



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee



Mapping Administrative Justice in Scotland

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Foreword

The administrative justice system has been described as the “Cinderella” of the justice system – more often taking a back seat, whilst the limelight is shared between criminal and civil justice. For most, when asked to think of “justice”, criminal cases or civil court litigation are more likely to spring to mind than, say, an appeal against a refusal of planning permission, or a reconsideration of entitlement to receive state benefits.

Yet, the average citizen is more likely to come into contact with the administrative justice system than either of the others. Decisions made by public bodies and organisations affect the lives of everyone who lives in Scotland. Reduction of disability benefit; refusal of a school placing request; refusal to provide certain adult social care services; or refusal of a claim for asylum and a decision to deport; decisions of this nature, and the processes for challenging them, demonstrate the breadth – and importance – of the administrative justice system.

Key to the remit of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) is to “promote the interests of system users and champion an administrative justice system that is accessible, responsive and has users’ needs at the centre”. With this in mind, we wanted to build a comprehensive picture of the administrative justice and tribunals landscape in Scotland.

The report undoubtedly demonstrates the scale, complexity and fragmentation of the system, especially when viewed through the lens of a system user. As such, it can help inform future policy making, as well as shape the priorities of any future oversight body in the area.

This report is a “snapshot” of the administrative justice and tribunals landscape in Scotland as at November 2015. The system is organic, and even during the course of producing this report has changed. Major changes are on the horizon which will alter the landscape further. Not least are those resulting from the Courts Reform (Scotland) Act 2014, and the Tribunals (Scotland) Act 2014. And further changes under the proposed devolution settlement, including those relating to tribunals, tax and welfare, are looming. However it remains to be seen exactly how the Scotland Bill 2015 will affect the administrative justice and tribunals landscape in Scotland.

It is intended that this report will become a living resource – that will be updated and refreshed as required, to reflect the changing face of the administrative justice landscape in Scotland.

I would like to thank my colleagues on the Committee for their contributions to this project, and Scottish Government staff for their administrative support. Finally, I must thank Alan Morrison, our Policy and Research Officer, who had the insight, dedication and perseverance to translate our ambition for a comprehensive overview of the system into this report and the maps within it.

Marieke Dwarshuis

Chair, Scottish Tribunals and Administrative Justice Advisory Committee

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Introduction

Chapter 1

1.1 This report has been prepared on behalf of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC).

1.2 The STAJAC was established in November 2013 by the then Minister for Community Safety and Legal Affairs, Roseanna Cunningham MSP. It was established as an interim committee with a lifespan of two years, ending in November 2015. The Committee performs a crucial oversight role in Scotland, providing external scrutiny of the administrative justice and tribunals system in devolved areas, and highlighting any issues to the Scottish Ministers.

1.3 Of particular note is the first line of the Committee's remit which states that it should:

“promote the interests of system users and champion an administrative justice system that is accessible, responsive and has users’ needs at the centre”¹

1.4 With this in mind, and informed by the views of stakeholders, the Committee believed it essential to build up, as far as possible, a comprehensive picture of the current administrative justice and tribunals landscape in Scotland. By doing so, the nature and complexity of the ‘system’ as a whole would be laid bare.

1.5 The mapping exercise could then serve to inform the future work of any oversight body, as well as inform the development of policy affecting the design of (aspects of) the system and its processes. For example, pressure points and gaps could be identified for further scrutiny; and rationales could be developed for the further expansion or development of the system and redress processes, in areas ranging from welfare payments to licensing and from school closures to information rights.

What is administrative justice, and the administrative justice and tribunals system?

1.6 There are various existing definitions of what constitutes “administrative justice”, and what makes up the “administrative justice and tribunals system”.

1.7 A statutory definition of the overall system was provided in the Tribunals, Courts and Enforcement Act 2007:

“the overall system by which decisions of an administrative or executive nature are made in relation to particular persons including:

- a) the procedures for making such decisions,
- b) the law under which such decisions are made, and

¹ For the STAJAC's full Remit and Working Practices, see:

<http://www.adminjusticescotland.com/Remit%20&%20Working%20Practices.htm>

- c) the systems for resolving disputes and airing grievances in relation to such decisions.”²

1.8 Digging a little deeper, the Administrative Justice Steering Group has described the term “administrative justice” in the following terms:

“Initial decision making by public bodies affecting individuals’ rights and interests including the substantive rules under which decisions are made and the procedures followed in making decisions... and; systems for resolving disputes relating to such decisions and for considering individuals’ grievances.”³

1.9 On the basis of these definitions, it can be said that the “administrative justice and tribunals system” in Scotland encompasses:

- first instance decision making of all devolved and reserved public bodies (or bodies performing a public service) affecting individuals’ rights and interests;
- the appeal and review processes for resolving disputes, including the role of the courts and judicial review;
- tribunals in both first-instance decision making and appellate roles (including party to party tribunals);
- complaints processes and complaints handling bodies for the public sector; and
- regulatory bodies and Commissioners, which handle complaints or references, and/or conduct investigations.

Aim and Scope of this report

1.10 The aim of this report is to “map”, as comprehensively as possible, the administrative justice and tribunals landscape in Scotland. It sets out, as far as has been possible, the public bodies and tribunals (and bodies performing a public service) which take decisions of an administrative nature in Scotland, and the various associated redress processes in relation to grievances with those decisions. It also described tribunals resolving disputes between parties (and not involving administrative decisions).

1.11 In defining the scope of the landscape to be mapped, the Committee first of all adopted the statutory definition of the administrative justice system, set out above at section 1.7.

1.12 In adopting this definition, the Committee set the scope for the mapping exercise to include both reserved and devolved bodies and tribunals which operate in Scotland, and take decisions of an administrative nature which affect individuals; and the associated reserved and devolved dispute resolution processes, bodies or tribunals which have a role in dealing with the grievances of individuals in Scotland.

1.13 *For the purposes of this report*, the Committee interpreted the phrase “particular persons” as relating predominantly to citizens in an individual and natural capacity, rather than “legal persons” in a commercial capacity. Therefore, certain bodies and tribunals have not been included in this

² Tribunals, Courts and Enforcement Act 2007, Schedule 7, para.13(4), repealed by the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

³ Administrative Justice Steering Group (AJSG), *Administrative Justice in Scotland – The Way Forward: The final report of the Administrative Justice Steering Group*, (Consumer Focus Scotland, 2009), para.2.1

report. These include, for example, the Competition Appeals Tribunal and the Copyright Tribunal, which make decisions of a purely commercial nature.

