tribunals Wales ("the CAJTW"), which, in its 2016 report on the administrative justice landscape in Wales, recommended (**Administrative justice: a cornerstone of social justice in Wales**, recommendation 24, page 12) Welsh Government should explore the merits of extending the jurisdiction of the then Special Educational Needs Tribunal for Wales, now the Education Tribunal for Wales, to be a national tribunal for school admissions and exclusion

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appeals.

60. The Commission on Justice in Wales ("the Thomas Commission") also commented:

“ We are concerned that school admissions and exclusions appeals panels operate without any kind of judicial scrutiny save in those very rare cases in which an exclusion leads to an application for judicial review. The role of judges in determining disputes relating to the education of pupils has steadily increased over time as functions of public bodies have increased. We consider that a thorough appraisal of the operation of local authority appeal panels and oversight by the President of Welsh Tribunals of their decision-making processes is required. (**Justice in Wales for the people of Wales**, paragraph 6.47, page 280) ”

61. We agree with these recommendations and propose that the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales and adjudicated on as part of Wales' independent tribunal system. We do not consider that those involved in the exclusion of a child from a school approach those decisions lightly, but the consequences of school exclusion for a child and for a school are of the highest significance. It is essential that decision-making is consistent and unquestionably independent.

Consultation question 7

Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

School admission appeal panels

62. The Law Commission concluded that, at least for the time being, school

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admission appeal panels, as described in Annex 3, should remain outside of the new unified tribunal system and administered by admission authorities.

63. In reaching this conclusion, the Law Commission highlighted local knowledge and seasonal peaks in case load as the determining factors. They also acknowledged, however, that this approach will preserve in the system a sub-optimal position as regards independence for school admission appeals that is a key design feature of other tribunals. In part, and to mitigate the implications of this position, the Law Commission recommended that appeals from school admission appeal panels should be available on a point of law to the First-tier Tribunal for Wales.

64. We have referred to the body of work that has recommended reform of school admission appeal panels and school exclusion appeal panels (see paragraph 60 of this chapter of the white paper). We also note the logistical complexities identified by the Law Commission as regards the transfer of the jurisdiction of school admission appeal panels.

65. Our conclusion is that in the long run the jurisdiction of school admission appeal panels should ultimately be incorporated into the new tribunal system. The structure we propose for our tribunal system is intended to be flexible enough to accommodate the jurisdiction of school admission appeal panels. However, it is important on practical grounds that the accumulation of new jurisdictions within the First-Tier Tribunal is phased and that there is a degree of prioritisation, based on the importance of the subject matter and the logistical complexity among other factors. We therefore agree with the Law Commission's recommendation that school admission appeal panels continue to be administered by admission authorities at this time, but that there should be a right of appeal to the First-tier Tribunal for Wales on points of law.

Consultation question 8

Do you agree the jurisdiction of school admission appeal panels should

continue to be administered by admission authorities for the time being?

Consultation question 9

Do you agree appeals from school admission appeals panels should be available on a point of law to the First-tier Tribunal for Wales?

Organising the work of the First-tier Tribunal for Wales

66. In chapter 3 we proposed the work of the 2 new tribunals should be organised into chambers. The chamber structure will accommodate the jurisdictions transferring into the new tribunal system. They therefore need to be carefully constructed to accommodate the specialised nature of each jurisdiction. Jurisdictions should be combined in single chambers where there is synergy and where it is appropriate practically and operationally to do so.

67. Our proposed structure for the new tribunal system is designed with sufficient flexibility to accommodate the transfer in of jurisdictions, the creation of new chambers and the allocation of the work between chambers. It is our intention, working with the President of Welsh Tribunals and the President's senior judicial colleagues in the new tribunal system to keep the organisation of the new tribunal system under review. This means that there will be scope to add existing jurisdictions at a later stage if not transferred on the establishment of the new system, to create new chambers and to alter the allocation of work between chambers.

68. In addition, the flexibility designed into the new tribunal system to accommodate jurisdictions will, we propose, be capable of absorbing

jurisdictions in the Welsh justice system that may arise in the future. The Commission on the UK's Future (commonly referred to as the Brown Commission) established by the UK Labour Party has, for example, recommended the devolution of youth justice to Wales ([A New Britain: Renewing our Democracy and Rebuilding our Economy](#)). See "Enhancing Wales' powers of self-government" and recommendation 24 pages 112 -113). A tribunal setting could in many ways be better than a court setting for youth justice matters, because tribunals are a more informal approach to adjudicating on matters compared to courts. We therefore propose to continue to consider the devolution of youth justice and the fit of it with the new tribunal system, for example dovetailing youth justice with a broader range of issues concerning the child including welfare, health and education.

69. We propose the initial chamber structure for the First-tier Tribunal for Wales should be set out in legislation establishing the new tribunal system. The initial chamber structure we propose is set out in Figure 1, below.

Initial chamber structure for the First-tier Tribunal for Wales

- ALT and RPTW moves to Property
- APW moves to Standards
- MHRTW moves to Mental Health
- WLT moves to Welsh Language
- RSIAT, RNEIAT, ETW, School exclusion appeal panels, Appeals on points of law from school admission appeal panels move to Education
- VTW moves to Taxation
- No existing jurisdictions proposed for transfer but propose creating a catchall chamber to be already established and capable of absorbing other jurisdictions that do not align with the other chambers, e.g. data protection and Freedom of Information Act 2000 matters - moves to General Regulatory Chamber.

Consultation question 10

Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

The principle for routes of appeal in devolved Welsh legislation

70. One of the key principles of the new tribunal system for Wales is that it will be able to adapt to changing requirements without the need for further primary legislation. Whilst we propose the structure for the new tribunal system on its establishment will be put in place by the legislation creating the new system, the nature and timing of future change to the system will be accommodated by the structure we have set out in chapter 3.

71. The Thomas Commission commented that the Welsh tribunals have been under-used as a means of enforcing Welsh legislation (**Justice in Wales for the people of Wales**, paragraph 16, page 12). In the commission's view:

“ Welsh tribunals should be used for dispute resolution relating to future Welsh legislation. There has been a tendency in the legislation passed by the Assembly for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals. We regard this as anomalous when specialist Welsh tribunals exist that have the competence and capability to determine disputes. (**Justice in Wales for the people of Wales**, paragraph 6.59.2, page 284) ”

72. We propose that our guiding principle is that disputes deriving from Welsh law should as a general rule, be heard in a Welsh judicial institution, unless there are circumstances that dictate otherwise identified by the full and detailed analysis of each proposal.

73. In addition to jurisdictions of the devolved tribunals we have identified in Chapter 2, there are numerous appeal routes to the courts and tribunals of England and Wales, for example to the UK First-tier Tribunal. In accordance with our guiding principle, we consider that such routes of appeal should be gradually drawn into the new system in Wales. For example, appeals relating to devolved taxes (land transaction tax and landfill disposals tax) are made to and heard by the UK First-tier Tribunal (Tax Chamber) and the UK Upper Tribunal (Tax and Chancery Chamber) before progressing to the relevant Appeal Court. We intend in time to examine transferring these jurisdictions into the First-tier Tribunal for Wales and Appeal Tribunal for Wales, possibly the Taxation Chamber of the First-tier Tribunal for Wales, as part of the establishment of the unified tribunal system in Wales. Cases currently coming before the UK tribunals are limited in number and we therefore propose to consider this issue in due course. Considerations in relation to the route of appeal for any future Welsh taxes will be on a case-by-case basis.

74. The power we propose for the Welsh Ministers with the concurrence of the President of Welsh Tribunals to organise the work of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales into chambers is the mechanism by which the new tribunal system can be adapted to absorb additional routes of appeal over time. Initially, the workload of the Appeal Tribunal for Wales may be such as not to need distinct chambers.

Consultation question 11

Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

Consultation question 12

Are there any particular types of dispute under devolved law which you

believe lend themselves particularly well to being resolved by a tribunal?

The Appeal Tribunal for Wales

75. A key component of the unified and coherent structure of the proposed new tribunal system is the Appeal Tribunal for Wales, the first Welsh appellate body in Welsh legal history. We see the Appeal Tribunal for Wales as a vehicle for developing the devolved law of Wales in a coherent and uniquely Welsh way.

76. Current routes of appeal from the devolved tribunals have developed piecemeal over time and are very much the product of the historical development of the devolved tribunals rather than the product of a coherent approach to Wales' system of devolved tribunals where routes of appeal are an integral part. In his response to the Law Commission consultation, Sir Wyn Williams, then President of Welsh Tribunals commented:

“ ... there is no reasonable justification for appeals from some (a minority) tribunals going to the High Court whereas appeals from the remaining tribunals (the majority) go the Upper Tribunal of England and Wales. The current routes of appeal are, in my view, the result of historical developments undertaken on a piecemeal basis and without reference to the overarching objective of having in place a coherent tribunal structure of which routes of appeal are an integral part. ([Devolved Tribunals in Wales Report](#), paragraph 4.12, page 60) ”

77. The Law Commission recommended the creation of an Appeal Tribunal for Wales (see Annex 2, Law Commission recommendations 11) and for jurisdictions to be added to the Appeal Tribunal over time. The Law Commission also recommended the mechanism for this should be a power for the Welsh Ministers by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdictions to it over time (see Annex 2, Law

Commission recommendations 12).

78. But the Law Commission also recognised that the proper location of appeals from devolved tribunals in Wales was one of the most difficult topics it tackled in its review. Referring to the consultation it ran to inform its recommendations, the Law Commission said:

“ Several of the existing leaders of the section 59 tribunals have responded to the consultation explaining that their current appeal route works well for their tribunal, and should be preserved. This desire to preserve current appeal routes must however be balanced against a need to make sure that the system is coherent and works well as a whole; that it is capable of evolving and accommodating new appeal routes. ([Devolved Tribunals in Wales Report](#), paragraph 4.47, page 69) ”

79. Views on preserving current routes of onward appeal have also been relayed to us in the discussions we have held with the Judicial Leads of the Welsh Tribunals. These are clearly well considered views and they are made by judicial leaders of considerable experience.

80. The Law Commission’s view was that the introduction of a unified First-tier Tribunal creates a strong impetus for a single route of appeal to the Appeal Tribunal for Wales. The Law Commission said:

“ This project undoubtedly presents an opportunity to create a system that is simple, intuitive and coherent, whereas building in different appeal routes from the outset risks compromising that objective. ([Devolved Tribunals in Wales Report](#), paragraph 4.47, page 69) ”

81. Whilst the Law Commission recommends legislating to create the Appeal Tribunal for Wales, it comments we should do so:

“ ...with a view to bringing those provisions into force and establishing the

tribunal when the Welsh Government has a clearer view of how the tribunal system is likely to develop. The legislation should include powers to transfer jurisdictions to the Appeal Tribunal... The Welsh Government would then be able to bring the Appeal Tribunal for Wales into existence and populate it when the time is ripe. ”

82. We agree with the Law Commission’s recommendation to create an Appeal Tribunal for Wales and to the manner in which jurisdictions should be transferred to the Appeal Tribunal for Wales and organised into chambers. Our aspiration if possible would be for the Appeal Tribunal to be operational in at least some jurisdictions from the same point at which the First-tier Tribunal for Wales comes into existence.

83. Notwithstanding the eminence of those setting out a contrary view, we are not convinced that it will ultimately be sensible to have different appeal routes from different chambers of the First-tier Tribunal. This has the potential to undermine the coherence and accessibility of the system, and the standing and credibility of the new institutions, as well as the attractiveness of roles within it. In our view, the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made.

84. However, it is of course essential that the Appeal Tribunal for Wales does not take on functions for which the judiciary are not confident it is appropriately prepared. We therefore propose that the power of the Welsh Ministers to transfer jurisdictions to the Appeal Tribunal for Wales by subordinate legislation should be with the concurrence of the President of Welsh Tribunals.

Consultation question 13

Do you agree there should be an Appeal Tribunal for Wales?

Consultation question 14

Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

Consultation question 15

Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

Chapter 5: Independence

Proposal

We propose:

- all those responsible for the administration of justice in Wales should be under a statutory duty to uphold the independence of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, and
- the creation of a statutory body arms-length from Welsh Government with operational responsibility for the administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

Introduction

86. Judicial independence is the principle that guides the way in which judicial institutions are and will continue to be supported in Wales. Whilst our approach to administering the Welsh Tribunals through the Welsh Tribunals Unit has developed over time, the Unit remains part of Welsh Government. Protecting judicial independence and giving greater structural independence to the administration of justice is a key objective of the structural reforms we are proposing to modernise our tribunal system in Wales.

Statutory duty to uphold independence

87. The Law Commission recommended a statutory duty to uphold the independence of the devolved tribunals (see Annex 2, Law Commission recommendation 52). The Commission on Justice in Wales (“the Thomas Commission”) was of the view that it is essential the judiciary and other institutions have an independent relationship with the Welsh Government and Senedd and that a statutory duty as regards independence should be in place (**Justice in Wales for the people of Wales**, paragraph 12.177). Statute makes provision designed to guarantee continued judicial independence at a UK level (Section 3 of the Constitutional Reform Act 2005), but there is no current statutory protection for independence that applies across the devolved tribunals. We consider a statutory duty to uphold independence is consistent with the continued development of our devolved tribunal system as a cornerstone of Wales’ emerging justice system.

88. We propose a statutory duty to uphold judicial independence could potentially apply to all those with responsibility for the administration of justice as that applies to the reformed tribunal system and the members of the new tribunals. Thus, the duty could potentially apply to the First Minister, the Welsh Ministers, the Counsel General and any other persons discharging a responsibility as regards the new tribunals.

89. The duty should include a duty to have regard to the need for members of the tribunals to have the necessary level of support to enable them to carry out their functions.

90. The duty could also apply to all Members of the Senedd, given that the Senedd has ultimate responsibility for Wales' constitutional arrangements and for decisions on public expenditure, including the level of funding that would be available for the operation of the tribunals. We note that a similar duty applies to Members of the Scottish Parliament. However, while we hope that all Members of the Senedd would support the independence of the judiciary, there are legitimate questions which could be asked about the practical implications of such a duty and whether it could impact on free speech during Senedd proceedings. We would therefore see it as a matter for the Senedd Commission to consider as to whether it would be appropriate to include such a duty.

Consultation question 16

Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

Consultation question 17

Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

Judicial oath

91. The Law Commission recommends all members in the new tribunal system should be required to take a judicial oath or affirmation (see Annex 2, Law Commission recommendation 53).

92. At present, only the President of Welsh Tribunals is required to take the oath of allegiance and the judicial oath as set out in sections 2 and 4 of the Promissory Oaths Act 1868 (Paragraph 14 of Schedule 5 to the Wales Act 2017). By contrast, similar legal requirements apply to all members of the Scottish Tribunals (Paragraph 11 of Schedule 7 to the Tribunals (Scotland) Act 2014) and to the Senior President of Tribunals and all members of the UK First-tier Tribunal and the Upper Tribunal (Paragraph 11 of Schedule 1, paragraph 9 of Schedule 2, paragraph 10 of Schedule 3 and paragraph 8 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007). In Northern Ireland, the judicial oath has a different formulation (Section 19 of the Justice (Northern Ireland) Act 2002).

93. Oaths have a clear historical and symbolic significance across the UK's justice systems. They also have a practical significance in terms of the perception of judicial independence. That said, there is a rational argument that a modern justice system should not rely on office holders taking oaths to each affirm they exercise their respective duties guided by principles of equality, fairness of treatment and the rule of law. Requirements on individuals to act in certain ways would be more clearly justiciable if directly written into statute or were a matter of contract embodied by the terms and conditions of a person's appointment as a member in the new tribunal system in Wales.

94. If, however, all members of the new tribunal system are to be required to take an oath or affirmation to enhance the public perception of judicial independence, we consider a modern formulation of the form of oath or affirmation will be compatible with the ethos of the new modern tribunal system for Wales. Such an oath or affirmation could be broadly akin to the following:

“ I do swear [or solemnly and sincerely and truly affirm] that I will well and faithfully serve in the office of and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm. ”

Consultation question 18

Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

Consultation question 19

Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

Structural independence

95. The remodelling of the administration of our nascent justice system in Wales is a necessary part of the journey towards building a justice infrastructure for Wales capable of adopting jurisdictions and growing and evolving over time.

96. The Thomas Commission and the Law Commission both concluded that the current arrangements for the administration of the Welsh Tribunals, whereby the Welsh Tribunals Unit, embedded in and part of Welsh Government, provides administrative support services, does not sufficiently establish the perception of judicial independence.

97. The Thomas Commission preferred to see operational responsibility for the

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administration of devolved tribunals reformed on the model of the Scottish Courts and Tribunals Service (“the SCTS”) (**Justice in Wales for the people of Wales**, paragraphs 12.162 to 12.165). The SCTS is a body corporate established by statute. The commission recommended the Welsh Tribunals Unit should have structural independence from Welsh Government (**Justice in Wales for the people of Wales**, paragraphs 6.58 to 6.59).

98. The Law Commission also recommended structural independence for the future administration of the system of devolved tribunals in Wales (see Annex 2, Law Commission recommendation 51). Whilst the Law Commission offered some general principles to guide the design and establishment of a body, neither the Thomas Commission nor the Law Commission offered any detailed recommendations about the structure, composition and functions of the body (although they did express views on its status, discussed further below).