1.14 For the purposes of this report, the Committee has interpreted the phrase “resolving disputes and airing grievances” rather widely. The report includes statutory rights of appeal and review in relation to the decisions of public bodies and tribunals, but it also includes the role of regulators and professional regulatory bodies where appropriate. Therefore, the roles of, for example, the General Teaching Council for Scotland and the General Medical Council are detailed. However, it should be noted that not every professional regulatory body has come within the scope of this report - only those that lead to a statutory tribunal, or those that regulate professionals who, by virtue of their employment, perform a public service have been included.

Methodology

1.15 Given STAJAC’s remit to “champion the needs of users”, it decided to approach the mapping project from the user perspective.

1.16 Therefore, rather than describing the landscape around the constituent parts of the system and the ways in which to navigate from one part to the next, it was decided to describe the landscape, and the many journeys a user might have to make through it, from the bottom up: starting from the initial decision that is made that affects an individual’s rights and interests.

1.17 This resulted in the 14 subject based chapters detailed in this report, which were designed to ensure an accessible approach by subject area, starting from the initial administrative decision, rather than by form or body of redress.

1.18 The most challenging part of this mapping project has been to uncover all the various bodies making first instance administrative justice decisions, and all the various decisions they might make. Indeed, whilst this map cannot claim to be comprehensive, it is the most comprehensive of its type.

1.19 A combination of desktop research and meetings with relevant professionals ensured that the administrative justice decisions and redress processes in each subject area were identified. These have been detailed, and the various redress processes formatted within accessible tables, allowing an overview “at a glance”. These tables detail the salient information of the different redress processes, including the relevant redress bodies, legislative basis, form of redress and further rights of redress. In order to ensure accuracy, draft sections were sent to relevant professionals, where available, for suggestions and approval.

1.20 The fold-out “maps” following each chapter were designed following the drafting of the text and tabular sections of each relevant subject area. They were designed to allow an accessible, visual “whole system” overview of the various subject areas and differing routes of redress in each, as detailed in the report.

How to use this Report

1.21 This report is divided into two parts.

1.22 Part 1 is comprised of the “system chapters” and includes chapters 2-5. These provide a brief overview of the system as a whole, describing the role and interaction of the Courts and

Tribunals, an explanation of Judicial Review, of role of the Ombudsmen and the Commissioners and regulatory bodies in the administrative justice and tribunals system in Scotland.

1.23 Part 2 is comprised of the “subject area chapters” and includes chapters 6-19. These detail the main administrative justice processes relevant to each subject area, and include the fold-out “maps” of the routes of redress (as detailed in the textual and tabular part of each chapter). These should be read in conjunction with Part 1, and in particular with *Chapter 3 – Judicial Review* and *Chapter 4 – The Ombudsmen*; which detail the scope of judicial review and the roles of the Ombudsmen as routes of redress which are not detailed in each individual subject area chapter.

Important Notes

Each reference to legislation and/or statutory instrument is to be taken “as amended”, unless otherwise stated

In the text, and in the tables at the right-most column (“Further Appeal or Review”), the statement “no further right of appeal or to request review” or “none”, does not mean that Judicial Review will not be possible, and reference should be made to *Chapter 3 – Judicial Review* for further information

In the text, and in the tables at the right-most column (“Further Appeal or Review”), the statement “on a point of law only” means that an appeal is not possible on the merits of the case, but rather only possible on grounds relating to the legality of the decision and other points of law. This may affect the availability of Judicial Review, and reference should be made to *Chapter 3 – Judicial Review* for further information

The role of the Ombudsmen as a route of redress has been dealt with generically in Chapter 4, rather than in each individual chapter. There are exceptions in relation to the Scottish Public Services Ombudsman (SPSO), where the SPSO has a specific statutory role and these are detailed in the relevant chapters. Reference should be made to Chapter 4 – *The Ombudsmen* for further information

Finally, this report is intended as a reference guide only. The information contained within is, to the best of STAJAC’s knowledge, accurate as at November 2015. It is not, however, a statement of the law and should not be taken as such.

The Role of the Courts and Tribunals

Chapter 2

2.1 Scotland's courts and both devolved and reserved tribunals play an important role in the administrative justice system. These bodies most often interact with the system in an appellate role, but are also responsible to a more limited extent for first-instance decision making or the adjudication of disputes.

2.2 This chapter gives a general overview of the relationship between the courts and tribunals, and their role within the administrative justice system. The individual redress processes which involve the courts and tribunals are detailed in the subject area chapters and maps of this report, but it must be noted that on-going reform as detailed in this chapter may have an effect on these processes.

The Courts

2.3 Scotland's civil courts, and particularly the Sheriff Court, feature often within this report. The legislation or regulations which provide a public body or organisation with administrative decision making power more often than not provide for a statutory right of appeal or review. These can relate to an internal right of appeal, but as can be seen from the maps in this report, the courts have been given an important appellate role in the administrative justice system.

2.4 Depending on the legislative basis of the right of appeal or review, courts can provide a full-blown merits based review of the initial decision, or are limited to a consideration of points of law only. For a merits based review of the decision, the court can look at the facts, circumstances and discretion of the decision maker in coming to its decision.

2.5 Appeals on a point of law are far more limited. This form of redress is concerned only with the legality of the decision, or where the case has raised a point of law in itself.

2.6 In other cases, the legislation limits the appeal or review to consideration of the scope of the legislation which delegates the decision making power only. This is similar, but narrower, than consideration on a point of law, and considers whether the decision taken was *ultra vires*. These latter forms of redress are similar to judicial review, and can limit its availability.

2.7 In coming to a judgement in their appellate function, the powers of the court are sometimes delineated by legislation. In general terms, however, the court will have the power to make any order it sees fit, including; to confirm the original decision; to quash that decision; to remit the case to the initial decision making body for reconsideration; to direct that body to make any such decision that the court sees fit; to substitute the decision with the court's own decision; or to vary the initial decision.

2.8 There may be a further onward right of appeal against the decision of a court on appeal. This is, in general, more likely to be the case if the appellate function of the court was merits-based. These are to a court of higher standing.

2.9 The courts are also sometimes granted the power, on application from a relevant authority, to make an “initial” administrative decision regarding action to be taken. For example, a Local Authority may petition the Sheriff Court to make a certain Order or Notice requiring, or prohibiting, certain actions by individuals. This type of court decision making, as detailed in this report, will usually give rise to a right of appeal or review, often to a court of higher standing.

Human Rights, Devolution and European Law Cases

2.10 For certain cases which raise human rights or “devolution issues”,⁴ there may be a further right to appeal after the “final judgement”⁵ in any case to the UK Supreme Court.⁶ The case must raise a sufficiently important point of law which is in the public interest, to warrant a hearing at the Supreme Court.⁷ For human rights issues, there may be a further right of appeal to the European Court of Human Rights in Strasbourg.

2.11 It should also be noted that cases which raise issues of European law may be referred to the Court of Justice of the European Union. Separate processes exist for cases of this type, and this is out-with the scope of this report.

Court Reform

2.12 Currently, Scotland is in the midst of a wide-scale programme of civil court reform. The Courts Reform (Scotland) Act 2014 has already changed the rules regarding judicial review and references to the UK Supreme Court.⁸ The Act will also significantly change the way in which civil cases, including administrative cases, progress through the system. For instance, the Act will introduce a national Sheriff Appeal Court for civil appeals.⁹ The role of that Court is currently performed by the six individual Sheriffs Principal. These changes, obviously, have the potential to impact significantly on the processes outlined in this report.

The Tribunals

2.13 There are, in effect, two tribunals systems which operate in relation to matters which affect the citizens of Scotland: the devolved tribunals system, and the reserved tribunals system.

2.14 Tribunals act in both an appellate and first-instance decision making capacity. Some tribunals also act as an adjudicator of party-party disputes.¹⁰

⁴ See: Scotland Act 1998, Schedule 6, para 1: which lists “devolution issues” – these include determinations of whether an Act or action of the Scottish Parliament or Scottish Ministers is within legislative competence

⁵ Court of Session Act 1988, s.40(10)

⁶ Constitutional Reform Act 2005, s.40(4)(b); Scotland Act 1998, Schedule 6, para.1

⁷ Court of Session Act 1988, s.40A(3)

⁸ Court of Session Act 1988, s.27B; Court of Session Act 1988, s.40

⁹ Courts Reform (Scotland) Act 2014, Part 2

¹⁰ For example, the Employment Tribunals, the Private Rented Housing Panel and the Homeowner Housing Panel

2.15 The subject matter handled by the tribunals ranges from immigration appeals to the determination of orders under relevant mental health legislation. The combined systems handle thousands of cases each year, and form a vital part of the administrative justice system.

The Reserved System

2.16 Most reserved tribunals operate from within a unified two-tier structure, supported by Her Majesty's Courts and Tribunals Service. This comprises a number of "chambers" identified by subject matter which together form the UK First-tier Tribunal; and a number of second-tier chambers which, in general, handle appeals from the first-tier and complex first-instance cases, which together form the UK Upper Tribunal. There are also a number of stand-alone reserved tribunals.¹¹

The Devolved System

2.17 The devolved tribunals system is currently undergoing a process of reform and rationalisation, bringing the system broadly in line with the unified structure operating for most reserved tribunals.¹² This will comprise a First-tier Tribunal for Scotland and an Upper Tribunal for Scotland, containing "chambers" and "divisions" identified by subject matter, respectively. These will collectively be known as "the Scottish Tribunals" and will be supported by the Scottish Courts and Tribunals Service (SCTS).

2.18 Existing devolved tribunals which are supported by SCTS will be transferred in to the unified structure over a phased period of time, with the first of these – the housing jurisdictions¹³ – to be transferred in 2016. There are currently a number of stand-alone devolved tribunals (not supported by SCTS), which are also scheduled to be transferred in to the unified structure over time.¹⁴

The Devolution Settlement

2.19 It is important to be aware that the Smith Commission recommended the devolution to Scotland of almost all reserved tribunals which handle cases in relation to citizens of Scotland.¹⁵ Tribunals relating to national security are to remain reserved.¹⁶ The exact terms of the agreement regarding the devolution of tribunals are currently being negotiated as part of the Scotland Bill 2015. It remains to be seen which tribunals will be devolved, to what extent they will be devolved, and the timetables for their devolution.

¹¹ For example, the Reserve Forces Appeals Tribunal and the Horserace Betting Levy Appeal Tribunal

¹² Tribunals (Scotland) Act 2014

¹³ The new Housing and Property Chamber will comprise the Private Rented Housing Panel, the Homeowner Housing Panel, a new Private Rented Sector Tribunal and a Letting Agents Tribunal

¹⁴ For example, the Police Appeals Tribunal, the NHS Tribunal and the Valuation Appeal Committees

¹⁵ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (Edinburgh 2014), available: https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf; note that only the administration of such tribunals, and not the substantive law is to be devolved

¹⁶ These comprise: The Pathogens Access Appeal Commission; The Investigatory Powers Tribunal; The Proscribed Organisations Appeal Commission; and the Special Immigration Appeals Commission

Powers of the Tribunals

2.20 In general, the powers of the tribunals (in whichever capacity), are laid out in the relevant legislation and regulations. Invariably, there are rights of appeal or review in relation to tribunal decisions, and these range from reconsideration by the tribunal itself; transfer to another tribunal of higher standing; or transfer to the courts system.

Judicial Review

Chapter 3

3.1 Judicial review is a common law remedy. In principle, anyone affected by any action or inaction by a public body, office or organisation when exercising its decision making power can petition the court to raise an action for judicial review, in order to challenge that action or inaction.

3.2 It is usually used in situations in which no other legal remedy, such as a right of appeal to a tribunal, is available. Judicial review may be used to challenge the decisions or actions of any public body, e.g. Government Ministers and Government Departments, Local Authorities, NHS bodies, prison governors, quangos of all kinds, tribunals and inferior courts.

3.3 In limited circumstances, it may also be used to challenge decisions or actions of private bodies such as trade associations and sporting bodies. However, this chapter is concerned with its use to challenge decisions of public bodies. In principle, it can be used in any area of public administration and has been used in Scotland to challenge, for example, decisions on planning, immigration control, the homelessness legislation and the treatment of prisoners.

3.4 Judicial review is available only in the Court of Session and not in any other court.¹⁷ In a limited range of circumstances, a petition for judicial review may be transferred to the UK First-tier Tribunal or to the UK Upper Tribunal which will then conduct the judicial review.¹⁸

Grounds for Judicial Review

3.5 The Court will not, in general, undertake a review of the merits of the decision made (i.e. whether the decision was right), but is concerned with whether the decision was legal.¹⁹

3.6 There are, in general, only three grounds on which an action for judicial review can be founded. These are: a) illegality; b) irrationality; and c) procedural impropriety.²⁰ These are explained below:

¹⁷ *Brown v Hamilton District Council*, 1983 SC (HL) 1

¹⁸ Tribunals, Courts and Enforcement Act 2007, s.20(1)(a)

¹⁹ *R v Secretary of State for Scotland*, 1999 SC (HL) 17

²⁰ *Council of Civil Service Unions v Minister for the Civil Service*, [1985] AC 374; *City of Edinburgh District Council v Secretary of State for Scotland*, 1985 SLT 551

a) Illegality

3.7 The ground of illegality concerns a decision which has not been taken in accordance with the law. This can cover any of the following:

- the making of a decision which goes beyond what is permitted by the legislation governing the decision;
- failing to take action or make a decision when legislation requires it;
- taking irrelevant considerations into account in making a decision, or failing to take relevant considerations into account;
- a public body using a power which it does have for an improper purpose;
- the decision taken is in breach of the Human Rights Act;
- the decision taken is in breach of European Union Law;
- a public body has unfairly refused to satisfy a legitimate expectation, e.g. by failing to keep a promise.

b) Irrationality

3.8 The ground of irrationality concerns the use of discretion on the part of the decision maker. This ground is also termed “unreasonableness”.²¹ The threshold for what constitutes an unreasonable or irrational decision is very high. It must constitute a decision “so unreasonable that no reasonable authority could have come to it”.²²

c) Procedural Impropriety

3.9 The ground of procedural impropriety covers:

- the failure of the public body to follow the specific procedural requirements of the legislation governing the decision;
- failure to follow the common law principles of procedural fairness, also known as the principles of “natural justice”. The two principles of natural justice are that a person making a decision that affects the legal rights or important interests of another person must (i) be impartial, and (ii) generally follow a fair procedure. These principles apply to decisions made by courts, tribunals and administrative bodies.

Restrictions on the Availability of Judicial Review

3.10 Since 22nd September 2015, a person seeking judicial review of a decision (‘the petitioner’) has been required to seek permission from the Court of Session for the judicial review to proceed. The court will not grant permission unless the petitioner has a “sufficient interest” in the matter,

²¹ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, [1948] 1 KB 223

²² *Ibid*, p.230

and the action has a “real prospect of success”.²³ If permission is granted, the case proceeds to a full hearing.

3.11 Also since 22nd September 2015, a person seeking judicial review of a decision must bring proceedings to court within 3 months of the act or decision s/he seeks to challenge. The Court of Session may allow a petition raised more than three months after the decision if that appears equitable in all the circumstances.

3.12 Furthermore, where a statute provides for a right of appeal or review, judicial review is in general unavailable.²⁴ This includes instances where the right of appeal or review was available, but unexercised. Judicial review will only be available in these instances where exceptional circumstances are deemed to excuse the failure to use the statutory right of appeal or review.²⁵

3.13 The existence of a non-statutory right of appeal or review – such as an internal process – will probably not affect the availability of judicial review, however.

Outcomes

3.14 Where the Court of Session decides that the public body has acted unlawfully it can make a variety of orders to give the petitioner a remedy. These include an order quashing the decision (known as “reduction”); an order declaring the rights of the parties to the case (“declarator”), an order stopping the public body going ahead with any proposed action (“interdict”); an order requiring the public body to do something, including for example, to make a fresh decision (“implement”); or an order requiring the payment of damages.²⁶

²³ Court of Session Act 1988, s.27B; Note that applications for permission relating to the decisions of the Upper Tribunal for Scotland pursuant to s.27B(3) of the Court of Session Act 1988, the test must raise an important point of principle or practice in addition to the standard test, as set out in the same section.

²⁴ *West v Secretary of State for Scotland*, 1992 SC 385

²⁵ *British Railways Board v Glasgow Corporation*, 1974 SC 261 (OH)

²⁶ Court of Session Rules, Chapter 58

The Role of the Ombudsmen

Chapter 4

4.1 This chapter outlines the roles and functions of the two public services Ombudsmen which operate in Scotland: The Scottish Public Services Ombudsman (SPSO) and the UK Parliamentary and Health Services Ombudsman (PHSO). The Office of SPSO is currently held by Mr Jim Martin, whilst that of PHSO is currently held by Dame Julie Mellor MBE.

4.2 The Ombudsmen are Parliamentary Organisations and they are accountable to and report direct to their respective parliaments. They can provide an alternative form of redress where there exist no formal appeal or review processes, in relation to a decision by a Public Authority which an individual is unhappy with. Ombudsmen have a great deal of freedom in how they investigate and are usually described as operating in an inquisitorial manner rather than an adversarial one. The jurisdiction of the Ombudsmen is wide. By way of example, just some of the bodies relevant to this report within the remit of the Ombudsmen are:

SPSO²⁷

- Local Authorities, in their various capacities
- Local Authority Committees and Boards, including the Planning Committees and Licensing Boards
- Health Boards and Special Health Boards
- Forestry Commission Scotland
- Education Scotland
- Registered Social Landlords
- Any member of the Scottish Government

PHSO²⁸

- Any UK Government Department, and their associated agencies, including:
- The Department for Work and Pensions
- Her Majesty's Revenue and Customs
- Department for the Environment, Food and Rural Affairs
- The Home Office
- Driving and Vehicle Standards Agency
- Driving and Vehicle Licensing Agency

4.3 This chapter should be read in conjunction with *Chapter 5 – Other Complaints Handlers and the Commissioners*, as both detail complaints handlers and reviewing bodies. The Commissioners usually have a single or specialist remit, and are responsible for handling complaints and cases relevant only to one or closely linked areas, whereas the Ombudsmen described in this chapter have a broader remit, covering a number of areas. The other complaints handlers and

²⁷ These represent just a few examples. For further guidance, see: Scottish Public Services Ombudsman Act 2002

²⁸ These represent just a few examples. For further guidance, see: Parliamentary Commissioner Act 1967

commissioners are also, as public organisations themselves, subject to the jurisdiction of the Ombudsmen who can consider complaints about their work.

4.4 Additional complexity may occur when there is an overlap between the organisations under the jurisdiction of the Commissioners and complaint handling bodies and those directly within the broader jurisdiction of the Ombudsmen. Generally, the complainant would be signposted first to the specialist complaint handler but it is not always clear what exactly the Ombudsmen may consider if a complaint is then made to them. Complexity can also arrive when different aspects of the same complaint are subject to different jurisdictions. As will be seen from below, significant work has been undertaken in Scotland since 2008/09 to improve and clarify complaints systems and processes.

4.5 Both Ombudsmen investigate cases of “maladministration” or poor service by Public Authorities within their remits and, while they have broad discretion to investigate they are subject to some restrictions. The most significant in this context is that they cannot generally question the merits of a discretionary judgment made *without* maladministration, although a significant exception exists for complaints about public health bodies.²⁹ This means they do not usually review the merits of the decision and maladministration is an important concept to understand when considering their role.

What is maladministration?