99. We agree the judiciary must be, and must be seen to be, independent of the executive and legislative arms of government. The fundamental question to address is therefore whether the independence of the new tribunal system is best served if functions of administering the system are part of or are separate from Welsh Government.

100. There are 2 principal models that could be deployed for the administration of the new tribunal system, while providing for greater structural independence:

- a. Administrative arrangements could be made, for example through a framework document. His Majesty’s Courts and Tribunals Service (HMCTS), for example, is not established in statute. It is commonly described as being an executive agency responsible for administrative functions for the courts and tribunals of England and Wales and is part of the Ministry of Justice. HMCTS is now managed jointly by the executive and the judiciary with the Senior President of Tribunals sitting on the board, strengthening judicial independence in the administration of tribunals. (HMCTS is governed by a **framework document** that sets out partnership arrangements between the Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals).
- b. Alternatively, the level of independence could be set by statute. The Scottish

Courts and Tribunals Service is an example of a statutory body corporate (Part 4 of and Schedule 3 to the Judiciary and Courts (Scotland) Act 2008) independent of the Scottish Government and constituted with the function of providing administrative support to the Scottish courts and tribunals.

101. In proposing a model, our objective is to create structural separation between responsibility for operational and administrative functions for the new tribunal system (with an appropriate level of judicial involvement in that) and the executive and legislative functions of the Welsh Government and of the Senedd respectively. Although these operational and administrative functions are executive rather than judicial, on balance we believe that it is right for these functions to have a greater degree of separation from government than can be provided if they remain delivered by an arm of government, for example by an executive agency.

102. We therefore propose to legislate to create a body corporate as a separate legal entity, at arms' length from Welsh Government and with operational responsibility for the administration of the new tribunal system. We consider this model will deliver the structural separation and independence from Government that aligns with the guiding principle of judicial independence and the weight of opinion expressed by both the Thomas Commission and the Law Commission.

Tribiwnlysoedd Cymru / Tribunals Wales

103. For the purposes of this consultation, we call the proposed statutory body “Tribiwnlysoedd Cymru / Tribunals Wales”, its name to be formally considered and confirmed in due course.

104. There will of course be an on-going relationship between Tribunals Wales and the Welsh Government, the nature of which will be informed by the way in which Tribunals Wales is constituted.

105. The purpose of Tribunals Wales will be to assume operational responsibility

for the new tribunals service by exercising the functions and powers conferred on it by primary legislation within the budget set by the Welsh Government. The legislative and governance frameworks put in place will define the extent of the Welsh Ministers' accountability for Tribunals Wales.

106. Our proposed structure and governance for Tribunals Wales is set out in Table 1, below. Unlike current arrangements, we propose it is governed by a board. The board would have a combination of executive, non-executive and judicial members. Its overall function would be to oversee the governance and operation of the body.

107. Our proposals include a requirement for the board to complete a corporate plan and to publish an annual report and accounts, as is generally considered best practice. The annual report would be expected to include information about the operational performance of the tribunals and their chambers – including measures around efficiency of operation, and the frequency with which decisions of each chamber were appealed or changed upon internal review. We would also expect (where possible) for the report to include user satisfaction measures.

108. The creation of the board that includes judicial oversight of the new tribunal system provides the foundation to collect key performance information about the operation of the system. Key performance measures to be monitored by the board would be determined in due course. We see these as including matters such as the use of the Welsh language in the tribunals system, differential experiences of tribunal users from different backgrounds and the diversity of tribunal members.

109. The proposals in Table 1 include a limited power for the Welsh Government to make requirements of the board; for example, these might include provisions which the government would find helpful to see included in its annual report.

110. Annual reporting is one of the ways in which dialogue is maintained between the different branches of government – but it is not the only way in which we would expect that dialogue to continue. For example, the Counsel General and Minister for the Constitution meets regularly with the President of

Welsh Tribunals, and we would expect that to continue. It is important that there is regular exchange of information about the operation of the law and the impact of governmental decisions.

111. Similarly, although these things are not all matters for the government, we have welcomed the practice of the President of Welsh Tribunals being regularly invited to appear before a Senedd committee to discuss his annual report, and of that report being debated in the Senedd. We would welcome a similar practice developing with regard to the annual reports of Tribunals Wales.

112. A particular point to highlight is that we propose the Chair for the Board of Tribunals Wales should be a non-executive member selected through an open and fair public appointment process. In his evidence session to the Legislation, Justice and Constitution Committee, on 13 March 2023, Sir Wyn Williams, then President of Welsh Tribunals, said he favoured a judge acting as Chair because that would, in perception terms, ensure that independence is preserved.

113. Both examples exist elsewhere in the sphere of organisational leadership of justice bodies. The Chair of the Scottish Courts and Tribunals Service is the Lord President, the most senior judge in Scotland, whereas the chair of HMCTS is non-judicial but a person who has held senior business positions and as a leader of organisations (having been selected through an open competition focused on chairing and leadership skills, rather than the process by which senior judges are selected which necessarily has to give significant weight to other factors) ([Legislation, Justice and Constitution Committee](#), paragraph 15).

Status of Tribunals Wales

114. The structural independence of Tribunals Wales will be guaranteed by its establishment in statute and the functions, duties and powers conferred on it by that statute, as set out in Table 1.

115. Every public body also has a status, and there are 2 principal statuses of devolved statutory bodies in Wales. It is important to note, however, that neither of these models is inherently more independent than the other. Other than the characteristics of whether their staff are civil servants or not, both of the below models appear to us to be compatible with the arrangements at Table 1.

- a. The first potential model is that Tribunals Wales could be constituted as a non-ministerial department (“NMD”). This was the model recommended by the Thomas Commission and the Law Commission. NMDs are staffed by civil servants. An example in Wales is the Welsh Revenue Authority.
- b. Another potential model is a Welsh Government Sponsored Body (“WGSB”). There are a number of WGSBs operating independently of Welsh Government and an example operating in the justice sphere is the Valuation Tribunal for Wales (“the VTW”). The VTW and its governing council was established by subordinate legislation made by the Welsh Ministers (The Valuation Tribunal for Wales Regulations SI 2010 No.713 W.69). A framework document ([Valuation Tribunal for Wales framework document](#)) sets out the broad framework within which the VTW operates and details the terms and conditions under which the Welsh Ministers provide funds to it. Its staff are public servants but not civil servants.

116. As stated above, both of these models appear to us to have the potential to provide sufficient structural independence. The principal impact we have determined of the decision between the 2 options is the implication for the management of the organisation and for its staff. A decision on the model to be pursued has the potential to impact on staff of the Welsh Tribunals Unit and the Valuation Tribunal for Wales, and on the ability to attract and reward staff in the future. We are therefore interested in hearing views on the implications of this decision, and indeed whether there are other ways of providing structural independence which have advantages beyond these 2 models. We plan to use the consultation period to engage with staff and trade unions, and we will continue to do so as we develop legislation to implement reform.

Consultation question 20

Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

Consultation question 21

Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

Consultation question 22

Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

Consultation question 23

Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

Tribiwnlysoedd Cymru / Tribunals Wales, a proposed arms-length body corporate: proposed

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structure and governance

Areas:

- **Establishment**
- **Purpose**
- **Board**
- **Staff**
- **Finance**
- **Corporate governance**
- **Transfer of staff**
- **Transfer of property and liabilities**
- **Consequential matters**

[View in table format](#)

Establishment

Statutory provision: Incorporation

A body corporate known as “Tribunals Wales/Tribiwnlysoedd Cymru” (proposed name for working purposes only). Creates a statutory body with legal personality.

Welsh Ministers’ accountability

Determined by the legislative framework for Tribunals Wales.

Statutory provision: Status

As a general principle the Law Commission concluded the administration for the

tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.

Welsh Ministers' accountability

The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.

Purpose

Statutory provision: Objective

To have operational responsibility for the administration of the new tribunal system and to exercise its functions to provide services to ensure the effective administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales and to support members to discharge their functions.

Welsh Ministers' accountability

Creates structural separation between operational responsibility for the administration of the new tribunal system, sitting with Tribunals Wales, and policy functions sitting with the Welsh Government.

Statutory provision: Functions and powers

Statute to detail functions of Tribunals Wales and its general and ancillary powers.

Welsh Ministers' accountability

Accountable for overall performance of Tribunals Wales.

Statutory provision: Government policy

A duty on Tribunals Wales in the exercise of its functions to have regard to such aspects of Welsh Government policy and such other matters as the Welsh Ministers may direct.

Welsh Ministers' accountability

Day-to-day administration will not sit with ministers. This is not a power for the Welsh Ministers to give Tribunals Wales specific directions as to the exercise of its functions.

Statutory provision: Advice to the Welsh Ministers

Duty to provide advice and assistance to the Welsh Ministers as requested; power to offer advice on policy relation to matters where Tribunals Wales exercises functions or the administration of justice in Wales.

Welsh Ministers' accountability

Mechanism for Welsh Ministers to draw on relevant expertise of Tribunals Wales and for it to be able to offer advice to ministers framed by its functions.

Statutory provision: Default power

Power for the Welsh Ministers by regulations to assume responsibility for the

functions of Tribunals Wales where ministers consider the body is failing to carry out its functions to deliver its purpose or is doing so in such a way so as to create a significant risk to the functioning of the tribunal system.

Welsh Ministers' accountability

Equivalent to section 70 of the Judiciary and Courts (Scotland) Act 2008.

Board

Statutory provision: Chairperson

Chairperson appointed by the Welsh Ministers, or President of Welsh Tribunals ex officio.

Welsh Ministers' accountability

Welsh Ministers' role in appointing chair if the President of Welsh Tribunals ex officio does not hold the chair.

Statutory provision: Members

Judicial members

President of Welsh Tribunals ex officio (if not Chairperson); one judicial member of the new tribunal system for Wales selected by the President.

Non-judicial members

Not fewer than 3 nor more than 6 persons appointed by the Welsh Ministers.

Executive members

CEO ex officio; one other member of staff appointed by the CEO.

(This gives a board of between 8 and 11 persons).

Welsh Ministers' accountability

Welsh Ministers to be under a "have regard to" duty to ensure appointees have experience of matters relevant to the Tribunals Wales' purpose and functions and to secure a variety of skills and experience among the members (e.g. a person representative of tribunal users, or a solicitor or barrister with experience of devolved tribunals).

Tribunals Wales to be a regulated body with appointments to it regulated by the Commissioner for Public Appointments.

Statutory provision: Tenure (except PWT governed by separate legislation)

4 years. Eligible for reappointment. Provision for resignations and removals also required.

Welsh Ministers' accountability

Ensure appointments meet Code of Practice, including any restrictions on reappointments.

Statutory provision: Remuneration

Power for Tribunals Wales to pay remuneration and expenses to members of the board and any co-opted members of committees.

Welsh Ministers' accountability

Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for Tribunals Wales to carry out its functions.

Statutory provision: Committees

Power for Tribunals Wales to establish committees and co-opt persons to sit on them.

Statutory provision: Proceedings

Power for Tribunals Wales to regulate its proceedings, quorum (including committees), manner of voting, etc.

Statutory provision: Delegation

Power for Tribunals Wales to delegate any function to a member, committee, employee or any other person, corporation or statutory entity, but not to divest itself of responsibility for the function delegated.

Staff

Statutory provision: CEO

First CEO to be appointed by Welsh Ministers on the T&Cs they determine appropriate.

Subsequent CEOs to be appointed by the Board of Tribunals Wales on T&Cs it, with the approval of the Welsh Ministers, determines appropriate.

Welsh Ministers' accountability

Welsh Ministers make first appointment of CEO and required to approve T&Cs of that and subsequent appointees.

Statutory provision: Other staff

Tribunals Wales can appoint staff as it considers appropriate to enable it to discharge its functions. If an NMD, this will be subject to the Civil Service Commission Recruitment Principles.

Welsh Ministers' accountability

Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for the Tribunals Wales to carry out its functions. Ensure that CEO and Board are recruited under Code of Practice.

Finance

Statutory provision: Funding

Sources of funding for Tribunals Wales: income from fees; and grant-in-aid from Welsh Ministers of such amount ministers consider appropriate for the body to carry out its functions and subject to conditions ministers consider appropriate.

Welsh Ministers' accountability

Welsh Ministers accountability underpinned by a framework document/ interdepartmental agreement setting out the Welsh Government's budget planning processes, governed by the Government of Wales Act 2006 and Senedd Cymru Standing Orders. Decision on budget allocation to sit with ministers.

Tribunals Wales to co-operate with ministers by providing all necessary assistance, information and budget forecasts to inform Government budget planning decisions.

Budget allocations for the year ensuing to be confirmed in an annual remit letter.

Statutory provision: Accounting Officer

CEO to be the Accounting Officer of Tribunals Wales with responsibility for deployment of resources in line with conditions of funding specified by the Welsh Ministers, signing the annual report and accounts and so forth.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out the roles and

responsibilities of the CEO as Accounting Officer and the Permanent Secretary as Principal Accounting Officer for the Welsh Ministers.

Statutory provision: Audit

External auditor to be the Auditor General for Wales, with power to examine the economy, efficiency and effectiveness of the use of resources but not to question the merits of the objectives of Tribunals Wales.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out detail on matters in relation to internal audit and external audit.

Corporate governance

Statutory provision: Corporate plan

Tribunals Wales to prepare a corporate plan for a defined period to be approved by the Welsh Ministers which the body must then publish and lay before the Senedd. It must set out the body's strategic objectives for the planning period and the performance measures by which achievement of the objectives can be measured.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out the corporate governance planning framework: Term of Government remit letter (subject to process for modification if government priorities shift); corporate plan for a defined period; annual business plan; accounts and annual report.

The planning period the corporate plan must cover could be prescribed in primary legislation (e.g. periods of 3 years commencing on a certain date) or in subordinate legislation with a power for the Welsh Ministers to amend the period as they consider appropriate.

Statutory provision: Accounts and annual report

Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.

Statutory provision: Accounts and annual report

Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.

Statutory provision: Provision of information

Tribunals Wales to provide the Welsh Ministers with any information they require relating to the exercise of the body's functions, subject to the confidentiality of

information relating to applications to the tribunals.

Welsh Ministers' accountability

Framework document/interdepartmental agreement to set out detail on Welsh Ministers access to information held by Tribunals Wales.

Transfer of staff

Statutory provision: Transfer scheme for staff

Power for the Welsh Ministers by regulations to provide for the transfer of staff employed by them to be transferred to Tribunals Wales.

Power for the Welsh Ministers to second staff to Tribunals Wales.

Welsh Ministers' accountability

Welsh Ministers accountable for the initial staffing of Tribunals Wales.

Transfer of property and liabilities

Statutory provision: Transfer scheme for property and liabilities

Power for the Welsh Ministers by regulations to provide for the transfer of any property and liabilities to Tribunals Wales.

Welsh Ministers' accountability

Welsh Ministers accountable for the initial property and liabilities of Tribunals Wales.

Consequential matters

Statutory provision: Amendments to legislation

Tribunals Wales to be included in relevant schedules as a public body, including, e.g.:

- The Freedom of Information Act 2000
- The Well-being of Future Generations Act 2015, and
- The Public Services Ombudsman (Wales) Act 2019.

Table 1: Tribiwnlysoedd Cymru / Tribunals Wales, a proposed arms-length body corporate: proposed structure and governance

Area	Statutory provision	Detail	Welsh Ministers' accountability
Establishment	Incorporation	A body corporate known as "Tribunals Wales/Tribiwnlysoedd Cymru" (proposed name for working purposes only). Creates a statutory body with	Determined by the legislative framework for Tribunals Wales.

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Area	Statutory provision	Detail	Welsh Ministers' accountability
	Status	<p>legal personality.</p> <p>As a general principle the Law Commission concluded the administration for the tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.</p>	<p>The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.</p>
Purpose	Objective	<p>To have operational responsibility for the administration of the new tribunal system and to exercise its functions to provide services to ensure the effective administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales and to support members to discharge their functions.</p>	<p>Creates structural separation between operational responsibility for the administration of the new tribunal system, sitting with Tribunals Wales, and policy functions sitting with the Welsh Government.</p>
	Functions and powers	<p>Statute to detail functions of Tribunals Wales and its general and ancillary powers.</p>	<p>Accountable for overall performance of Tribunals Wales.</p>

Area	Statutory provision	Detail	Welsh Ministers' accountability
	Government policy	A duty on Tribunals Wales in the exercise of its functions to have regard to such aspects of Welsh Government policy and such other matters as the Welsh Ministers may direct.	Day-to-day administration will not sit with ministers. This is not a power for the Welsh Ministers to give Tribunals Wales specific directions as to the exercise of its functions.
	Advice to the Welsh Ministers	Duty to provide advice and assistance to the Welsh Ministers as requested; power to offer advice on policy relation to matters where Tribunals Wales exercises functions or the administration of justice in Wales.	Mechanism for Welsh Ministers to draw on relevant expertise of Tribunals Wales and for it to be able to offer advice to ministers framed by its functions.
	Default power	Power for the Welsh Ministers by regulations to assume responsibility for the functions of Tribunals Wales where ministers consider the body is failing to carry out its functions to deliver its purpose or is doing so in such a way so as to create a significant risk to the functioning of the tribunal system.	Equivalent to section 70 of the Judiciary and Courts (Scotland) Act 2008.