4.6 Maladministration is not defined in law in either of the Acts establishing the two Ombudsmen,³⁰ or in any subsequent Ombudsman legislation. The most commonly cited definition is that given by Richard Crossman, Leader of the House of Commons, during the parliamentary debate on the Parliamentary Commissioner Bill:

“A positive definition of maladministration is far more difficult to achieve. We might have made an attempt in this Clause to define, by catalogue, all of the qualities which make up maladministration, which might count for maladministration by a civil servant. It would be a wonderful exercise – bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on.”³¹

4.7 This definition has since been fleshed out by the case-work of the PHSO. In his 1993 annual report as Ombudsman, Sir William Reid sought to clarify the Crossman definition in order to emphasise that ‘maladministration’ should not be interpreted narrowly, and defined it as including:

“Unwillingness to treat the complainant as a person with rights; refusal to answer reasonable questions; knowingly giving advice which is misleading or inadequate; offering no redress or manifestly disproportionate redress; and partiality.”³²

²⁹ See sections 4.22, below

³⁰ Scottish Public Services Ombudsman Act 2002; Parliamentary Commissioner Act 1967

³¹ *HC Deb. 18 October 1966 vol. 734 cc.51-52*

³² Parliamentary Commissioner for Administration, *Third Report 1993-94*, 3-4

4.8 The concept, arguably, is not fixed but can change as the requirements on public organisations change. For example, it is now generally accepted it can include a failure to take into account a person's human rights.

The Scottish Public Services Ombudsman (SPSO)

4.9 The Scottish Public Services Ombudsman Act 2002 established an integrated Ombudsman service, combining the offices of the Scottish Parliamentary Ombudsman, the Health Service Ombudsman for Scotland, the Local Government Ombudsman and the Housing Association Ombudsman for Scotland.³³ The Ombudsman's jurisdiction has increased steadily since 2002, and now covers prisons, water and sewerage services, and colleges and universities of higher and further education.

4.10 The Ombudsman may investigate instances where there is a claim of injustice or hardship suffered by the complainant in consequence of alleged maladministration or service failure.³⁴

4.11 The SPSO is a final stage complaints handling body, meaning that it will usually only investigate complaints where the complainant has exhausted the internal complaints handling process with the relevant public body. The SPSO does, however, have the discretion to handle an "early complaint" if the Ombudsman thinks it just to do so in the circumstances.

4.12 The SPSO has responsibility in Scotland as the Complaints Standards Authority (CSA). In this role, the CSA is responsible for the production and promotion of standardised and simplified internal complaints procedures for the public sector in Scotland.³⁵ The model Complaints Handling Procedure – a staged process with the SPSO as the final external stage - is now in place across Scotland, with the majority of Public Authorities now operating this standardised internal complaints process.

4.13 Furthermore, in cases where no formal appeal or review exists in relation to decisions of a Public Authority, the SPSO may provide an alternative form of redress. The SPSO may also be able to exercise the discretion to look into an issue even when such a formal process exists. In this case, the SPSO provides an important "fall-back" form of redress in relation to decisions of Public Authorities, especially in cases where a route of redress would otherwise not exist.

The SPSO's Jurisdiction

4.14 The Ombudsman may investigate actions taken by or on behalf of a person liable to investigation under the Act.³⁶ The bodies which may be subject to investigation are usually listed in Schedules 2 and 3 to the Act³⁷. These may be amended by Order in Council, with the exception of the bodies listed in Part 1 of Schedule 2 which includes, among others, the Scottish Government, Local Authorities and all Health Service bodies.³⁸

³³ Scottish Public Services Ombudsman Act 2002, s.1

³⁴ *Ibid*, s.5

³⁵ *Ibid*, ss.16-16D

³⁶ *Ibid*, s.2

³⁷ There is a provision in the Public Services Reform (Scotland) Act 2011 which allows for licensed providers (private water and sewerage providers) to be included who are not listed

³⁸ *Ibid*, Schedule 2, Part 1. This includes the Parliamentary Corporation, the Scottish Government, offices of the Scottish Administration, any Health Service body, any Local Authority, any Licensing Board, the Strathclyde Passenger

4.15 The SPSO, unlike the PHSO, does not operate an “MP filter” system – complainants can write to the office directly.³⁹ Further, the Ombudsman’s services are free for everyone. The SPSO has no power of initiative to conduct his own investigations.

The Complaints Process

4.16 As mentioned above, there are few limits imposed by the legislation on the process of investigation. The legislation does set out some broad parameters. The time limit for bringing complaints is 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint out-with the time bar.⁴⁰

4.17 If, after considering a complaint, the Ombudsman decides not to investigate, or if after commencing an investigation he decides to discontinue to do so, he must send a statement of reasons for the decision to the persons specified – the person aggrieved; the listed Authority; and any other person who is alleged to have taken the action complained of.⁴¹ Where he is discontinuing an investigation, he may also lay a report with the Scottish Parliament.

4.18 Where the Ombudsman chooses to continue with an investigation, he must communicate with the listed Authority and any other person who is alleged in the complaint, in order to allow them to comment on allegations.⁴² In all other matters, the Ombudsman may conduct the inquiry as he sees fit.⁴³ The SPSO has court-backed powers to compel the production of documents and the attendance and examination of witnesses, for the purposes of conducting his investigation.⁴⁴ No statutory immunity can prevent the production of requested documents, save for information relevant to proceedings of the Scottish Cabinet.⁴⁵ The Ombudsman may petition the Court of Session where he suspects obstruction or contempt.⁴⁶

4.19 When the Ombudsman concludes his investigation, he must send to the complainant a report of the investigation. He must also send that report to any public body that formed the subject of the complaint, and any other person listed in the complaint. In addition, he must provide a copy of that report to the Scottish Ministers.⁴⁷

Outcomes

4.20 Where the Ombudsman has made a finding that the action, or inaction, of the Public Authority has constituted maladministration or service failure resulting in injustice or hardship for

Transport Authority, any Transport Partnership, any National Park Authority, the Scottish Fire and Rescue Service, any Children’s Panel Advisory Committee, any joint committee for superannuation of Local Government employees, Scottish Water, any Registered Social Landlord, any prison governor, or medical officer, or director of a contracted-out prison

³⁹ *Ibid*, s.9(1); see section 4.30, below

⁴⁰ *Ibid*, s.10(1)

⁴¹ *Ibid*, s.11(1)-(2)

⁴² *Ibid*, s.12(2)

⁴³ *Ibid*, s.12(4)

⁴⁴ *Ibid*, s.13(4)

⁴⁵ *Ibid*, s.13(5)-(7)

⁴⁶ *Ibid*, s.14

⁴⁷ *Ibid*, s.15(1)(a)

the complainant, he may make recommendations to that Authority. These can recommend ways in which the Authority can remedy the injustice or hardship caused, and may also relate to a change in internal processes to reduce the likelihood of similar occurrences. The remedy suggested may constitute something as simple as a formal apology, or could constitute some form of practical action, including the remedy of financial loss.

4.21 Where the Ombudsman feels that, following an investigation, the injustice or hardship suffered has not, or will not be remedied, the Ombudsman may make a special report on the case.⁴⁸ In doing so, the report must be sent to the complainant, the relevant public body or bodies and any other listed person, and will be laid before the Scottish Parliament.⁴⁹ In addition, the Ombudsman may determine whether or not to make the report available to the public.⁵⁰ The SPSO has not, as yet, had to exercise these powers.

Discrete and Future Powers of the SPSO

4.22 As noted briefly above, the SPSO's remit and powers in relation to health complaints differs from those in relation to other complaints. The SPSO is the statutory final-stage complaints handler for disputes relating to the NHS, and services provided on behalf of the NHS.⁵¹ He is specifically empowered to take into account the "clinical judgement" of health professionals and medical staff when he is investigating complaints about such services.⁵² In broad terms, this means that the SPSO can look at the merits of the case and, in practice, this can involve the Ombudsman looking at the complainant's health records.

4.23 Furthermore, the SPSO is in line to receive further discrete powers which differ to his traditional role. In particular, the Scottish Government consulted on reform of the Social Work Complaints process, which is the statutory redress process for disputes regarding most social services provided by Local Authorities.⁵³ Presently, the SPSO is the statutory final-stage complaints handler in this process, but proposals have been made to increase the remit of the Ombudsman in this regard – allowing him to take into account the "professional judgement" of social services professionals, in the same manner as the process for health complaints.⁵⁴

4.24 Finally, The Welfare Funds (Scotland) Act 2015, which places the Scottish Welfare Fund on a statutory footing, will also provide new powers for the SPSO.⁵⁵

4.25 The Act will allow for the SPSO (after initial review by the Local Authority⁵⁶) to review and, should he see fit, quash decisions taken by Local Authorities in relation to the Scottish Welfare Fund, or direct them to reconsider the application.⁵⁷ In addition, the Ombudsman may direct a

⁴⁸ *Ibid*, s.16(2)

⁴⁹ *Ibid*, s.16(3)

⁵⁰ *Ibid*, s.16(5)

⁵¹ Patient Rights (Scotland) Act 2011

⁵² Scottish Public Services Ombudsman Act 2002, s.7(2)

⁵³ The Social Work (Representations Procedure) (Scotland) Directions 1996

⁵⁴ The Scottish Government, *Social Work Complaints: Consultation Report*, (Edinburgh, July 2012), available: <http://www.gov.scot/Resource/0039/00398131.pdf>; see also: <http://www.valuingcomplaints.org.uk/complaints-procedures/local-authority-model-chp/social-work-complaints/>, for information provided by the SPSO

⁵⁵ The Welfare Funds (Scotland) Act 2015, s.8

⁵⁶ *Ibid*, s.3

⁵⁷ *Ibid*, s.8(a)

Local Authority to provide the assistance requested, or any other assistance that the Local Authority is entitled to give from the Scottish Welfare Fund.⁵⁸

The UK Parliamentary and Health Services Ombudsman

4.26 The Parliamentary and Health Service Ombudsman (PHSO) comprises two separate organisations. The Health Service Ombudsman only applies to England.⁵⁹ However, the Parliamentary Commissioner for Administration investigates complaints made against UK Government Departments and other UK Public Organisations.⁶⁰

4.27 The PHSO is a final stage complaints handling body, meaning that she will usually only investigate complaints where the complainant has already exhausted the internal complaints handling process with the relevant public body. The PHSO, does however, like the SPSO have the discretion to accept “early” complaints if the circumstances would justify it. The Ombudsman’s functions in relation to public bodies are largely governed by the Parliamentary Commissioner Act 1967.⁶¹

4.28 The Ombudsman describes itself as existing to investigate claims of injustice arising from alleged maladministration or poor service.⁶² This involves considering whether the complainant has suffered hardship or detriment because an organisation has not acted fairly or reasonably, because it has otherwise given a poor service and not acted to put things right, or because the organisation has no specified redress process. The service is free for everyone.

The PHSO’s Jurisdiction

4.29 The Parliamentary Commissioner Act established the office of the Parliamentary Commissioner for Administration (the Ombudsman)⁶³ and granted a general power to investigate any action taken on behalf of a Government Department or other Public Authority to which the Act applies.⁶⁴ The Authorities that fall within the Ombudsman’s jurisdiction are set out in Schedule 2 to the Act, which lists a variety of Government Departments, corporations and unincorporated bodies established by Royal Prerogative.⁶⁵

4.30 At the time of creation, it was felt necessary to attempt to prevent spurious claims reaching the Ombudsman, and thus she may only investigate matters that have been referred to her via a Member of Parliament (known as the “MP filter”).⁶⁶ Furthermore, appointments of the Crown, Ministers of the Crown or Government Departments, the Scottish Ministers, the First Minister and the Lord Advocate are excluded from the Ombudsman’s jurisdiction.⁶⁷

The Complaints Process

⁵⁸ *Ibid*, s.8(b)

⁵⁹ In respect of NHS complaints in England, those functions are set out in the Health Service Commissioners Act 1993

⁶⁰ Parliamentary Commissioner Act 1967

⁶¹ *Ibid*

⁶² See: <http://www.ombudsman.org.uk/about-us>

⁶³ Parliamentary Commissioner Act 1967, s.1

⁶⁴ *Ibid*, s.5

⁶⁵ *Ibid*, s.4(1)

⁶⁶ *Ibid*, s.5(1)(a)-(b)

⁶⁷ *Ibid*, s.6(2)(b)

4.31 Complaints must be made, to an MP, within twelve months of the date when the person aggrieved first had notice of the matters alleged in the complaint. The Ombudsman does, however, have discretion to conduct an investigation out-with that period, where there are special circumstances.⁶⁸

4.32 As with the SPSO, the PHSO also has court-backed powers of investigation in relation to requiring persons to provide information, produce documents or to attend and give evidence.⁶⁹ Information cannot be withheld by virtue of legislative exclusions or immunities, save for where information relates to proceedings of the UK Cabinet or any sub-committee of the Cabinet.⁷⁰

Outcomes

4.33 Where the Ombudsman conducts an investigation, or otherwise chooses not to conduct such an investigation, she shall send to the MP which forwarded the request for investigation, a report of the results of the investigation, or a statement of reasons for not conducting an investigation.⁷¹ She will also report, where she has conducted an investigation, to the Authority which forms the subject of the complaint.⁷² Finally, she is also obliged to report to the complainant.⁷³

4.34 Where the Ombudsman has made a finding that the action, or inaction, of the Public Authority has constituted maladministration or service failure resulting in injustice or hardship for the complainant, she will make recommendations to that Authority. These will recommend ways in which the Authority can remedy the injustice or hardship caused, and may also relate to a change in internal processes to reduce the likelihood of similar occurrences. The remedy suggested may constitute something as simple as a formal apology, or could constitute other practical actions.