Area	Statutory provision	Detail	Welsh Ministers' accountability
Board	Chairperson	Chairperson appointed by the Welsh Ministers, or President of Welsh Tribunals ex officio.	Welsh Ministers' role in appointing chair if the President of Welsh Tribunals ex officio does not hold the chair.
	Members	<p>Judicial members</p> <p>President of Welsh Tribunals ex officio (if not Chairperson); one judicial member of the new tribunal system for Wales selected by the President.</p> <p>Non-judicial members</p> <p>Not fewer than 3 nor more than 6 persons appointed by the Welsh Ministers.</p> <p>Executive members</p> <p>CEO ex officio; one other member of staff appointed by the CEO.</p> <p>(This gives a board of between 8 and 11 persons).</p>	<p>Welsh Ministers to be under a "have regard to" duty to ensure appointees have experience of matters relevant to the Tribunals Wales' purpose and functions and to secure a variety of skills and experience among the members (e.g., a person representative of tribunal users, or a solicitor or barrister with experience of devolved tribunals).</p> <p>Tribunals Wales to be a regulated body with appointments to it regulated by the Commissioner for Public Appointments.</p>
	Tenure (except PWT)	4 years. Eligible for reappointment.	Ensure appointments meet Code of Practice,

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Area	Statutory provision	Detail	Welsh Ministers' accountability
	governed by separate legislation)	Provision for resignations and removals also required.	including any restrictions on reappointments.
	Remuneration	Power for Tribunals Wales to pay remuneration and expenses to members of the Board and any co-opted members of committees.	Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for Tribunals Wales to carry out its functions.
	Committees	Power for Tribunals Wales to establish committees and co-opt persons to sit on them.	
	Proceedings	Power for Tribunals Wales to regulate its proceedings, quorum (including committees), manner of voting, etc.	
	Delegation	Power for Tribunals Wales to delegate any function to a member, committee, employee or any other person, corporation or statutory entity, but not to divest itself of responsibility for the function delegated.	

Area	Statutory provision	Detail	Welsh Ministers' accountability
Staff	CEO	<p>First CEO to be appointed by Welsh Ministers on the T&Cs they determine appropriate.</p> <p>Subsequent CEOs to be appointed by the Board of Tribunals Wales on T&Cs it, with the approval of the Welsh Ministers, determines appropriate.</p>	Welsh Ministers make first appointment of CEO and required to approve T&Cs of that and subsequent appointees.
	Other staff	Tribunals Wales can appoint staff as it considers appropriate to enable it to discharge its functions. If an NMD, this will be subject to the Civil Service Commission Recruitment Principles.	Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for the Tribunals Wales to carry out its functions. Ensure that CEO and Board are recruited under Code of Practice.
Finance	Funding	Sources of funding for Tribunals Wales: income from fees; and grant-in-aid from Welsh Ministers of such amount ministers consider appropriate for the body to carry out its functions and subject to conditions ministers	Welsh Ministers accountability underpinned by a framework document/ interdepartmental agreement setting out the Welsh Government's budget planning processes, governed by

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Area	Statutory provision	Detail	Welsh Ministers' accountability
		consider appropriate.	<p>the Government of Wales Act 2006 and Senedd Cymru Standing Orders. Decision on budget allocation to sit with ministers.</p> <p>Tribunals Wales to co-operate with ministers by providing all necessary assistance, information and budget forecasts to inform Government budget planning decisions.</p> <p>Budget allocations for the year ensuing to be confirmed in an annual remit letter.</p>
	Accounting Officer	CEO to be the Accounting Officer of Tribunals Wales with responsibility for deployment of resources in line with conditions of funding specified by the Welsh Ministers, signing the annual report and accounts and so forth.	Framework document/ interdepartmental agreement to set out the roles and responsibilities of the CEO as Accounting Officer and the Permanent Secretary as Principal Accounting Officer for the Welsh Ministers.
	Audit	External auditor to be the Auditor General for	Framework document/ interdepartmental

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Area	Statutory provision	Detail	Welsh Ministers' accountability
		Wales, with power to examine the economy, efficiency and effectiveness of the use of resources but not to question the merits of the objectives of Tribunals Wales.	agreement to set out detail on matters in relation to internal audit and external audit.
Corporate Governance	Corporate Plan	Tribunals Wales to prepare a corporate plan for a defined period to be approved by the Welsh Ministers which the body must then publish and lay before the Senedd. It must set out the body's strategic objectives for the planning period and the performance measures by which achievement of the objectives can be measured.	<p>Framework document/ interdepartmental agreement to set out the corporate governance planning framework: Term of Government remit letter (subject to process for modification if government priorities shift); corporate plan for a defined period; annual business plan; accounts and annual report.</p> <p>The planning period the corporate plan must cover could be prescribed in primary legislation (e.g., periods of 3 years commencing on a certain date) or in subordinate legislation with a power for the Welsh Ministers to amend the period as they consider appropriate.</p>

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Area	Statutory provision	Detail	Welsh Ministers' accountability
	Accounts and annual report	Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.	Framework document/ interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.
	Provision of information	Tribunals Wales to provide the Welsh Ministers with any information they require relating to the exercise of the body's functions, subject to the confidentiality of information relating to applications to the tribunals.	Framework document/ interdepartmental agreement to set out detail on Welsh Ministers access to information held by Tribunals Wales.
Transfer of staff	Transfer scheme for staff	<p>Power for the Welsh Ministers by regulations to provide for the transfer of staff employed by them to be transferred to Tribunals Wales.</p> <p>Power for the Welsh Ministers to second staff to Tribunals Wales.</p>	Welsh Ministers accountable for the initial staffing of Tribunals Wales.

Area	Statutory provision	Detail	Welsh Ministers' accountability
Transfer of property and liabilities	Transfer scheme for property and liabilities	Power for the Welsh Ministers by regulations to provide for the transfer of any property and liabilities to Tribunals Wales.	Welsh Ministers accountable for the initial property and liabilities of Tribunals Wales.
Consequential matters	Amendments to legislation	<p>Tribunals Wales to be included in relevant schedules as a public body, including, e.g.:</p> <ul style="list-style-type: none"> • The Freedom of Information Act 2000 • The Well-being of Future Generations Act 2015, and • The Public Services Ombudsman (Wales) Act 2019. 	

Chapter 6: The President of Welsh Tribunals

Proposal

We propose:

- the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a

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- judge in those tribunals, and
- the role of President of Welsh Tribunals should be enhanced by conferring new statutory duties and functions on the office.

Introduction

117. The Wales Act 2017 created the office of President of Welsh Tribunals. The President's functions under the Act are twofold (Section 60(5) of the Wales Act 2017). First, the President is responsible for the maintenance of the tribunals (Section 59 of the Wales Act. See also Chapter 2: Scope of our reforms) within the resources made available by the Welsh Ministers. This extends to training, guidance and welfare of the members of those tribunals. Second, the president is responsible for representing the views of members of the tribunals to the Welsh Ministers and to the Senedd. The first President of Welsh Tribunals, Sir Wyn Williams did this in part through his annual reports that were presented to the First Minister and Counsel General, then laid before the Senedd.

118. The Wales Act does not exhaustively define the duties, functions and powers of the President, some of which are implied. For example, it is commonly accepted that as the President is the most senior judicial figure within the devolved tribunals in Wales, with a complementary supervisory role over the tribunals in respect of which the President has statutory functions. Those functions are, however, currently limited to matters of training, guidance and welfare.

119. The role of the President of Welsh Tribunals is complicated by the nature of the current legislative frameworks for the tribunals under the President's supervision. This is because the Wales Act 2017 has been overlaid across pre-existing legislation spanning the pre and post devolution periods. In addition, there are devolved tribunals within the scope of our proposals that do not fall within the purview of the President's role.

120. We consider the office of President of Welsh Tribunals is a key component

of Wales' devolved tribunal system. The senior judicial leadership the office provides is required as our new tribunal system is created and as it evolves going forward. But we think there is potential to enhance the office of President of Welsh Tribunals, potential the UK government has grasped, too, in making the President of Welsh Tribunals the appointing authority for sitting-in-retirement offices for the Welsh Tribunals. Any such appointments, however, currently still require the agreement of the appointing authority for the original judicial office, which will either be the Welsh Ministers or the Lord Chancellor (Section 124 of the Public Service Pensions and Judicial Office Act 2022).

A judicial role for the President of Welsh Tribunals

121. The Law Commission recommends the President of Welsh Tribunals should be presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals (See Annex 2, Law Commission recommendations 17 and 18).

122. The Wales Act 2017 does not expressly confer a judicial role on the President of Welsh Tribunals to sit as a judge in the Welsh Tribunals. This position contrast with the equivalent senior leadership roles of the tribunals in England and Wales and in Scotland where, respectively, the Senior President of Tribunals and the President of Scottish Tribunals both have judicial roles prescribed in statute (Sections 4(1)(c) and 5(1)(a) of the Tribunals Courts and Enforcement Act 2007 and section 17(5) of the Tribunals (Scotland) Act 2014). Sir Wyn Williams as President of Welsh Tribunals commented on the judicial role of the President of Welsh Tribunals in his first annual report :

“ Although the Act is silent upon the point, it seems clear that, as a senior judge, the President is entitled to sit as the legal chair of each of the Welsh Tribunals. That said, my view is that the President should sit as a legal chair of a Tribunal only if the Judicial Lead of that Tribunal and the

President agree that the circumstances prevailing in a given case make it inappropriate for the Judicial Lead to sit. (**President of Welsh Tribunals First Annual Report** page 3) ”

123. At present, whilst it may be implied the President of Welsh Tribunals can sit as a judge in one of the tribunals within the President’s remit, there is no accepted mechanism for this arrangement in practice and no provision in procedural rules or directions setting out the practice and procedure for how the President should sit.

124. We consider there are clear practical benefits for express statutory provision to be made for a judicial role for the President of Welsh Tribunals in both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. First, it will provide clarity to the current legal basis of the President’s judicial role. Second, together with suitable procedural rules it will provide certainty as to the practice and procedure to be followed on those occasions the President sits as a judge. Third, it will make senior judicial resource available to Wales’ emerging justice system particularly where issues arise relating to the application of devolved legislation across the tribunals as a whole. Fourth, it will provide a valuable insight to the President about the running of the tribunals and the allocation of resources across them. Finally, a specified judicial role for the President will increase the attraction of the office for potential incumbents in the future.

125. For clarity, we also propose an express statutory provision that the President of Welsh Tribunals is the presiding judge of both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

Consultation question 24

Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for

New statutory duties and functions

126. We have discussed the statutory provisions underpinning the office of President of Welsh Tribunals, and the current limited nature and extent of the President's functions. Whilst the office of President of Welsh Tribunals has since its inception under the Wales Act 2017 added very significant value to the tribunal justice system in Wales, we consider the office should be enhanced and have more substance.

127. In addition to an express statutory provision underpinning the judicial role of the President of Welsh Tribunals, we consider further statutory duties and functions should be conferred on the office to strengthen its leadership role across the new tribunals and in the interests of judicial independence. Many of these duties and functions are discussed in the other chapters of this white paper. They are set out in summary below:

Proposed duties and functions for the President of Welsh Tribunals

- Judicial oversight for the structure of the organisation of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 3
- Judicial oversight of proposals to add jurisdictions to the new tribunal system - chapter 3
- Judicial member or Chair of the Board of Tribunals Wales (“Tribiwnlysoedd Cymru/Tribunals Wales ” is the working name of the new statutory body we propose to create – see Chapter 5: Independence), the new body corporate arms-length from Welsh Government with operational responsibility for the administration of the new tribunal system - chapter 5

- Appointing authority for legal and non-legal members of the First-tier Tribunal for Wales - chapter 7
- Judicial oversight and concurrence to appointments by the Welsh Ministers of Chamber President and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales - chapter 7
- Authorising cross-deployment of tribunal members across the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 7
- Adjudicating on complaints about members of the First-tier Tribunal for Wales - chapter 8
- Judicial oversight and concurrence to adjudications on complaints about members of the Appeal Tribunal for Wales - chapter 8
- Chair of the Tribunal Procedure Committee for Wales, responsibility for appointing members to the Committee and for making procedural rules for the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 9

128. The list of proposed duties and functions set out above is not exhaustive. We intend to ensure the office of President of Welsh Tribunals is underpinned by a statutory framework that equips the President to provide judicial leadership for the new tribunal system on its creation and as it develops in the future.

Consultation question 25

Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

Chapter 7: Appointments and deployment

Proposal

We propose:

- a coherent approach for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- in making appointments there should be regard to the need to encourage diversity in the range of persons appointed as members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- terms and conditions, including remuneration, to be set by the Welsh Ministers, and
- a system for the effective deployment of tribunal members across the new tribunal system.

Introduction

129. We set out in Chapter 5 our proposals to support judicial independence in the new tribunal system. With independence comes accountability, and these are not incompatible propositions. The Judicial Executive Board has summarised judicial accountability as follows:

“ Individual judges are subject to a strong system of internal accountability in respect of legal errors and personal conduct...[and] are accountable to the public in the sense that in general their decisions are in public and are discussed, often critically, in the media and by interest groups and sections of the public affected by them. The judiciary is similarly institutionally accountable in respect of first instance and appellate decisions.

“ Neither individual judges nor the judiciary are, nor should they be, accountable to the executive branch of the state because that is inimical to the judicial independence which is a necessary requirement for the discharge by judges of their core responsibility to resolve disputes fairly and impartially. (**The Accountability of the Judiciary**) ”

130. Judicial independence and accountability operate in balance. Whilst current appointments for Welsh Tribunal members follow transparent selection processes, the legislation for appointments is inconsistent. A coherent approach to the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, resulting from clear and transparent selection processes, will contribute to this balance. Our proposals for appointments to the new tribunal system are therefore guided by the following principles:

- a. processes and procedures should protect the independence of tribunal members and the new tribunal system
- b. there should be consistency of appointing authority to ensure fairness, and
- c. appointments should be underpinned by clear and transparent selection processes.

Consultation question 26

Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Current arrangements for appointments

131. Responsibility for, and the process of, appointing members to devolved tribunals is inconsistent. This is one of the products of the piecemeal development of the Welsh Tribunals and it has arisen not because of policy

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decisions to treat appointments across tribunals in different ways, but instead largely because of the passage of time and as thinking about the judicial nature of tribunals has developed. Different procedures apply again to members of the VTW and school admission and exclusion appeal panels.

132. The current arrangements for appointments to the devolved tribunals, including for the office of President of Welsh Tribunals, are set out in the table below:

Appointments

President of Welsh Tribunals

Legislation: Section 60 of and Schedule 5 to the Wales Act 2017

Appointing authority: Lord Chief Justice, consultees - Lord Chancellor, and Welsh Ministers.

Adjudication Panel for Wales

Legislation: Section 75 Local Government Act 2000

Appointing authority: Welsh Ministers

Agricultural Land Tribunal for Wales

Legislation: Section 73 of Schedule 9 to the Agriculture Act 1947

Appointing authority: Lord Chancellor

Educational Tribunal for Wales

Legislation: Section 91 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Appointing authority: Lord Chancellor appoints the President, and the legal chair panel.

Welsh Ministers appoint lay panel with the agreement of the Secretary of State and the President.

Mental Health Review Tribunal for Wales

Legislation: Section 65 of and Schedule 2 to the Mental Health Act 1983

Appointing authority: Lord Chancellor

Residential Property Tribunal for Wales

Legislation: Section 229 of the Housing Act 2004, section 173 of the Commonhold and Leasehold Reform Act 2002 and Schedule 10 to the Rent Act 1977

Appointing authority: Lord Chancellor appoints legal members. Welsh Ministers appoint other members, Vice President, and President from the persons appointed by the Lord Chancellor.

Welsh Language Tribunal

Legislation: Section 120 of and Schedule 11 to the Welsh Language (Wales) Measure 2011

Appointing authority: Welsh Ministers

Valuation Tribunal for Wales

Legislation: Regulations 9, 11 and 12 of and Schedule 2 to the Valuation Tribunal for Wales Regulations 2010

Appointing authority:

Appointments Panel of the VTW's Governing Council:

- Members
- Chairpersons

Election by ballot of full VTW membership:

- President

Note: The Welsh Ministers hold default powers if the above appointments are not made within 3 months of a vacancy.

School admission

Legislation: The Education (Admission Appeals Arrangements) (Wales) Regulations 2005

Appointing authority: Local authority or governing body must appoint either 3 or 5 members to each appeal panel

School exclusion

Legislation: The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003

Appointing authority: Local authority must appoint either 3 or 5 members to each appeal panel.

133. With limited exceptions (see Chapter 6: The President of Welsh Tribunals, paragraph 112), the President of Welsh Tribunals does not have responsibilities for appointments to the Welsh Tribunals. The current limited judicial involvement in and oversight of appointments to devolved tribunals contrasts with the position in the England and Wales system and in Scotland, and the functions conferred respectively on the Senior President of Tribunals ([Footnote 1](#)) and on the Lord President and President of Tribunals ([Footnote 2](#)).