4.35 Where the Ombudsman feels that there has been maladministration resulting in injustice that is not likely to be remedied, she may lay before each House of Parliament a special report on the case.⁷⁴ Further, the Ombudsman is obliged to report annually to each House of Parliament on the general performance of her functions under this Act.⁷⁵

⁶⁸ *Ibid*, s.6(3)

⁶⁹ *Ibid*, s.8(2)

⁷⁰ *Ibid*, s.8(4)

⁷¹ *Ibid*, s.10(1)

⁷² *Ibid*, s.10(2)

⁷³ *Ibid*, s.10(2A)

⁷⁴ *Ibid*, s.10(3)

⁷⁵ *Ibid*, s.10(4)

Other Complaints Handlers and the Commissioners

Chapter 5

5.1 This chapter outlines the jurisdiction of the main system-wide regulators and oversight bodies in Scotland which are empowered to handle complaints/references, and/or conduct investigations. These bodies play an important role in the administrative justice system – providing a route of redress in their own right, in order to protect the rights and interests of citizens on matters within their remits. It should be noted, that where a regulator or other oversight body is subject area specific, it will be dealt with in the relevant subject area chapter. These are:

Education Scotland: *Chapter 6 – Education and Learning* at section 6.27

The Care Inspectorate: *Chapter 7 – Social Services, Care, Health and Well-being* at section 7.39

The Mental Welfare Commission: *Chapter 7 – Social Services, Care, Health and Well-being* at section 7.36

The Scottish Housing Regulator: *Chapter 9 – Housing, Property and Land* at section 9.11

Water Industry Commission for Scotland: *Chapter 10 – The Environment, Heritage, Water and Waste Management* at section 10.28

Drinking Water Quality Regulator: *Chapter 10 – The Environment, Heritage, Water and Waste Management* at section 10.30

The Information Commissioner: *Chapter 12 – Freedom of Information, Data Protection and Investigatory Powers* at section 12.14

The Scottish Information Commissioner: *Chapter 12 – Freedom of Information, Data Protection and Investigatory Powers* at section 12.4

The Police Investigations and Review Commissioner: *Chapter 17 – The Police Service, Legal Services and Prisons* at section 17.3

The Scottish Legal Complaints Commission: *Chapter 17 – The Police Service, Legal Services and Prisons* at section 17.22

The Office of the Scottish Charity Regulator: *Chapter 19 – Licensing, Gambling, Charities and Electoral Registration* at section 19.54

5.2 This chapter should be read in conjunction with *Chapter 4 – The Ombudsmen*, as both detail complaints handlers and reviewing bodies. Whilst the bodies detailed here deal with specific and specialised remits, there may be an overlap with the jurisdiction of the Ombudsmen. Further, the

bodies detailed here are public organisations and their own work may come within the remit of the Ombudsmen.

Children and Young People's Commissioner Scotland

5.3 The Children and Young People's Commissioner Scotland was established by the Commissioner for Children and Young People (Scotland) Act 2003. The Commissioner's general function is to promote and safeguard the rights of children and young people in Scotland.⁷⁶ In furtherance of this function, the Commissioner is empowered to undertake investigations on behalf of groups of children and young people generally, or on behalf of particular groups of children and young people.⁷⁷ The Act provides that the Commissioner may investigate:

*"...whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people."*⁷⁸

5.4 The definition of "service provider" is wide, and includes public, private and voluntary sector service providers, including Local Authorities who hold parental rights and responsibilities in relation to "looked after" children.⁷⁹ The Commissioner must be satisfied that the matter to be investigated is one of particular significance to children and young people.⁸⁰

5.5 There are exclusions to the Commissioner's remit to conduct investigations, however. The Commissioner cannot conduct an investigation: if it relates to a reserved matter⁸¹; if it is the subject of court or tribunal proceedings⁸²; if it relates only to an individual child or young person (as opposed to groups thereof)⁸³; and finally, the Commissioner is prohibited from conducting an investigation which would duplicate the work that is properly the function of another person or body.⁸⁴

5.6 Whilst the Commissioner is, presently, barred from conducting an investigation where the matter relates to an individual child or young person, it should be noted that this is changing. The Children and Young People (Scotland) Act 2014 will increase this remit to permit investigations relating to individual children and young people.⁸⁵ The non-duplication requirement is to remain, however, and in practice means that where, for example, the Scottish Public Services Ombudsman (SPSO) has competence to investigate, the Commissioner will be barred from doing so.⁸⁶

⁷⁶ Children and Young People (Scotland) Act 2003, s.4(1)

⁷⁷ *Ibid*, s.7

⁷⁸ *Ibid*, s.7(1)

⁷⁹ *Ibid*, s.16(1)

⁸⁰ *Ibid*, s.7(2)(a)

⁸¹ *Ibid*, s.7(3)(a)

⁸² *Ibid*, s.7(3)(c)(i)-(ii)

⁸³ *Ibid*, s.7(3)(b)

⁸⁴ *Ibid*, s.7(2)(b)

⁸⁵ Children and Young People (Scotland) Act 2014, s.5

⁸⁶ By way of an example: the Commissioner could investigate complaints relating to the discipline of children or young people in school, as long as this did not trigger a discrimination element - Education Authorities fall within the remit of the SPSO, but the discipline of children is specifically excluded [Scottish Public Services Ombudsman Act 2002, Schedule 4, para.10]; matters which raise a discrimination element are properly within the remit of the Equality and Human Rights Commission, detailed at sections 5.8-5.11.