Proposed arrangements for appointments

134. The Law Commission's recommendations for reform of existing appointments processes propose new appointing authorities for the First-tier Tribunal for Wales and the Appeal Tribunal for Wales (see Annex 2, Law Commission recommendations 31 to 37). These can be summarised as follows:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

135. We agree with the principle of the Law Commission's proposals. The responsibilities of appointing authority could be conferred on the Welsh Ministers, as recommended by the Law Commission, or on a specific minister such as the First Minister or Counsel General. Under current arrangements, appointing responsibilities for some of the Welsh Tribunals sit with a specific minister (the Lord Chancellor) who has specific statutory duties with regard to the independence of the judiciary. Generally, functions are not imposed on individual Welsh Ministers.

136. We consider a coherent approach to appointments across the new tribunal system, particularly the enhanced role for the President of Welsh Tribunals, will contribute to judicial independence. Under these proposals, no appointments will be able to be made without judicial involvement, in the shape of the President acting as appointing authority or concurring to appointments where the Welsh Ministers act as appointing authority.

137. Of course, whoever is the appointing authority, the most important element is that appointment decisions should be based on recommendations resulting from clear and transparent selection processes. The Judicial Appointments Commission (“the JAC”) is a statutory body and has responsibility for selecting people for judicial appointments to the Welsh Tribunals where the Lord Chancellor is currently the appointing authority. Where Welsh Ministers are the appointing authority, the JAC manages the selection processes under the terms of an arrangement under section 83 of the Government of Wales Act 2006.

138. We propose that appointments should continue to be underpinned by clear and transparent selection processes. We are exploring with the JAC and with the UK government the practical issues of retaining the JAC to undertake selection processes and to make recommendations for appointments of members to the new tribunal system.

139. The upshot of accepting these proposals would be that the Lord Chancellor would not retain a role as an appointing authority in the new unified tribunal system. This appears to us to be appropriate: the Lord Chancellor is responsible for the judiciary of the reserved, England and Wales jurisdiction and does not generally have commensurate functions with regard to the judiciary in devolved institutions, such as the courts of Scotland.

Consultation question 27

Do you agree with our proposals for the appointing authority for members

of the new tribunals:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

Criteria for appointments

140. A further product of the piecemeal development of the devolved tribunals is that the criteria for appointment as tribunal members that prospective candidates must satisfy lack coherence and vary from tribunal to tribunal, rather than being consistent across the system. Currently, for example, for the Welsh Tribunals the judicial-appointment eligibility condition (Section 50 of the Tribunals Courts and Enforcement Act 2007) only applies by statute to legal roles in the Welsh Language Tribunal, the Education Tribunal for Wales and the Agricultural Land Tribunal for Wales.

141. The judicial-appointment eligibility condition imposes a statutory requirement for at least 5 or 7 years of post-qualification experience and specifies the relevant legal qualification that candidates must hold for appointment to a legal role. Those qualifications include, for example, barrister, solicitor, or Fellow of the Chartered Institute of Legal Executives ("CILEx"). Currently, however, those holding the CILEx qualification are eligible to apply for a more limited range of legal roles in the wider England and Wales jurisdiction compared to those qualified as a barrister or as a solicitor. We note the flexibility available to the Senior President of Tribunals who may appoint a judge of the First-tier Tribunal even if that person does not satisfy the judicial-appointment

eligibility condition (paragraph 2(d) of Schedule 2 to the Tribunals Courts and Enforcement Act 2007).

142. Non-legal roles cover a wider and varied range of areas. For the Welsh Tribunals this covers mental health, agriculture and local government ethical standards, amongst others. The eligibility criteria for non-legal roles therefore varies where this is appropriate, depending on the jurisdiction of the tribunal to which a non-legal role applies.

143. Whilst clear and consistent criteria for appointments is part of the equation for building and maintaining the body of members for the new tribunal system, another part is diversity. The Commission on Justice in Wales (“the Thomas Commission”) commented:

“ The people of Wales are entitled to a system for the provision of justice that meets their specific needs and takes into account demography, geography, diversity and equality. ([Justice in Wales for the people of Wales](#), paragraph 12.3.2, page 450) ”

144. The annual official statistics on judicial diversity in England and Wales for 2022, covering the current judiciary, judicial appointments and legal professions, indicates, for example, that approximately half of tribunal judges were women, but the proportion is lower in the court judiciary, particularly in senior roles. In addition, for judicial appointments, recommendation rates from the eligible pool for ethnic minority candidates were an estimated 37% lower than for white candidates, a difference that is described in the official statistics as being statistically significant ([Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2022 Statistics](#)).

145. We note the UK government has announced proposals to broaden the legal roles open to CILEx qualified legal professionals to include Judge of the Upper Tribunal of England and Wales, amongst others ([UK Government press release](#), 11 May 2023). Broadening the pool from which appointments can be made will encourage greater diversity in the judiciary over time. The Thomas

Commission saw CILEx as increasing diversity in the legal profession in Wales, with some 75 per cent of its members female and 70 per cent of its members aged below 44 years of age (**Justice in Wales for the people of Wales**, paragraph 9.20, page 379). It offers a more accessible route to qualification for many in Wales:

“ The Chartered Institute of Legal Executives’ route to qualification as a legal professional is more accessible, flexible and affordable... It provides a non-university route to achieving the academic stage of legal training. Students can study, often on a part time basis, through local colleges or by distance learning and at a pace of their choosing; they can be in relevant employment whilst doing so. The Institute estimates that it costs a person on average less than £10,000 to qualify as a Chartered Legal Executive, which is much less than the costs to qualify as a solicitor or a barrister. (**Justice in Wales for the people of Wales**, paragraph 9.45, page 388) ”

146. Currently, only in respect of appointments to one of the Welsh Tribunals is the appointing authority required to have regard to the need to encourage diversity in the range of persons appointed. That tribunal is the Welsh Language Tribunal where the Welsh Ministers are the appointing authority (Welsh Language Tribunal (Appointment) Regulations SI 2013 No.3139 (W.312), Regulation 4). We consider the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should similarly be required to have regard to the need to encourage diversity in the range of persons appointed.

147. We also consider the pool of candidates eligible for appointment should be drawn widely to encourage persons with the appropriate experience, qualifications and skills, including, for example, legal professionals holding the CILEx qualification, to apply to join the membership of the new tribunal system. Gathering data on and monitoring key performance indicators will be a function of the Board of the new arms-length body. We see this as including indicators on the diversity of tribunal members and the Welsh language across the tribunal

system.

Consultation question 28

Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

Consultation question 29

Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

Terms and conditions of appointment

148. The Welsh Ministers have the power to set the terms and conditions, including remuneration, of members of the Welsh Tribunals under the various separate legislative frameworks governing each of them. We propose the Welsh Ministers have an equivalent power in relation to all members of the new tribunals, enabling regard to be had to making terms and conditions common, where possible and appropriate, across the various jurisdictions as well as facilitating cross-deployment.

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Consultation question 30

Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

Deployment

149. Cross-deployment, or cross-ticketing, is a means by which a member of a Welsh Tribunal can sit and hear cases in a Welsh Tribunal other than the one to which the member has been appointed (Section 62 of the Wales Act 2017). This is a flexible means of resourcing to meet the needs the current Welsh Tribunals. This system of flexible resourcing does not currently apply across all devolved tribunals in Wales.

150. Cross-deployment can also operate between the Welsh Tribunals and the UK First-tier Tribunal and Upper Tribunal and vice versa, where the President of Welsh Tribunals and the Senior President of Tribunals agree (Section 63 of the Wales Act 2017).

151. To facilitate the effective deployment of tribunal members across the new tribunal system in Wales and across the wider system of reserved tribunals, we propose a system of cross-deployment for judicial, legal and non-legal members should operate in the new tribunal system and the tribunal system in place in the England and Wales jurisdiction. It should be subject to appropriate approvals from the senior judicial leaders for each system of tribunals, in Wales this responsibility will sit with the President of Welsh Tribunals.

152. We propose the powers of cross-deployment are restricted to such deployment to tribunals at the same level, and so, for example, a judge or other member of the First-tier Tribunal for Wales could be deployed to an equivalent position in a different jurisdiction to that of the Chamber to which they are appointed but cannot be cross-deployed into the Appeal Tribunal for Wales.

Consultation question 31

Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

The appointment of the President of Welsh Tribunals

153. The President of Welsh Tribunals is a Lord Chief Justice appointment and both the Lord Chancellor and the Welsh Ministers are consultees in that. The Lord Chancellor also has functions in relation to removal of the President from office (Section 60 of and paragraphs 2 and 10 of Schedule 5 to the Wales Act 2017).

154. We have considered the underpinning rationale for the current arrangements and whether they remain optimal for the office of President in the new tribunal system. We propose in the paragraphs below in relation to appointments of tribunal members that the current appointing authority functions of the Lord Chancellor should not be retained in relation to the tribunals in the new unified tribunal system. We propose that, similarly, the current functions of the Lord Chancellor in relation to the appointment of the President should not be retained for the new tribunal system.

155. Our rationale for this proposal is the office of President of Welsh Tribunals is the most senior judge in the devolved tribunal system. The executive function in the process of the President's appointment, namely affirming agreement to the Lord Chief Justice appointing a person to the office should be exercised by the Welsh Ministers alone, who collectively with the Counsel General and the Deputy Ministers are the Welsh Government, the executive for Wales.

156. We consider that there should be synergy and coherence between appointment and disciplinary processes, as we set in the paragraphs below. We

therefore propose that the Lord Chancellor's existing functions in relation to the dismissal of the President should not be retained for the new tribunal system.

157. As noted, the Lord Chief Justice of England and Wales is the appointing authority for the President of Welsh Tribunals. Within the hierarchy of judges, it is logical the President of Welsh Tribunals sits under the Lord Chief Justice, including within the system of devolved tribunals. It is also logical that the Lord Chief Justice has a role in the President's appointment and in matters relating to discipline, particularly in relation to dismissal. But this does not mean the President must necessarily be appointed by the Lord Chief Justice. Appointing authority arrangements for the President's appointment could therefore continue as they currently are in the new tribunal system, or there could be a Welsh appointing authority.

158. We welcome your comments on the process for appointing the President of Welsh Tribunals and whether and how it should evolve as part of the new tribunal system in Wales.

Consultation question 32

Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

Footnotes

1. See, for example, section 4 and paragraph 1 of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007, conferring the function on the Senior President of Tribunals to appoint ordinary members and legal members of the First-tier Tribunal for England and Wales. [Back to text](#).
2. See, for example, sections 22 and 32 and paragraph 1 of Schedule 4 to the

Tribunals (Scotland) Act 2014. The Scottish Ministers are the appointing authority for appointments to the First-tier Tribunal for Scotland and must: consult with the Lord President before appointing Chamber Presidents; and appoint Deputy Chamber Presidents if requested to do so by the President of Tribunals. [Back to text](#).

Chapter 8: Complaints and discipline

Proposal

We propose:

- a uniform procedure for complaints and discipline about the conduct of all tribunal members of the new tribunals, and
- a uniform procedure for complaints about the administration of the new tribunal service.

Introduction

159. Just as a coherent approach to appointments to the new tribunal system contributes to the balance between judicial independence and judicial accountability, so too does a complaints and disciplinary system that is fair, robust and transparent, meeting both the expectations of tribunal users and protecting judicial independence.

160. The current complaints and disciplinary procedures across the devolved tribunals are inconsistent. Some tribunals have policies that cover complaints about the conduct of tribunal members, some have policies that also encompass complaints about tribunal administration, and some have no policies to address either issue.

161. Our objective in proposing reformed procedures to apply to the new tribunal system in Wales is twofold: first, a uniform procedure for complaints about the conduct of all tribunal members; and second, a uniform procedure for complaints about the administration of the new tribunal service, administered by Tribunals Wales (“Tribunals Wales”, is the statutory body arms-length from Welsh Government we propose is responsible for the operational administration of the new tribunal system. See Chapter 5: Independence, for our detailed proposals).

Complaints about tribunal members

162. We propose a consistent procedure across all chambers of the First-tier Tribunal for Wales and for the Appeal Tribunal for Wales based on the Law Commission’s recommendations .

163. In terms of the First-tier Tribunal for Wales, we propose:

- a. Chamber Presidents to be responsible for investigating conduct complaints about non-legal and legal members of their respective chambers and an independent body or person to be responsible for investigating complaints about Chamber Presidents and Deputy-Presidents, and
- b. On receipt of an investigatory report and recommendations, the President of Welsh Tribunals to be responsible for discipline and dismissal, if necessary, of members of the First-tier Tribunal for Wales. We propose that dismissal in respect of Chamber Presidents and Deputy Presidents should be with the concurrence of the Welsh Ministers.

164. In terms of the Appeal Tribunal for Wales, we propose that complaints about members be investigated by an independent body or person. We agree with the Law Commission’s analysis on the approach to sanctioning Appeal Tribunal members, namely based on the independent investigator’s report and recommendations, sanctions falling short of dismissal to be imposed by the First Minister with the concurrence of the President of Welsh Tribunals; powers of dismissal vesting in the First Minister alone to avoid the possibility of deadlock

between the executive and the judiciary in the most serious of cases.

165. Our proposals outlined above envisage an investigatory role for an independent body or person. We have considered the Lord Chancellor's responsibility for judicial discipline as conferred by statute and the power to make regulations about the procedure that may be followed in dealing with disciplinary matters (Section 115 and 116 of the Constitutional Reform Act 2005). The Lord Chancellor, with the agreement of the Lord Chief Justice, the Lord President of the Court of Session and Lord Chief Justice of Northern Ireland, has designated officials for the purpose of exercising functions relating to judicial discipline. The officials so designated are known collectively as the Judicial Conduct Investigations Office ("the JCIO"), technically, a department of the Ministry of Justice.

166. In practice, the JCIO is treated as an arm's-length body and operates as an independent office supporting the Lord Chancellor and the Lord Chief Justice in managing complaints about judicial office holders. This extends to members of the Welsh Tribunals where the Lord Chancellor is currently the appointing authority, but not where the Welsh Ministers are the appointing authority. There is currently no formal arrangement in place for the JCIO to support the Welsh Ministers to manage complaints about judicial office holders that the Welsh Ministers appoint, should any such complaints arise (this contrasts processes for the selection and recommendation of person for appointment where an arrangement under section 83 of the Government of Wales Act 2006 is in place between the Welsh Ministers and the JAC for the JAC to exercise those functions on behalf of the Welsh Ministers'). We are exploring with the JCIO and the UK government the practical issues around the JCIO supporting the complaints process and nominating a person or persons to carry out the investigatory role that we propose. We are also exploring other options as to the body or person placed to undertake this role..

Consultation question 33

Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Consultation question 34

Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

Complaints about the administration of the new tribunal system

167. We agree with the Law Commission that there should be a uniform procedure for complaints about the administration of the new tribunal system by Tribunals Wales (See Annex 2, Law Commission recommendation 40).

168. As Chapter 5 discusses, we propose to create a body corporate arms-length from Welsh Government with operational responsibility for the administration of the new tribunal system (See Chapter 5: Independence, pages 36-49 on “Structural independence”, where we propose such an arms-length body is created either as a Welsh Government Sponsored Body or as a Non-Ministerial Department). We propose that complaints about the administration of the new tribunal system, including complaints about Board Members and staff of Tribunals Wales, should be dealt with in the first instance by Tribunals Wales. Appropriate internal complaints mechanisms are a key part of an effective redress and oversight system, and Tribunals Wales should be enabled to innovate to put in place a uniform complaints policy that should be easily

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accessible for tribunal users and that clearly articulates the procedure that a complainant is required to follow (see [Public Administration and a Just Wales](#)).

169. We further propose that Tribunals Wales in the exercise of its functions to administer the tribunal system in Wales should be subject to the jurisdiction of the Public Services Ombudsman for Wales. We do not propose the Ombudsman's jurisdiction should extend to complains about judicial or ordinary members of the First Tier Tribunal for Wales or the Appeal Tribunal for Wales.

Consultation question 35

Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

Chapter 9: Procedural rules

Proposal

We propose:

- there should be common procedural rules across the new tribunal system as far as appropriate, but mindful of the need to accommodate differences between jurisdictions
- each chamber of the First-tier Tribunal for Wales and of the Appeal Tribunal for Wales should have its own set of procedural rules, and
- a Tribunal Procedure Committee for Wales be established, chaired by the President of Welsh Tribunals, to develop and keep up to date procedural rules which would be made by the President subject to them being approved by the Welsh Ministers.

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Introduction

170. We have in previous Chapters of this white paper discussed the piecemeal development of the devolved tribunals in Wales, which is particularly evident in the procedural rules of the devolved tribunals. Some procedural rules date back to pre-devolution legislation from the 1970s and were not written with Wales or modern tribunal practice in mind. This is not helped by the inconsistent use of terminology across the various pieces of legislation to refer to the power to make “rules”, “regulations”, “provision for procedure” and “procedure regulations”.

171. The existing procedural rules currently in place across the devolved tribunals in scope of the tribunal reform project are inconsistent, complex and out of date. This causes difficulties for both judges as well as tribunals users. We agree with the Law Commission that there is a need to address the coherence of procedural rules for the new tribunal system.

172. We therefore propose the creation of a Tribunals Procedure Committee for Wales with responsibility for reviewing and updating procedures to be known as “Tribunal Procedure Rules”, with common rules across the new tribunal system forming part of bespoke rules tailored to the jurisdiction of each of the chambers of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

A Tribunal Procedure Committee for Wales

173. We propose the creation of a Tribunal Procedure Committee for Wales with responsibility for reviewing and updating procedures to be known as “Tribunal Procedure Rules”, to address the coherence of procedural rules for the new tribunal system instead of the existing inconsistent, complex and out of date rules currently in place across the devolved tribunals in scope of the tribunal reform project.

174. This model in part mirrors the approach taken in relation to the UK First-tier

Tribunal and Upper Tribunal. The responsibility of making the rules governing the practice and procedure in those tribunals is vested in the Tribunal Procedure Committee, an advisory non-departmental public body, established by Section 22 of the Tribunals, Courts and Enforcement Act 2007 and sponsored by the Ministry of Justice. The Tribunal Procedural Committee makes the procedural rules with the aim of ensuring that tribunals are accessible and fair; cases are quick and efficient; and rules are simple and clear. The Tribunal Procedural Committee keeps the procedural rules under constant review particularly in light of new rights of appeal and legislative change.

175. We consider it is important to have an oversight body to ensure the consistency of the rules where necessary; to recognise the need to protect the unique characteristics and needs of individual tribunals where appropriate; and to ensure the procedural rules are regularly reviewed and kept up to date.

176. We propose the Tribunal Procedure Committee for Wales will be a statutory committee, to be chaired by the President of Welsh Tribunals, who will also be responsible for appointing the committee's members, being guided in this process by factors set out in legislation. We propose the Tribunals Procedure Committee for Wales membership should reflect the various jurisdictions/ chambers of the First-tier Tribunal for Wales but should also consist of representatives of tribunal users.

177. Our proposed structure for the Tribunal Procedure Committee for Wales, including matters such as, its membership, how members are appointed, and the tenure of members, amongst other matters, are set out in Table 4.

Consultation question 36

Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and **below**?

Power to make procedural rules

178. The Tribunals, Courts and Enforcement Act 2007 (Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007), sets out the procedure for making the Tribunal Procedural Rules of the First-tier Tribunal and the Upper Tribunal. Broadly, these procedural rules are made by the [UK] Tribunals Procedure Committee, following a majority agreement of its members (Paragraph 28(2)(a) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007) and, amongst other things, after consultation with such persons as they think appropriate (including Chamber Presidents) (Paragraph 28(1)(a) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). The Draft rules are submitted to the Lord Chancellor, who may allow or disallow them (Paragraphs 28(2)(b) and 28(3) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). If allowed, the rules are made by the Committee by statutory instrument (Paragraphs 28(5) and 28(6) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). The Tribunal Procedural Rules are made by Committee in line with statutory objectives, and further guiding principles based on the underlying statutory objectives.

179. The Scottish Civil Justice Council, a body established in May 2013, is responsible for the preparation of draft rules of procedure for civil courts in Scotland, which are presented to the Court of Session who then create the rule by Act of Sederunt. The Tribunals (Scotland) Act 2014 amended the functions of the Scottish Civil Justice Council to include a duty to “review the practice and procedure followed in proceedings in the Scottish Tribunals” (The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 s2 (1) (ba) (as amended by paragraph 13 to Schedule 9, to the Tribunals (Scotland) Act 2014). The amendment is not yet in force; in the meantime tribunal rules are made by the Scottish Ministers.

180. The Law Commission sought views as to how the procedural rules of the devolved tribunals should be made (Law Commission (2020) Devolved Tribunals in Wales Consultation Paper, consultation question 34, Paragraphs 5.109 (page 106) and 11.33 (page 215)). Whilst, most respondents considered the rules

should be made by a majority of the Tribunal Procedure Committee for Wales, nearly a third of respondents supported a combination of the rules being made by a majority of the Tribunal Procedure Committee for Wales or by the President of Welsh Tribunals with the approval of the Welsh Ministers. This included Sir Wyn Williams, who at the time of responding held the office of the President of Welsh Tribunals.

181. The Law Commission concluded the best approach was as suggested by Sir Wyn Williams: that the rules be made by the President of Welsh Tribunals, only after having been formulated and accepted by a majority of the committee. The Law Commission considered this approach should meet the wish of tribunal members for checks and balances to be in place, should prevent a majority of the committee from imposing their views and would also help to empower and ensure the credibility of the committee. Finally, given the terms of procedural rules can have cost implications, the Law Commission considered the rules should, in addition, be subject to the approval of the Welsh Ministers. The Law Commission formularised its conclusion in Recommendation 25 (See Annex 2, Law Commission recommendation 25) of its final report. The Law Commission further recommended a duty on the Committee to consult with whomever it considers appropriate before the rules are made (See Annex 2, Law Commission recommendation 26).

182. We have considered the responses to the Law Commission's consultation and the conclusions drawn. We agree with the recommendations of the Law Commission and propose the Tribunal Procedure Rules of the devolved tribunals are to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for Wales, and subject to being approved by the Welsh Ministers.

183. We propose provision is included on the face of the bill setting out the process for making Tribunal Procedure Rules. The Tribunal Procedure Rules will be made by the President of the Welsh Tribunals with the concurrence of the Welsh Ministers through statutory instrument.

184. We consider there is merit in ensuring wide consultation with judicial leads,

tribunal members, policy-makers and tribunal users before the rules are made, to ensure robust procedural rules, which work for all potential tribunal users and the judiciary. Therefore, we also propose the Tribunal Procedure Committee for Wales should be subject to a duty to consult with whomever it considers appropriate (including members of the tribunal, members of the broader judiciary, practitioners and tribunal users, as suggested by the Law Commission) before making the rules.

185. Further detail regarding the making of the Tribunal Procedure Rules is set out in Table 4 below.

Consultation question 37

Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

Standardising procedure rules

186. We consider the standardisation of some aspects of the Tribunal Procedural Rules of the devolved tribunals will ensure the procedural rules for the tribunal system in Wales are consistent and accessible for tribunal users and for administrative staff and cross-ticketed tribunal members sitting across chambers in the new structure. Thereby, promoting flexibility and efficiency in the unified devolved tribunal system.

187. The First-tier Tribunal and the First-tier Tribunal for Scotland both have separate sets of procedural rules for each chamber. There are 7 sets of procedural rules in the First-tier Tribunal, containing an identical overriding objective and duty of the parties to cooperate with the tribunal. One of the guiding principles followed by the UK Tribunal Procedure Committee is that the Committee should strive to: adopt common rules across tribunals wherever

possible, so that rules specific to a chamber or a tribunal operate only where there is a clear and demonstrated need for them.

188. We propose the Tribunal Procedure Committee for Wales develop common Tribunal Procedure Rules across the new tribunal system. But importantly this standardisation should only be as far as this is appropriate. Therefore, in addition we propose, chambers into which jurisdictions are organised should have bespoke rules recognising the unique characteristics and needs of their respective jurisdictions. Similarly, when the Appeal Tribunal for Wales is divided into chambers the same approach should apply to its Tribunal Procedure Rules.

189. Whilst it will be for the Tribunal Procedure Committee for Wales to develop the Tribunal Procedure Rules, we agree with the Law Commission recommendation (see Annex 2, Law Commission recommendation 30) and therefore propose the procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

190. Further details on our proposals on the matters proposed, as noted in paragraph 188 above, which could be included in the standardised procedural rules, are set out in paragraphs 191 to 208 below.

191. We also propose the Tribunals Procedure Committee for Wales has the power to develop Tribunal Procedure Rules nuanced for each chamber and its specific jurisdiction, as detailed in Table 4 below.

An overriding objective and a non-exhaustive list of illustrative examples

192. The procedural rules of the Mental Health Review Tribunal for Wales, Education Wales Tribunal, residential property tribunals which form part of the Residential Property Tribunal for Wales and the Welsh Language Tribunal contain an overriding objective. Although each overriding objective differs in its wording, they have in common the requirement that cases should be dealt with “fairly and justly” (an example of variation can be found in Mental Health Review Tribunal for Wales Rules SI 2008 No 2705, Rule 3, which states the overriding objective of the rules is to enable the tribunal to deal with cases “fairly, justly, efficiently and expeditiously”).

193. The Law Commission recommended that the new standardised procedural rules of the devolved tribunals should contain an overriding objective to be applied consistently across tribunals. Procedural rules generally provide a non-exhaustive definition of what it means to deal with cases “fairly and justly”. The Law Commission consultation paper included an example of what the overriding objective (Law Commission, 2020. [Devolved Tribunals in Wales Consultation Paper](#), consultation question 21, paragraphs 5.19, page 87 and 11.21, page 212) could contain, drawing on examples taken from the statements of overriding objective contained in the existing procedural rules ([Devolved Tribunals in Wales Consultation Paper](#), paragraph 5.13, page 86). The Law Commission recommended that a new overriding objective should include a non-exhaustive list of illustrative examples.

194. We propose the new standardised procedural rules should include a statement of principle to guide exercises of discretion by containing an overriding objective which the devolved tribunals must give effect to when exercising any function under the tribunal procedure rules or interpreting any procedural rule.

195. We propose the Tribunal Procedure Rules of the First-tier Tribunal for Wales and Appeal Tribunal for Wales could contain an overriding objective, for

example, to enable the Tribunal to deal with cases fairly and, justly. There is authority that, even where there is no express overriding objective in a particular set of tribunal rules, a tribunal must deal with matters fairly and justly. Whilst this objective may be implied, we propose to make it express. We consider the inclusion of an overriding objective would promote justice, assist in judicial decision making and assist tribunal users. We propose the overriding objective should also include an inexhaustive list of illustrative examples of what it means to deal with cases in line with the objective.

A duty of the parties to cooperate with each other and the tribunal

196. The Law Commission's final report recommended an overriding objective should be accompanied by a duty of the parties to cooperate with each other and the tribunal. Such a duty being currently contained in the overriding objective of the procedural rules of some of the devolved tribunals. In the case of the Mental Health Review Tribunal for Wales, whilst not contained within its own procedural rules, such a rule is contained within that of its First -tier tribunal for England and Wales equivalent.

197. We propose there should be a duty of tribunal users to cooperate with the tribunal and other parties. However, we recognise the duty ought to encourage cooperation rather than being too prescriptive. The duty would emphasise the inquisitorial rather than adversarial nature of a tribunal.

Provision for service of documents by electronic means

198. The procedural rules on service of documents across the devolved tribunals are inconsistent and out of date, reflecting their piecemeal development. The rules do not address modern tribunal practice and are not reflective of technological advances. For example, express provision permitting documents to be sent by email is only contained in the procedural rules of 3 of the devolved tribunals ([footnote 1](#)), with the rules of others only implicitly

appearing to permit documents to be sent by email. Practice directions have been utilised to expressly permit parties to serve documents by email ([footnote 2](#)) during the COVID-19 pandemic. The problem has been highlighted by recent caselaw ([footnote 3](#)).

199. The Law Commission, in its consultation, proposed the procedural rules of the devolved tribunals should provide for service of documents by electronic means.

200. We note the concerns raised by some respondents, whilst agreeing with the principle of the provisional proposal. For example, particularly in the context of the Mental Health Review Tribunal for Wales, it was considered that provision should be enabling rather than prescriptive, to allow hard copy communications where appropriate ([footnote 4](#)). It was also considered that permitting the electronic service of documents could impede the participation of digitally excluded people.

201. We particularly share the concerns regarding digital inclusion in relation service of documents. Through the [Digital Strategy for Wales](#) we make clear that for people who cannot, or decide not to, participate digitally, we must continue to apply the principles of user-centred design so that there are alternative ways to access public services in Wales and that these access routes should be as good as those offered online. The [National Survey for Wales 2021-22](#) confirmed there is an estimated 180,000 people aged 16 and over, living in Wales who do not personally use the internet and therefore cannot access digital services, including tribunal related services. These citizens cannot be left behind.

202. It is of note that the procedural rules of all the chambers of the UK First-tier Tribunal make express provision for the electronic service of documents. However, none of them prescribe electronic service of documents as the only method of service. We propose the Tribunal Procedure Rules should make provision for service of documents by electronic means, but not exclusively. This would ensure the devolved tribunals procedural rules are consistent and brought up to date with modern tribunal practice and technological advances, whilst also

acknowledging the importance of affording proper protection to the potentially vulnerable and to the digitally excluded, and in turn safeguarding access to justice.

A power for the First-tier Tribunal for Wales to review its own decisions

203. The power to review decisions can be a useful tool to tribunals, as it provides them with an opportunity to correct obvious errors without the need for an appeal. However, the power of devolved tribunals to review their decisions varies across the tribunals, where such a provision exists at all.

204. We agree with the Law Commission recommendation that the Tribunal Procedural Rules contain a power for the First-tier Tribunal for Wales to review its own decisions. The power to review decisions would allow the First-tier Tribunal Wales to rectify any obvious errors of law or procedure, it would not seek to alter the grounds of appeal. In this way the Tribunal Procedural Rules would consistently provide a sensible, proportionate and cost-effective means of scrutinising the decision-making process in circumstances limited to correcting obvious errors of law or procedure and avoiding unnecessary appeals.

Rules on remote hearings

205. The COVID-19 pandemic saw tribunal hearings migrate from face-to-face to remote hearings, whether by telephone conference or video conference. Whilst this approach to tribunal hearings was in response to the pandemic, in some cases the impact has been beneficial for tribunal users. The President of Welsh Tribunals reported, in his 2020/2021 annual report ([President of Welsh Tribunals Third Annual Report 2020-2021](#)), the great success of remote hearings in relation to the then Special Educational Needs Tribunal for Wales and its tribunal users positive preference for remote hearings, since tribunal users “are, in the main, able to participate from their own homes and, in consequence, feel more relaxed and better able to participate” in the

proceedings ([President of Welsh Tribunals Third Annual Report 2020-2021](#) page 12).

206. Where appropriate, remote hearings continue to be utilised today, despite the COVID-19 pandemic restrictions having now been lifted. However, currently, there is no uniform procedure for remote hearings across the devolved tribunals. The Law Commission “saw no principled reason for such inconsistency” ([Devolved Tribunals in Wales](#), paragraph 6.155, page 126) and considered the significant increase in the use of remote hearings since the beginning of the COVID-19 pandemic, “created a strong case for updating and standardising procedural rules relating to remote hearings across the devolved tribunals” ([Devolved Tribunals in Wales](#), paragraph 6.155, page 126). The Law Commission, therefore, recommended that rules on remote hearings should be standardised in the devolved tribunal procedural rules. However, there would need to be “sufficient flexibility” to accommodate the requirements of each individual tribunal in the use of remote hearings ([Devolved Tribunals in Wales](#), paragraph 6.165, page 128; and see Annex 2, Law Commission recommendation 30).

207. We agree with the Law Commission recommendation. Remote hearings will continue to be a feature of the modern tribunal system and there is a need to standardise the rules relating to them. We, therefore, propose that the procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include rules on remote hearings.

208. We recognise the potential benefits of standardising the rules relating to remote hearings. For example, improving the accessibility of the tribunals; and ensuring tribunals users in Wales are not disadvantaged by the potential creation of a two-tier system, if we do not keep pace with the shift towards digitalisation within His Majesty’s Courts and Tribunals Service. However, we also acknowledge the concerns raised by some respondents to the Law Commission consultation. For example, the importance of working with deaf individuals to ensure their communication needs are met appropriately for both face-to-face and remote hearings (See comments of The National Deaf Children’s Society Cymru: [Devolved Tribunals in Wales](#), paragraph 6.162,

page 127); and of giving careful consideration to the “unique circumstances of the Mental Health Review Tribunal for Wales and the fact that it is very difficult to ascertain the physical and mental state of a person remotely” (**Devolved Tribunals in Wales**, paragraph 6.163, pages 127-128).

209. Consequently, whilst it will be for the Tribunal Procedure Committee for Wales to consider and formulate the draft Tribunal Procedure Rules, we believe the Tribunal Procedure Committee for Wales should consider the need for sufficient flexibility in its approach to and application of the rule, allowing practice directions which build on the standard rule on remote hearings so as to reflect the unique subject matters of all the devolved tribunals.

Consultation question 38

Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

Consultation question 39

Do you agree with our proposal that the Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

Transitional arrangements

210. To ensure as little disruption as possible to the devolved tribunals in Wales, we propose provision is included on the face of the bill detailing the transitional arrangements. We propose that such a provision would set out that, on creation of the new tribunal system and the transfer into it of those tribunals to be incorporated in the new structure from day one (for example, the Section 59 Welsh Tribunals), the procedural rules that are in force immediately before transfer will have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales until such time as new chamber Tribunal Procedure Rules are made and implemented.

The proposed new Tribunal Procedure Committee for Wales and Tribunal Procedure Rules

Areas:

- [Establishment](#)
- [Purpose](#)
- [Membership](#)
- [Sub-groups](#)
- [Proceedings](#)
- [Delegation](#)
- [Secretariat](#)
- [Making of the Tribunal Procedure Rules](#)
- [Duties on the Tribunal Procedure Committee](#)
- [Tribunal Procedural Rules](#)

[View in table format](#)

Establishment

Statutory provision: Tribunal Procedure Committee for Wales

A statutory committee, the “Tribunal Procedure Committee for Wales” to be established.

Statutory provision: Status

As a general principle the Law Commission concluded the administration for the tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.

Welsh Ministers’ accountability

The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.

Purpose

Statutory provision: Objective - (to make Tribunal Procedure Rules)

To develop rules, to be called “Tribunal Procedure Rules”, governing:

- a. the practice and procedure to be followed in the First-tier Tribunal for Wales, and
- b. the practice and procedure to be followed in the Appeals Tribunal for Wales.

The Tribunal Procedure Committee for Wales is to be responsible for ensuring the Tribunal Procedure Rules are developed, reviewed on a regular basis and

remain up-to-date.

The Tribunal Procedure Rules would seek to deliver fairness, greater access to justice for users, efficiency, clarity of language, consistency, simplicity for administrative staff and cross-ticketed judges.

Statutory provision: Functions

Statute to detail functions of the Tribunal Procedure Committee for Wales.

Membership

Statutory provision: Chairperson

President of the Welsh Tribunals

Welsh Ministers' accountability

Section 60(1) of and Schedule 5 to the Wales Act 2017, provide that the Lord Chief Justice may appoint a person to the office of President of Welsh Tribunals after consultation with the Welsh Ministers and Lord Chancellor, if no agreement is met then the recruitment may be referred to the Judicial Appointments Commission.

The Welsh Ministers will have no further role in the appointment of the Chairperson of the Tribunal Procedure Committee for Wales.

Statutory provision: Members appointment

The President of Welsh Tribunals to be responsible for appointing members to the Tribunal Procedure Committee for Wales.

We do not intend to prescribe the membership of the Tribunal Procedure Committee for Wales by statute. However, we propose the President of Welsh Tribunals, when appointing members of the Tribunal Procedure Committee for Wales will be under a duty "to have due regard" to factors/general guiding principles to be set out in legislation, including the need for:

- i. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented
- ii. the committee to have access to persons with relevant expertise, and
- iii. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do.

Statutory provision: Members

Appointed by the President of Welsh Tribunals, we envisage the Tribunal Procedure Committee for Wales to consist of core members and additional members appointed as and when required to provide jurisdiction-specific knowledge. Members are to be drawn from judicial and non-judicial/practitioner fields.

Judicial members: Chambers Presidents as ex officio members (based on our proposed structure for the First-tier Tribunal for Wales (see Figure 1); or the President of Welsh Tribunals to select from some judicial members from the pool of Chamber Presidents; or rotate membership between Chamber Presidents.

Non-judicial/Practitioner members: Members with special knowledge of administrative and tribunal decision-making. Not fewer than 3 nor more than 6 persons to ensure a balance of views based on the proposed structure for First-tier Tribunal for Wales.

[This potentially provides a Tribunal Procedure Committee for Wales of between 9 and 12 members excluding the President of Welsh Tribunals.]

The composition of the Tribunal Procedure Committee for Wales may need to

vary depending on the jurisdiction for which it is making Tribunal Procedure Rules and as jurisdictions transfer into the new unified tribunal structure.

Statutory provision: Tenure/Term of appointment (except PWT)

Tenure to be considered for members of the Tribunal Procedure Committee for Wales.

The pool of members is likely to be small, and specialism may be lost if the normal limits on the tenure for public appointments is rigidly imposed. Therefore, we consider that a more flexible approach to length of service on the Tribunal Procedure Committee for Wales should be adopted.

Statutory provision: Time commitment

We propose consideration should be given to the number of committee meetings to be held each year being prescribed in statute to correspond with the duty to meet described below. Possibly 9 per year, in line with the UK Tribunal Procedure Committee.

Statutory provision: Remuneration

Unremunerated, but a power so that the Board of the new body may reimburse members of the Tribunal Procedure Committee for their standard/reasonable travel and out-of-pocket expenses.

This is in line with the power for the Lord Chancellor in relation to UK Tribunal Procedure Committee Members expenses under paragraph 26 of Part 2 to Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

Sub-groups

Statutory provision: Sub-groups

The Tribunal Procedure Committee for Wales to be able to establish sub-groups to focus on particular areas of work.

Power for the Tribunal Procedure Committee for Wales to establish sub-groups and co-opt persons to sit on them.

Proceedings

Statutory provision: Proceedings

Power for the Tribunal Procedure Committee for Wales to regulate its proceedings, quorum (including sub-groups), manner of voting, etc.

Delegation

Statutory provision: Delegation

Power for the Tribunal Procedure Committee for Wales to delegate any function to a member, subgroup, employee of the new body (see Table 1) or any other person, but not to divest itself of responsibility for the function delegated.

Secretariat

Statutory provision: Staff

The board of the new body (see Table 1) can appoint staff as it considers appropriate to enable the committee to discharge its functions.

Welsh Ministers' accountability

Welsh Ministers to provide annual grant-in-aid of such amounts as ministers consider appropriate for the body to carry out its functions.

Making of the Tribunal Procedure Rules

Statutory provision: Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals

Provision to set out the process for making the Tribunal Procedure Rules.

The Tribunal Procedure Rules of the devolved tribunals to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for Wales, and subject to being approved by the Welsh Ministers.

NB: this could be a “qualified majority” (i.e., somewhat greater than 50%) or a simple majority of the Tribunal Procedure Committee for Wales.

Welsh Ministers' accountability

The Tribunal Procedure Rules will be made by subordinate legislation/statutory

instrument.

The Welsh Ministers will be accountable for approving the rules to be made by the PWT.

Duties on the Tribunal Procedure Committee for Wales

Statutory provision: Tribunal Procedure Committee for Wales “duty to consult”

The Tribunal Procedure Committee for Wales to be under a “duty of to consult” with whomever it considers appropriate (including Chamber Presidents (if not ex officio), members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before the making of the rules.

Statutory provision: Tribunal Procedure Committee for Wales “duty to meet”

The Tribunal Procedure Committee for Wales to be under a “duty to meet” (unless it is inexpedient to do so).

(see paragraph 28(1)(c) of Part 3 to schedule 5 to the Tribunals, Courts and Enforcement Act 2007, in relation to the UK Tribunal Procedure Committee).

Statutory provision: Tribunal Procedure Committee for Wales “duty to have regard” to procedural rules of other courts and tribunals in the UK.

Tribunal Procedure Committee for Wales to be under a duty to have regard to procedural rules of other tribunals in the UK.

Tribunal Procedural Rules

Statutory provision: Each chamber to have its own set of Tribunal Procedure Rules

To include commonalities and to recognise individual characteristics of the jurisdiction of each chamber.

The Tribunal Procedure Committee for Wales to adopt common Tribunal Procedure Rules across tribunals but importantly as far as this is appropriate – chambers should have their own set of bespoke Tribunal Procedure Rules recognising the unique characteristics of the jurisdictions in each chamber and similarly when the Appeal Tribunal for Wales is divided into chambers.

Welsh Ministers' accountability

See process for "Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals" above.

Statutory provision: Contents of the Tribunal Procedural Rules - All rules

The Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to include:

- i. an overriding objective relating to fairness and justice, with illustrative and non-exhaustive examples such as promoting independent decisions based on factual evidence
- ii. a duty of the parties to cooperate with each other and the tribunal
- iii. provision for service of documents by electronic means
- iv. a power for the First-tier Tribunal to review its own decisions; and rules on

remote hearings.

The Tribunal Procedure Committee to have a statutory duty to draft the rules, guided by clear principles when doing so, e.g., securing that justice is done in proceedings, that the tribunal system is accessible and fair and such like – an example is at section 22(4) of the Tribunals, Courts and Enforcement Act 2007.

Statutory provision: Contents of the Tribunal Procedure Rules - Non-exhaustive list of discretionary provisions

In addition to the rules to apply across all jurisdictions (as noted above), the Tribunal Procedure Committee will have the power to make rules which are needed in each jurisdiction able to make different rules for different circumstance. We propose it may make provision in respect of the following although this is not intended to be an exhaustive list and the Committee will exercise its judgement as to the tailored rules for each jurisdiction:

- i. Delegation to staff
- ii. Time limits
- iii. The extent to which matters may be decided without a hearing and whether a hearing may be public or private
- iv. Proceedings without prior notice
- v. Representation
- vi. Evidence and witnesses, including provisions relating to the payment of expenses for those attending hearings
- vii. Use of information
- viii. Costs and expenses
- ix. Alternative dispute resolution
- x. Correction of decisions and setting aside of decisions on procedural grounds

See as an example Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

Statutory provision: Transitional arrangements

Statute to include transitional arrangements to the effect that on creation of the new tribunal system and the transfer into it of the “listed tribunals” (those tribunals to be incorporated in the new structure from day one) the procedural rules that are in force immediately before transfer have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales.

Table 4: The proposed new Tribunal Procedure Committee for Wales and Tribunal Procedure Rules

Area	Statutory provision	Detail	Welsh Ministers' accountability
Establishment	Tribunal Procedure Committee for Wales	A statutory committee, the “Tribunal Procedure Committee for Wales” to be established.	
Purpose	Objective - (To make Tribunal Procedure Rules)	To develop rules, to be called “Tribunal Procedure Rules”, governing: a. the practice and procedure to be followed in the First-tier Tribunal for Wales, and b. the practice and procedure to be followed in the Appeal	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p data-bbox="742 369 1013 403">Tribunal for Wales.</p> <p data-bbox="678 448 1077 728">The Tribunal Procedure Committee for Wales is to be responsible for ensuring the Tribunal Procedure Rules are developed, reviewed on a regular basis and remain up-to-date.</p> <p data-bbox="678 772 1077 1086">The Tribunal Procedure Rules would seek to deliver fairness, greater access to justice for users, efficiency, clarity of language, consistency, simplicity for administrative staff and cross-ticketed judges.</p>	
	Functions	Statute to detail functions of the Tribunal Procedure Committee for Wales.	
Membership	Chairperson	President of Welsh Tribunals	Section 60(1) of and Schedule 5 to the Wales Act 2017, provide that the Lord Chief Justice may appoint a person to the office of President of Welsh Tribunals after consultation with the Welsh

Area	Statutory provision	Detail	Welsh Ministers' accountability
			<p>Ministers and Lord Chancellor, if no agreement is met then the recruitment may be referred to the Judicial Appointments Commission.</p> <p>The Welsh Ministers will have no further role in the appointment of the Chairperson of the Tribunal Procedure Committee for Wales.</p>
	Members' appointment	<p>The President of Welsh Tribunals to be responsible for appointing members to the Tribunal Procedure Committee for Wales.</p> <p>We do not intend to prescribe the membership of the Tribunal Procedure Committee for Wales by statute. However, we propose the President of Welsh Tribunals, when appointing members of the Tribunal Procedure Committee for Wales will be under a duty "to have due</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>regard" to factors/general guiding principles to be set out in legislation, including the need for:</p> <ul style="list-style-type: none"> i. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented ii. the committee to have access to persons with relevant expertise, and iii. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do. 	
	Members	<p>Appointed by the President of Welsh Tribunals, we envisage the Tribunal Procedure Committee for Wales to consist of core members and additional members appointed as and when required to provide jurisdiction-specific knowledge. Members are to be drawn from judicial and non-judicial/practitioner fields.</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>Judicial members: Chambers Presidents as ex officio members (based on our proposed structure for the First-tier Tribunal for Wales (see Figure 1); or the President of Welsh Tribunals to select from some judicial members from the pool of Chamber Presidents; or rotate membership between Chamber Presidents.</p> <p>Non-judicial/Practitioner members: Members with special knowledge of administrative and tribunal decision-making. Not fewer than three nor more than 6 persons to ensure a balance of views based on the proposed structure for First-tier Tribunal for Wales.</p> <p>(This potentially provides a Tribunal Procedure Committee for Wales of between nine and 12 members excluding the President of Welsh Tribunals.)</p> <p>The composition of the Tribunal Procedure Committee for Wales may</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>need to vary depending on the jurisdiction for which it is making Tribunal Procedure Rules and as jurisdictions transfer into the new unified tribunal structure.</p>	
	<p>Tenure/Term of appointment (except PWT)</p>	<p>Tenure to be considered for members of the Tribunal Procedure Committee for Wales.</p> <p>The pool of members is likely to be small, and specialism may be lost if the normal limits on the tenure for public appointments is rigidly imposed. Therefore, we consider that a more flexible approach to length of service on the Tribunal Procedure Committee for Wales should be adopted.</p>	
	<p>Time commitment</p>	<p>We propose consideration should be given to the number of committee meetings to be held each year being prescribed in statute to correspond with the duty to meet described below. Possibly 9 per year, in line with the UK Tribunal Procedure Committee.</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
	Remuneration	<p>Unremunerated, but a power so that the Board of the new body may reimburse members of the Tribunal Procedure Committee for their standard/reasonable travel and out-of-pocket expenses.</p> <p>This is in line with the power for the Lord Chancellor in relation to UK Tribunal Procedure Committee Members expenses under paragraph 26 of Part 2 to Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.</p>	Welsh Ministers to provide annual funding to Tribunals Wales of such amounts as ministers consider appropriate for the body to carry out its functions.
Sub-groups	Sub-groups	<p>The Tribunal Procedure Committee for Wales to be able to establish sub-groups to focus on particular areas of work.</p> <p>Power for the Tribunal Procedure Committee for Wales to establish sub-groups and co-opt persons to sit on them.</p>	
Proceedings	Proceedings	Power for the Tribunal Procedure Committee for Wales to regulate its proceedings, quorum	

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Area	Statutory provision	Detail	Welsh Ministers' accountability
		(including sub-groups), manner of voting, etc.	
Delegation	Delegation	power for the Tribunal Procedure Committee for Wales to delegate any function to a member, subgroup, employee of the new body (see Table 1) or any other person, but not to divest itself of responsibility for the function delegated.	
Secretariat	Staff	The Board of the new body (see Table 1) can appoint staff as it considers appropriate to enable the Committee to discharge its functions.	Welsh Ministers to provide annual grant-in-aid of such amounts as ministers consider appropriate for the body to carry out its functions.
Making of the Tribunal Procedure Rules	Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals	<p>Provision to set out the process for making the Tribunal Procedure Rules.</p> <p>The Tribunal Procedure Rules of the devolved tribunals to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for</p>	The Welsh Ministers will be accountable for approving the rules to be made by the PWT.

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>Wales, and subject to being approved by the Welsh Ministers.</p> <p>NB: this could be a “qualified majority” (i.e., somewhat greater than 50%) or a simple majority of the Tribunal Procedure Committee for Wales. The Tribunal Procedure Rules will be made by subordinate legislation/statutory instrument.</p>	
<p>Duties on the Tribunal Procedure Committee for Wales</p>	<p>Tribunal Procedure Committee for Wales “duty to consult”</p>	<p>The Tribunal Procedure Committee for Wales to be under a “duty of to consult” with whomever it considers appropriate (including Chamber Presidents (if not ex officio), members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before the making of the rules.</p>	
	<p>Tribunal Procedure Committee for Wales “duty to meet”</p>	<p>The Tribunal Procedure Committee for Wales to be under a “duty to meet” (unless it is inexpedient to do so).</p> <p>(see paragraph 28(1)(c) of</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		Part 3 to schedule 5 to the Tribunals, Courts and Enforcement Act 2007, in relation to the UK Tribunal Procedure Committee).	
	Tribunal Procedure Committee for Wales “duty to have regard” to procedural rules of other courts and tribunals in the UK.	Tribunal Procedure Committee for Wales to be under a duty to have regard to procedural rules of other tribunals in the UK.	
Tribunal Procedural Rules	Each chamber to have its own set of Tribunal Procedure Rules, to include commonalities and to recognise individual characteristics of the jurisdiction of each chamber.	The Tribunal Procedure Committee for Wales to adopt common Tribunal Procedure Rules across tribunals but importantly as far as this is appropriate – chambers should have their own set of bespoke Tribunal Procedure Rules recognising the unique characteristics of the jurisdictions in each chamber and similarly when the Appeal Tribunal for Wales is divided into chambers.	See process for Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals above.

Area	Statutory provision	Detail	Welsh Ministers' accountability
	Contents of the Tribunal Procedural Rules - All rules	<p>The Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to include:</p> <ul style="list-style-type: none"> i. an overriding objective relating to fairness and justice, with illustrative and non-exhaustive examples such as promoting independent decisions based on factual evidence ii. a duty of the parties to cooperate with each other and the tribunal iii. provision for service of documents by electronic means iv. a power for the First-tier Tribunal to review its own decisions; and rules on remote hearings. <p>The Tribunal Procedure Committee to have a statutory duty to draft the rules, guided by clear principles when doing so, e.g., securing that justice is done in proceedings, that the tribunal system is accessible and fair and such like – an example is at</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		section 22(4) of the Tribunals, Courts and Enforcement Act 2007.	
	Contents of the Tribunal Procedure Rules - Non-exhaustive list of discretionary provisions	<p>In addition to the rules to apply across all jurisdictions (as noted above), the Tribunal Procedure Committee will have the power to make rules which are needed in each jurisdiction able to make different rules for different circumstance. We propose it may make provision in respect of the following although this is not intended to be an exhaustive list and the Committee will exercise its judgement as to the tailored rules for each jurisdiction:</p> <ul style="list-style-type: none"> i. Delegation to staff ii. Time limits iii. The extent to which matters may be decided without a hearing and whether a hearing may be public or private iv. Proceedings without prior notice v. Representation vi. Evidence and witnesses, including 	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>provisions relating to the payment of expenses for those attending hearings</p> <ul style="list-style-type: none"> vii. Use of information viii. Costs and expenses ix. Alternative Dispute Resolution x. Correction of decisions and setting aside of decisions on procedural grounds <p>See as an example Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.</p>	
	Transitional arrangements	<p>Statute to include transitional arrangements to the effect that on creation of the new tribunal system and the transfer into it of the “listed tribunals” (those tribunals to be incorporated in the new structure from day one) the procedural rules that are in force immediately before transfer have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales.</p>	

Footnotes

1. Only the Education Tribunal for Wales, Valuation Tribunal for Wales and residential property tribunal rules specifically state that documents can be sent by email. See The Special Educational Needs Tribunal for Wales Regulations SI 2012 No. 322 (W. 53), regulation 79(2)(c); The Education Tribunal for Wales Regulations SI 2021 No. 406 (W. 132), regulation 75(4); The Valuation Tribunal for Wales Regulations SI 2010 No 713 (W 69), regulation 46(5); and The Residential Property Tribunal (Wales) Regulations SI 2006 No. 1641 (W.156), regulation 37. [Back to text](#).
2. See The Mental Health Review Tribunal for Wales Rules SI 2008 No. 2705 (L. 17), rule 9(1); The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations SI 2001 No 2288 (W 176), regulation 24(b); The Agricultural Land Tribunals (Rules) Order SI 2007 No 3105, rule 49(b); and The Leasehold Valuation Tribunals (Procedure) (Wales) Regulations SI 2004 No 681 (W 69), regulation 23(c)(ii). [Back to text](#).
3. See, for example, Agricultural Land Tribunal for Wales, Evans v Bodorgan Properties (CI) Limited ALT 06/2017; and the Upper Tribunal (Lands Chamber) considered the Agricultural Land Tribunal for Wales' rules on service in Adams v Jones [2021] UKUT 9 (LC); [2021] All ER (D) 65 (Jan). [Back to text](#).
4. The First-tier Tribunal (Health, Education and Social Care) procedural rules are enabling and not prescriptive. The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules SI 2008 No 2699, rule 13(4) provides that:

“ ... where the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. ”

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Chapter 10: Bringing justice closer to the people of Wales

Introduction

211. The reforms set out in this White Paper are important in and of themselves. But they are also important steps on a longer journey, which the Welsh devolution settlement is taking, towards a sustainable constitutional framework which has the greatest possible democratic legitimacy, and is best placed to meet the needs of the people of Wales.

212. In particular, the establishment of the First-Tier Tribunal for Wales and Appeal Tribunal for Wales has the potential to directly enable the successful devolution of parts of the justice system; and more indirectly, it is an indicator of the approach that the Welsh Government would take in designing and overseeing a devolved justice system.

213. This chapter looks particularly at:

- a. How a reformed tribunal system can support the development of a stronger justice system even ahead of potential further devolution
- b. The interaction between tribunals reform and any further devolution of justice, including youth justice and (subsequently) the justice system more broadly – above all the courts.

Strengthening the justice system under the current constitutional settlement

214. The reforms we propose in this White Paper will make a significant contribution to the improved operation of the justice system in Wales. Even if there was no further expansion of our plans for reform beyond the initial

rationalisation measures set out in this paper, those measures will give it greater independence, coherence, accessibility and efficiency.

215. However, the structural reforms to the tribunals system set out in this paper are also steps on a journey of improvement for justice in Wales.

216. Part of that journey of improvement will be bringing more functions, over time, within the ambit of the new tribunals system. Within its areas of competence the Senedd is able to establish further tribunals or allocate new functions to the existing devolved tribunals. Just as school exclusion appeals will be brought into the scope of the new First-Tier and Appeal Tribunals on their inception, other functions will follow over time, where it is thought that they might benefit from the approach taken by tribunals and the associated characteristics (such as the relative informality, at least in comparison to a court).

217. In determining which disputes should be put to the new tribunals structure, it will be important to consider the other means of dispute resolution potentially available – not just courts, but also other forms of dispute resolution such as ombudsmen, mediation, arbitration or conciliation. The Commission on Justice in Wales (“the Thomas Commission”) reviewed the operation of the justice systems in Wales and made recommendations concerning the civil and administrative justice system in Wales ([Justice in Wales for the people of Wales](#)).

218. The Thomas Commission concluded, amongst other things that:

“ resolving a dispute is complex for many reasons, including the lack of co-ordination between the courts, tribunals and different forms of alternative dispute resolution ([Justice in Wales for the people of Wales](#), Executive summary, see paragraph 15). ”

219. The Thomas Commission recommended that:

“ Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative

law, should be promoted and coordinated in Wales through a body chaired by a senior judge (**Justice in Wales for the people of Wales** recommendation 21, paragraph 5.55, page 260). ”

220. The Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee **review of tribunals operating in Wales** suggested a unified whole system approach to tribunal system in Wales as the underpinning to more effective administrative justice in Wales.

221. Proposals for reform of devolved tribunals in Wales as set out in the white paper represent a significant step forward for Wales’ nascent justice system. It is a key part of the wider and civil administrative landscape. Beyond the immediate development of legislative proposals based on this consultation, it is vital the operation of the wider landscape is kept under review.

Consultation question 40

Do you agree the operation of civil and administrative justice in Wales should be kept under review? And, if so, how should this be done?

222. In Chapter 5, we also set out how, through establishing a board to govern Tribunals Wales and reporting requirements for that board, we could ensure there is transparent monitoring of the system’s performance, of user satisfaction, and of information relating to diversity within the system. Monitoring this information consistently is not an end in itself – but it will allow a platform on which the system can build plans for the future that establish a culture of continual improvement.

223. However, there are also limits to what we can achieve to improve the justice system in Wales within the confines of the current system, where responsibility for justice remains largely vested in the UK government. There are

therefore further challenges ahead to properly and fully align justice matters with the operation of services that are devolved to and delivered in Wales.

Devolution of justice

224. The Thomas Commission unanimously recommended full legislative devolution of justice and policing. The most important recommendation in the context of this paper was the creation of a unified system of courts and tribunals in Wales, for determining (among other things) all civil and administrative law disputes ([Justice in Wales for the people of Wales](#), recommendation 22, paragraph 5.56, page 260).

225. The operation of courts and tribunals by a single service is of course something that currently happens in England, and in Scotland. It was recommended in the light of observations about whether the current division of responsibilities between courts and tribunals is rational and comprehensible to service users.

226. The legislation set out in this paper sets a clear marker for how we could operate a courts and tribunals service in future – as a statutory body, with the guarantee of independence that is provided by that model.

227. As we said in *Delivering Justice for Wales*, "we do not see reform of the justice system in Wales being a single event, but rather a process of change over time, prioritising those areas where we can most improve outcomes for Welsh citizens".

228. The Commission on the UK's Future established by the UK Labour Party ("the Brown Commission") has given one answer as to how that process of change might commence. The Brown Commission noted that one of the stark differences between the Welsh and Scottish devolution settlements is the devolution of matters relating to justice and policing, and that there is no reason of principle why such devolution should be less in Wales. In its report, the Brown

Commission recommended that the next UK Labour government should embark upon the devolution of youth justice and the probation service (**A New Britain: Renewing our Democracy and Rebuilding our Economy**). See “Enhancing Wales’ powers of self-government” and recommendation 24, pages 112 -113), while also engaging constructively with the recommendations of the Independent Commission on the Constitutional Future of Wales, which is due to report by the end of 2023.

229. As a place to end this paper, the devolution of youth justice offers an excellent example of the potential opportunities offered both by tribunal reform and by devolution of justice. It is easy to see how a tribunal setting could in many ways be better than a court setting for youth justice matters, because tribunals are a more informal approach to adjudicating on matters compared to courts. Tribunals such as the Education Tribunal for Wales have long experience of giving the highest priority to the voice of the child, of understanding and making recommendations around children’s needs, and creating environments and ways of working that allow children to participate in proceedings in a way that minimises trauma to them.

230. Some magistrates do receive specific training and develop considerable experience and expertise in working with children who offend, and consideration of their rights and welfare. Some cases in the Magistrates’ Courts are also heard by District Judges or Deputy District Judges, who will have professional legal qualifications and may have specific qualifications with regard to working with children and families. However, there is still a disparity between the basis on which magistrates are recruited and the necessary prerequisites for appointment to the Education Tribunal, based on the differing functions the 2 jurisdictions generally serve.

231. The Welsh Government is already benefiting from the work of an advisory group chaired by Dr Jonathan Evans, considering the strengths and weaknesses of the current youth justice system in Wales, the potential beneficial outcomes of devolution, and the mechanisms for achieving those benefits. As part of taking forward that work, we propose to consider the potential for a role for the new tribunal system, including international experience in operating such a model.

232. At this stage, this is just one idea among many as to how youth justice might be delivered differently with devolution. But it is included here to serve as an example of the creativity that would be allowed by devolution of justice – and the opportunity it gives to take a truly holistic approach to policy making for the first time.

233. In the meantime, our reforms to tribunals set a clear precedent of the approach we would take to the management of justice in Wales, guided by the principle of judicial independence and the need to ensure all the people of Wales have proper access to justice, wherever and whenever it is needed.

Annex 1: How to respond

Consultation questions

Question 1

Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

Question 2

Do you agree with the proposed structure of the unified tribunal system for Wales?

Question 3

Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

Question 4

Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

Question 5

Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

Question 6

Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

Question 7

Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

Question 8

Do you agree the jurisdiction of school admission appeal panels should continue to be administered by admission authorities for the time being?

Question 9

Do you agree appeals from school admission appeals panels should be

available on a point of law to the First-tier Tribunal for Wales?

Question 10

Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

Question 11

Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

Question 12

Are there any particular types of dispute under devolved law which you believe lend themselves particularly well to being resolved by a tribunal?

Question 13

Do you agree there should be an Appeal Tribunal for Wales?

Question 14

Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

Question 15

Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

Question 16

Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

Question 17

Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

Question 18

Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

Question 19

Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

Question 20

Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

Question 21

Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

Question 22

Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

Question 23

Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

Question 24

Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals?

Question 25

Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

Question 26

Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Question 27

Do you agree with our proposals for the appointing authority for members of the new tribunals:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

Question 28

Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

Question 29

Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

Question 30

Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

Question 31

Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

Question 32

Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

Question 33

Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Question 34

Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

Question 35

Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

Question 36

Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and in [chapter 9](#)?

Question 37

Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

Question 38

Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

Question 39

Do you agree with our proposal that the Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

Question 40

Do you agree the operation of civil and administrative justice in Wales should be kept under review? And if so, how should this be done?

Question 41

We would like to know your views on the effects that our proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales would have on the Welsh language, specifically:

- i. on opportunities for people to use Welsh and
- ii. on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 42

Please also explain how you believe the proposed reforms could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 43

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

When you reply, please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- your position (if applicable)
- the name of organisation (if applicable)
- an address (including post code)
- an email address, and
- a contact telephone number

Respond to the consultation

Submit your comments by **2 October 2023**, in any of the following ways:

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In order to show that the consultation was carried out properly, the Welsh

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You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than 3 years.

Further information and related documents

Number: **WG47494**

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Annex 2: Law Commission recommendations

A tribunal system for Wales

Recommendation 1

We recommend that the tribunals listed in section 59 of the Wales Act 2017 should be replaced by a single First-tier Tribunal for Wales, which may then be subdivided into chambers.

Recommendation 2

We recommend that chambers of the First-tier Tribunal for Wales should be led by chamber Presidents, supported by Deputy Presidents where necessary.

Recommendation 3

We recommend that the Welsh Ministers should be empowered to subdivide the First-tier Tribunal for Wales into chambers, and to allocate work to those chambers, by way of secondary legislation made with the concurrence of the President of Welsh Tribunals.

Recommendation 4

We recommend that the jurisdictions of the Valuation Tribunal for Wales should be transferred to a new Valuation Chamber of the First-tier Tribunal for Wales.

Recommendation 5

We recommend that school exclusion appeals should be transferred to the Education Chamber of a First-tier Tribunal for Wales.

Recommendation 6

We recommend that school admission appeal panels in Wales should continue to be administered by admission authorities.

Recommendation 7

We recommend that social care appeal panels should continue to be administered by Social Care Wales.

Recommendation 8

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form an Education Chamber to exercise the jurisdictions of the Registered School Inspectors Appeal Tribunal, the Registered Nursery Education Inspectors Appeal Tribunal and the Education Tribunal for Wales.

Recommendation 9

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form a Property Chamber of the First-tier Tribunal for Wales to exercise the jurisdictions of the Agricultural Land Tribunal for Wales and Residential Property Tribunal for Wales.

Recommendation 10

We recommend that the Welsh Government should keep the organisation of chambers of First-tier Tribunal for Wales, including the possible creation of a General Regulatory Chamber, under review as new tribunal jurisdictions are created.

Appeals

Recommendation 11

We recommend that legislation should create an Appeal Tribunal for Wales.

Recommendation 12

We recommend that the Welsh Ministers should have power by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdiction to it.

Recommendation 13

We recommend that the Appeal Tribunal for Wales should, in the absence of positive reason for different provision, be the appeal venue for appeals from the First-tier Tribunal for Wales.

Recommendation 14

We recommend that appeals from rent assessment committees should require permission.

Recommendation 15

We recommend that appeals from school admission appeals panels should be available on a point of law to the Education Chamber of the First-tier Tribunal for Wales.

Recommendation 16

We recommend that onward appeals from decisions of the Education Chamber on appeals from school admission appeals panels should be limited to cases which raise some important point of principle or practice, or where there is some other compelling reason to hear the appeal.

The President of Welsh Tribunals

Recommendation 17

We recommend that the President of Welsh Tribunals should be a judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. Provision for the President of Welsh Tribunals to sit should be made in procedural rules or directions.

Recommendation 18

We recommend that the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

Recommendation 19

We recommend that the Welsh Government should consult with the President of Welsh Tribunals on the School Admissions Appeal Code pursuant to section 85(2) of the School Standards and Framework Act 1998.

Recommendation 20

If the Valuation Tribunal for Wales remains outside the unified system of tribunals, it should nonetheless be subject to the supervision of the President of Welsh Tribunals.

Procedural rules

Recommendation 21

We recommend that there should be a Tribunal Procedure Committee for Wales.

Recommendation 22

We recommend that the Tribunal Procedure Committee for Wales should be able to establish sub-groups to focus on particular areas of work.

Recommendation 23

We recommend that the President of Welsh Tribunals should be responsible for chairing the Tribunal Procedure Committee for Wales and appointing its members.

Recommendation 24

We recommend that the President of Welsh Tribunals, when appointing members of a Tribunal Procedure Committee for Wales, should have regard to factors set out in legislation, including the need for:

1. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented
2. the committee to have access to persons with relevant expertise, and
3. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do.

Recommendation 25

We recommend that the rules be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee, subject to their being approved by the Welsh Ministers.

Recommendation 26

We recommend that the Tribunal Procedure Committee for Wales should consult with whomever it considers appropriate (including members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before making the rules.

Recommendation 27

The Tribunal Procedure Committee for Wales should adopt common procedural rules across the tribunals as far as is appropriate.

Recommendation 28

There should be a set of procedural rules for each chamber of the First-tier Tribunal for Wales and for the Appeal Tribunal for Wales. If the Appeal Tribunal for Wales is divided into chambers, the Tribunal Procedure Committee for Wales should consider whether to make a separate set of rules for each chamber.

Recommendation 29

We recommend that the Tribunal Procedure Committee for Wales should be required by legislation to have regard to the desirability of consistency within the procedural rules of the devolved tribunals and between them and those of other courts and tribunals in the UK.

Recommendation 30

The procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include:

1. an overriding objective
2. a duty of the parties to cooperate with each other and the tribunal
3. provision for service of documents by electronic means
4. a power for the First-tier Tribunal to review its own decisions, and
5. rules on remote hearings.

Appointments

Recommendation 31

We recommend that members of the First-tier Tribunal for Wales should be appointed by the President of Welsh Tribunals.

Recommendation 32

We recommend that Presidents and any Deputy Presidents of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

Recommendation 33

We recommend that members of the Appeal Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

Recommendation 34

We recommend that members of the Valuation Tribunal for Wales should be appointed by the President of Welsh Tribunals.

Recommendation 35

We recommend that the President and any Deputy President of the Valuation Chamber of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

Recommendation 36

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the First-tier Tribunal for Wales and Appeal Tribunal for Wales.

Recommendation 37

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the Valuation Chamber of the First-tier Tribunal for Wales.

Complaints and discipline

Recommendation 38

We recommend that a standard complaints policy should apply to all chambers of the First-tier Tribunal for Wales, allowing for variations for individual chambers where necessary.

Recommendation 39

We recommend that the complaints policy applying to the First-tier Tribunal for Wales should be available both online and in hard copy on request.

Recommendation 40

We recommend that there should be a uniform procedure for complaints about the administration of the Tribunals Service for Wales.

Recommendation 41

We recommend that there should be a uniform procedure for complaints about the conduct of members, Presidents and Deputy Presidents of the First-tier Tribunal for Wales.

Recommendation 42

We recommend that complaints about the conduct of tribunal members of the First-tier Tribunal for Wales are investigated by the relevant Chamber President.

Recommendation 43

We recommend that complaints about the conduct of Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

Recommendation 44

We recommend that complaints about the conduct of members of the Appeal Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

Recommendation 45

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the First-tier Tribunal for Wales.

Recommendation 46

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the Valuation Chamber of the First-tier Tribunal for Wales.

Recommendation 47

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss Presidents and Deputy Presidents of chambers of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

Recommendation 48

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss the President of the Valuation Chamber of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

Recommendation 49

We recommend that the First Minister should have power to dismiss judges of the Appeal Tribunal for Wales. Sanctions falling short of dismissal should be imposed by the First Minister with the concurrence of the President of Welsh Tribunals.

Recommendation 50

We recommend that the School Admissions Appeal Code should provide for complaints about the conduct of members of school admission appeal panels.

Tribunals administration

Recommendation 51

We recommend the establishment of a Tribunals Service for Wales as a non-ministerial department.

Judicial independence

Recommendation 52

We recommend that the Welsh Ministers and others responsible for the administration of justice in Wales should be subject to a statutory duty to uphold the independence of the devolved tribunals.

Recommendation 53

We recommend that all members of the First-tier Tribunal for Wales (including Chamber Presidents and Deputy Presidents) and members of the Appeal Tribunal for Wales should be required to take a judicial oath or affirmation.

Annex 3: Devolved Tribunals within the scope of the Tribunal Reform Project

Tribunals within the scope of the Tribunal Reform Project

The devolved tribunals falling within the scope of this project are as set out below:

Section 59 tribunals

The Welsh Tribunals as listed in Section 59(1) of the Wales Act 2017:

- a. The Agricultural Land Tribunal for Wales
- b. The Mental Health Review Tribunal for Wales

- c. The Residential Property Tribunal for Wales
- d. The Education Tribunal for Wales
- e. The Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal
- f. The Adjudication Panel for Wales
- g. The Welsh Language Tribunal

Other devolved tribunals

The following tribunals are not “Welsh tribunals” listed in section 59 of the Wales Act 2017. They have no formal relationship with the President of Welsh Tribunals and are not administered by the Welsh Tribunals Unit.

- a. The Valuation Tribunal for Wales
- b. Independent appeal panels: school admission appeal panels; and school exclusion appeal panels

The Agricultural Land Tribunal for Wales

Agricultural tribunals were established by the Agriculture Act 1947. The Act did not originally provide for an Agricultural Land Tribunal for Wales (“the ALTW”), instead giving the Lord Chancellor the power to make orders establishing tribunals for particular areas within England and Wales. The Transfer of Tribunal Functions Order 2013 abolished agricultural land tribunals for areas in England, transferring their functions to the First-tier Tribunal. The order also provided for the continuance of an Agricultural Land Tribunal for Wales.

The tribunal hears both disputes between agricultural landlords and tenants and drainage disputes. In the 2021-2022 reporting period, the ALTW received 20 applications in total. As the tribunal’s work is heavily reliant on site visits, its hearings are conducted in hotels, town halls or council buildings in the locality of the land in question.

The ALTW can review its own decisions, either on its own initiative or on application by a party, should more evidence become available, or if the decision contains a clerical error. An appeal may also be made to the Upper Tribunal (Lands Chamber) on any point of law.

The President of the ALTW is appointed by the Lord Chancellor and must be a barrister or solicitor of at least 7 years' experience. The chairperson of the panel must have a legal qualification and is accompanied by lay panel members who have knowledge and experience of farming, drainage and landowner matters in Wales.

The Mental Health Review Tribunal for Wales

Mental Health Review Tribunals were initially established on a regional basis under the Mental Health Act 1959. The Mental Health Review Tribunal for Wales ("the MHRTW") was specifically provided for by the Mental Health Act 1983. The MHRTW hears applications by and in respect of persons detained, in a hospital in Wales, or a person residing in Wales who is subject to conditional community discharge or guardianship under the Mental Health Act 1983, as amended by the Mental Health Act 2007. In England, the Health Education and Social Care Chamber of the First-tier tribunal hears equivalent claims.

The MHRTW handles the largest volume of applications of all the devolved tribunals falling within section 59(1) of the Wales Act 2017, receiving 1,840 applications or referrals for a Tribunal hearing in 2021-2022. Due to the nature of the MHRTW's work, most of its hearings take place in psychiatric hospitals. There is a right of appeal to the Upper Tribunal (Administrative Appeals Chamber) on any point of law arising from a decision made by the MHRTW.

The President of the MHRTW, who is the only salaried judge in the Welsh Tribunals, is responsible for the members and the decisions of the tribunal. There are invariably 3 tribunal members on the hearing panel: a legal member, a medical (psychiatric) member and a lay member. Members of the MHRTW are

appointed by the Lord Chancellor, except for legal members who sit on the restricted panel. They are appointed by the Lord Chief Justice in consultation with the Lord Chancellor. The Lord Chief Justice has delegated the appointment function to the President of Welsh Tribunals.

The Residential Property Tribunal for Wales

The Residential Property Tribunal for Wales (“RPTW”) hears appeals relating to privately rented and leasehold property under a number of pieces of legislation. The RPTW is in fact an “umbrella” tribunal, comprising 3 different tribunals, each based in different pieces of underlying legislation: rent assessment committees, leasehold valuation tribunals and residential property tribunals. In England similar claims are heard within the First-tier tribunal (Property Chamber).

Because the RPTW is composed of 3 different tribunals, the provisions governing its appeals differ. All appeals go to the Upper Tribunal (Lands Chamber), but appeals from rent assessment committees are explicitly limited by primary legislation to appeals on a point of law.

Due to the nature of the RPTW’s workload, hearings are conducted in town/village halls or hotels in the locality of the disputed property. Some cases are heard in the tribunal’s office, at Cleppa Park in Newport, but these are rare. We are aware of one large case involving 30 to 40 participants that was heard in Cardiff County Court.

The Lord Chancellor appoints tribunal chairpersons, who are legally qualified. The Welsh Ministers then appoint a president and vice-president from among those chairpersons. All other members of the tribunal are appointed by the Welsh Ministers. Tribunal hearings are conducted by a legally qualified chairperson, a professional member, and in some cases, a lay member.

Education Tribunal for Wales

The Education Tribunal for Wales was established in 2003, by Section 333 (1ZA) of the Education Act 1996. At the time, it was called the Special Educational Needs Tribunal for Wales (SENTW) and governed by the Education Acts 1996 and 2002. Its name was changed with effect from September 2021 by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

The tribunal covers the whole of Wales. This includes children who live in England but receive their education in Wales. The Education Tribunal for Wales is responsible for hearing and deciding appeals against decisions made by local authorities and further education institutes about children and young people’s additional learning needs, or special educational needs. ETW is also responsible for dealing with claims of disability related discrimination in schools in Wales under section 116 of the Equality Act 2010. The Education Tribunal for Wales also hears disability discrimination claims. The English equivalent of the Education Tribunal for Wales is the First-tier Tribunal (Special Educational Needs and Disability) which is part of the Health, Education and Social Care Chamber of the First-tier Tribunal.

The 2018 Act changes the way pupils’ additional learning needs are met in schools and other education bodies. It will replace previous legislation about special educational needs slowly. Each year, a group of school years will move from the Special Educational Needs (SEN) system to the new Additional Learning Needs (ALN) system. In the first year, nursery age children were included into the system, and in the third year, young people from age 16-25 will be included. The SEN legislation only included children of compulsory school age.

Section 70 of the 2018 Act provides a list of all the occasions in which a child, young person or parent can appeal to the Tribunal. This section is being brought into force incrementally by age group. Section 72 of the 2018 Act makes provision as to the right to appeal decisions which impact upon detained

persons.

The Education Tribunal for Wales received 151 applications in 2021-2022. Appeals may be made from the Education Tribunal for Wales to the Upper Tribunal (Administrative Appeals Chamber) on a point of law.

During 2021-2022 the Education Tribunal for Wales held 69 hearings: of those, 6 hearings were held on the basis of the papers only, 62 held as virtual hearings and one hearing was held in person. Where hearings are in-person, they are held in public buildings that are usually within one hour travelling distance from the child or young person's home.

The Education Tribunal for Wales is led by a President, who is appointed by the Lord Chancellor and must be a barrister or solicitor of at least 7 years' experience. Panels are made up of a chairperson, who must possess a legal qualification, and lay members who have experience in education or a related subject.

The Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal

The School Inspections Act 1996 (which applied to both England and Wales) provided for a register of school inspectors. A similar register of nursery education inspectors was created by the School Standards and Framework Act 1998. An inspector who disagreed with a decision to remove them from or not include them on the register, or which imposed conditions on their registration, could apply to a tribunal. The Education Act 2005 ("the EA 2005") abolished the requirement to keep registers of both school and nursery education inspectors in England.

The provisions in relation to school inspectors were kept for Wales by section 27 of the EA 2005. Inspectors of nurseries in Wales are also still able to apply to a

tribunal constituted under section 27 of the EA 2005. The tribunals are referred to as two separate tribunals by the regulations which govern their procedure: the Registered Schools Inspectors Appeal Tribunal (“RSIAT”) and the Registered Nursery Education Inspectors Appeal Tribunal (“RNEIAT”).

It is understood that the tribunal has not been constituted, and no applications have been received since 2007/2008. Members of the Education Tribunal for Wales are, however, eligible to deal with any cases which arise in the jurisdiction of the RSIAT and the RNEIAT. RSIAT and RNEIAT cases could presumably, if the need arose, be heard in the same locations as used by the Education Tribunal for Wales.

A tribunal established under section 27 of the EA 2005 may review, set aside or vary its own decisions if: a decision is wrongly made as a result of an error on the part of the tribunal staff; a party fails to appear with reasonable cause; new evidence becomes available; or the interests of justice require. There is no appeal from the tribunal. The tribunal chair is appointed by the Lord Chief Justice in consultation with the Lord Chancellor. Two other tribunal members are appointed by the Welsh Ministers.

The Adjudication Panel for Wales

The Adjudication Panel for Wales (“the APW”) was established under Part III of the Local Government Act 2000, with its first members appointed in 2002.

It is responsible for determining alleged breaches of authorities’ codes of conduct by members of Welsh county, county borough and community councils, and fire and national park authorities.

The APW has 2 statutory functions. The first is to consider references made by the Public Services Ombudsman for Wales following the Ombudsman’s investigation into a breach of a statutory code of conduct by a local authority member. These references are heard by case or interim case tribunals. The

APW also determines appeals from local authority standards committees, which are heard by appeals tribunals. The equivalent English tribunal, the Adjudication Panel for England, was abolished in 2010.

There is a right of appeal from case tribunals to the High Court. The APW has a small caseload and in the 2021-22 financial year it received 10 applications.

The APW is led by the Tribunal President, who is a legal member. The tribunal also has a Deputy President. A hearing panel is typically formed of 3 members; 2 lay members and the chairperson, who is a legal member. More than 1 legal member may sit on the panel; it is understood this approach has been taken for the purposes of training, or where there is a conflict of interest, or a shortage of lay members.

The Welsh Language Tribunal

The Welsh Language Tribunal (“the WLT”) was established in 2015 under section 120 of the Welsh Language (Wales) Measure 2011 (“the Measure”). It hears appeals against the Welsh Language Commissioner’s decisions in relation to the Welsh Language Standards. There is no equivalent tribunal in England.

There are 3 types of appeal. (1) where the Commissioner notifies a person of a determination that the requirement to comply with a Standard is not unreasonable or disproportionate, the Tribunal can determine whether the requirement is unreasonable or disproportionate; (2) a person who has made a complaint to the Commissioner that another person has failed to comply with a Standard may appeal (a) against the Commissioner’s decision that the other person has not failed to comply with the Standard; or (b) against the Commissioner’s decision not to carry out an investigation, not to consider whether to carry out an investigation or to discontinue an investigation.

The tribunal received 3 applications in 2021-2022. One application was brought under Section 99(2) of the Measure; one application was brought under section

103 and one application identified section 95(2) and 95(4) in the same application.

The WLT can review, vary or revoke its own decisions. There is also a right of appeal to the High Court on any point of law arising from a decision made by the WLT. To date, no appeals from the WLT to the High Court have been brought.

The WLT's President is responsible for organising the work of the members, and for making decisions in relation to appeals and complaints. The President is appointed by the Welsh Ministers and must either be a barrister or a solicitor with at least 10 years' experience. Cases are heard by a legal member, and 2 lay members.

The Valuation Tribunal for Wales

The history of valuation tribunals is a long one, and can be traced back to the Union Assessment Committees Act 1862. It is a history closely linked to local government, with valuation tribunals for each local authority.

The Valuation Tribunal for Wales ("the VTW") is established by statute and is funded by the Welsh Government as an arms-length Welsh Government Sponsored Body. Although the money to run the Tribunal comes from Welsh Government, the VTW is not part of Welsh Government. It stands alone as an independent tribunal with its own staff, who are not civil servants. The staff are employed directly by the VTW itself. It deals with appeals in relation to Non-Domestic Rating Valuations, and Council Tax Valuations and Drainage Rates Valuations.

The VTW receives more applications than other devolved tribunals. In 2021-2022 the VTW received 4,808 applications and made 1,070 tribunal decisions.

Cases are heard by members, who are local unpaid volunteers. Formal qualifications are not required in order to be a member. The VTW seeks to

appoint a range of individuals with different backgrounds, experiences and qualifications. All members are required to undertake regular training in valuation tribunal matters. There were 71 members in position as reported in the VTWs 2021-2022 Annual Report. Three members typically hear appeals, supported by a clerk. Clerks are employees of the VTW, who have detailed expertise and training in the underlying substance of the appeal. Their role is to advise on the relevant law and procedure. The VTW has 6 tribunal clerks and 2 senior tribunal clerks.

The VTW has the ability to review its own decisions. Further appeals are to the High Court (on a point of law, for Council Tax cases) or the Upper Tribunal (in relation to Non-Domestic Rating cases). The VTW hears cases locally across Wales.

The VTW conducts its own administration. It has its own chief executive. It is governed by a governing council, which includes the President of the VTW, 3 national representatives, and up to 3 members appointed by the Welsh Government.

Independent appeal panels

School admission appeal panels hear appeals against decisions of admission authorities, who decide which school a child should attend. Exclusion appeal panels hear appeals against decisions by school governors, who have decided that a pupil should be excluded from a school. Both panels are usually administered by local authorities. In practice it is common for them to be run together, under the umbrella term of “independent appeal panel”.

While administering the panel is usually the responsibility of the local authority, the Welsh Government has published a statutory code on admission appeals (the “Admissions Appeals Code”). It has also published guidance on exclusion from schools and pupil referral units (the “Exclusion Guidance”).

Both school admission and exclusion appeal panels should be heard in neutral locations, and not in the admitting/excluding school itself. Local authority buildings are permissible locations, so long as the hearing is conducted in a building that is not associated with the education department or admissions or exclusion teams of the local authority.

Following temporary measures which were put in place during the COVID-19 pandemic which allowed for school admission appeals to be heard remotely, the Welsh Government noted the benefits for all parties in having the option of remote school admission appeals on a permanent footing. The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 have recently come into force, which allow admission authorities the option to undertake school admission appeals remotely. The Welsh Government expects a large proportion of school admission appeals to be undertaken remotely going forward.

School admission appeal panels

Section 94(5) of the School Standards and Framework Act 1998 provides that admission authorities are responsible for administering admission appeal panels. Local authorities are the admission authorities for community and voluntary controlled schools (the majority of schools in Wales), while governing bodies are the admission authorities for foundation and voluntary aided schools. In Wales these are often faith schools, run by the Roman Catholic Church or the Church in Wales.

In practice, governing bodies may decide to ask the local authority to arrange the appeal panels for which the governing body is responsible. The Admissions Appeals Code also envisages the possibility of collaboration between local authorities. In relation to panel members, the Admissions Appeals Code notes that “pooling resources with neighbouring admission authorities and local authorities can help ensure that the same members do not sit on panels for a school on a repeated basis”.

School admission appeal panels are made up 3 or 5 members. One of those members must have experience in education, or be the parent of a pupil registered at another school. Another must be a “lay” member: someone “without personal experience in the management of any school or the provision of education in any school”. Admissions authorities are required to re-advertise for lay members every 3 years.

The appeal panel can direct that a child be given a place at a particular school. That decision is binding on both the admissions authority and the governing body of a community or voluntary controlled school at which the panel determines the child should be placed.

School admission appeals are far more common than exclusion appeals.

School exclusion appeal panels

School exclusion appeal panels are provided for by the Education Act 2002. They hear appeals against decisions of governing body discipline committees on permanent exclusions. They are arranged by the local authority. Composition of the panels is similar to that of admissions panels; a panel consists of 3 or 5 members, including lay members, members working in education or education management, and members who are or have been governors of maintained schools. A panel is able to order that:

1. the exclusion be upheld
2. the pupil be reinstated, or
3. the case is an exceptional one where reinstatement is not a practical way forward but would otherwise have been the appropriate direction.

There are fewer exclusion appeals than there are admission appeals.

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