5.7 On conclusion of an investigation, the Commissioner must lay a report before the Scottish Parliament, and this must include any recommendations to the service provider as a result of the investigation.⁸⁷

The Equality and Human Rights Commission (EHRC)

5.8 The Equality Act 2006 established the UK-wide EHRC, which has an office in Scotland, to promote and protect equality, diversity, and human rights; and to enforce the equality legislation and encourage Public Authorities to comply with the Human Rights Act.⁸⁸

5.9 Equalities legislation is a reserved matter, and as such the EHRC is the only competent Commission in relation to those matters. Human rights are slightly more complex. The EHRC is, in general, prevented from acting upon human rights issues relating to devolved matters, as this falls within the competence of the Scottish Human Rights Commission (SHRC), detailed at sections 5.12 – 5.14, below. However, the SHRC can grant permission to the EHRC to do so.⁸⁹

5.10 The 2006 Act empowers the EHRC to investigate potential breaches of equality legislation and to take measures to enforce that legislation.⁹⁰ The Commission can also conduct inquiries in relation to both equalities and human rights issues “on any matter relating to any of the Commission’s duties”; and can conduct investigations in relation to individuals or organisations it suspects of “unlawful” conduct under the equalities legislation.⁹¹

5.11 Crucially, the EHRC is also empowered to financially assist individuals with legal action against a responsible individual or body which relates to the equality legislation.⁹² The EHRC can also take legal action in its own name, including Judicial Review, and can support cases by joining the case as a third party.⁹³

The Scottish Human Rights Commission (SHRC)

5.12 The SHRC was established by the Scottish Commission for Human Rights Act 2006. Its general function is to promote, and encourage best practice in relation to, human rights insofar as they relate to devolved matters.⁹⁴

5.13 The Commission is empowered to conduct inquiries into the policies and practices of Scottish Public Authorities in relation to human rights.⁹⁵ The inquiry must relate to Public Authorities

⁸⁷ *Ibid*, s.11

⁸⁸ Equality Act 2006, ss.8-9; Equality Act 2010; Human Rights Act 1998, s.6. There are 9 protected characteristics under the equalities legislation: Age; Disability; Sex; Race; Religion or belief; Pregnancy and maternity; Marriage and civil partnership; Sexual orientation; Gender reassignment. Human rights, for the EHRC’s purposes, are defined in s.9(2) of the 2006 Act as “the Convention Rights” and other human rights as defined in the Human Rights Act 1998

⁸⁹ Equality Act 2006, s.7(4)

⁹⁰ Equality Act 2006, s.35; Equality Act 2010. The Commissioner can also, by virtue of s.31 of the 2006 Act, undertake “assessments” of Public Authorities to examine compliance with the Public Sector Equality Duty

⁹¹ *Ibid*

⁹² Equality Act 2006, ss.28-29

⁹³ *Ibid*

⁹⁴ Scottish Commission for Human Rights Act 2006, s.2. Human Rights for the purposes of the SCHRC are defined as the Convention Rights, and other human rights contained in any international Treaty, Convention or Instrument that has been ratified by the UK

⁹⁵ *Ibid*, s.8

generally, rather than a specific authority, unless a particular authority is the only body of its kind with functions relating to the subject matter of the inquiry, or the inquiry relates to the Torture Conventions or the United Nations Convention on Rights of Persons with Disabilities.⁹⁶ On conclusion of the inquiry, the Commission must lay a report before the Scottish Parliament, including the details of any recommendations the Commission has made.⁹⁷

5.14 The SHRC is also empowered to intervene and make submissions in specific civil proceedings before a court, insofar as the subject of the proceedings relates to the Commission's functions.⁹⁸ Leave or invitation of the relevant court is required,⁹⁹ and the matter must raise an issue of public interest.¹⁰⁰

The Commissioner for Ethical Standards in Public Life and the Standards Commission

5.15 The Commissioner for Ethical Standards in Public Life is responsible for investigating complaints regarding the potential breach of the relevant Codes of Conduct by Members of the Scottish Parliament (MSPs); Local Authority Councillors; and members of other Public Authorities.¹⁰¹ The Standards Commission decides what action to take, including holding a hearing, where a breach is found in regard to Councillors and members of other authorities.¹⁰² The Scottish Parliament is ultimately responsible for determining action to be taken against MSPs who have breached the Code of Conduct.

The Parliamentary Commissioner for Standards and the Committee on Standards and Privileges

5.16 The Parliamentary Commissioner for Standards investigates complaints that Members of Parliament (MPs) have breached the relevant Code of Conduct.¹⁰³ The Committee on Standards decides what action to take against the MP where a breach is found.¹⁰⁴

Other UK-wide Complaints Handling Bodies

5.17 There are a number of other complaints handling bodies which operate across the UK in relation to reserved bodies. These can operate as an "intermediary" stage in the complaints process. In particular, the Adjudicator's Office handles complaints against Her Majesty's Revenue and Customs, before these go to the Parliamentary and Health Services Ombudsman (PHSO). The Independent Case Examiner also acts as an "intermediary" stage in complaints about Department for Work and Pensions services (such as Job Centres and the Child Support Agency) before these go to the PHSO.

⁹⁶ *Ibid*, s.9

⁹⁷ *Ibid*, s.12

⁹⁸ *Ibid*, s.14(1). Note that this specifically excludes Children's Hearing proceedings

⁹⁹ *Ibid*, s.14(2)(a)-(b)

¹⁰⁰ *Ibid*, s.14(3)

¹⁰¹ Ethical Standards in Public Life etc. (Scotland) Act 2000

¹⁰² *Ibid*

¹⁰³ Standing Order of the House of Commons No.149 (Committee on Standards and Privileges) and No.150 (Parliamentary Commissioner for Standards)

¹⁰⁴ *Ibid*

Education & Learning

Chapter 6

6.1 Education and learning are areas wholly devolved to the Scottish Parliament under the Scotland Act 1998.¹⁰⁵ In terms of administrative justice, it is possibly one of the most complex devolved areas – with various different procedures to challenge or question decisions of the bodies which provide public services in education. The landscape comprises a complex mix of Public Authorities, Scottish Government-sponsored bodies, regulators and tribunals.

6.2 This chapter details the role of Local Authorities, in their capacity as Education Authorities. The role of the Scottish Qualifications Authority is also set out. Scotland's colleges and universities, as well as the Student Awards Agency for Scotland, are also detailed. Finally, the role of the regulators and scrutiny bodies within the education sector is considered.

First Instance Decision Making Body

Local Authorities in their capacity as
Education Authorities

The Scottish Qualifications Authority (SQA)

Institutions of Further and Higher Education (Colleges and Universities)

The Student Awards Agency for Scotland (SAAS)

Remit

Administer and maintain local authority controlled nurseries, primary schools and secondary schools – and are responsible for all matters therein.

Awards qualifications and results to pupils sitting SQA approved examinations.

Each institution is responsible for its own administration and maintenance.

Provides eligible students studying a course of higher education in Scotland with financial assistance.

¹⁰⁵ Education is not included in Schedule 5 to the Scotland Act 1998, which sets out the matters that are reserved

Education Authorities

6.3 The provision of education is one of the largest areas of responsibility for Local Authorities in Scotland.¹⁰⁶ Vast numbers of decisions are taken on a daily basis by schools under Local Authority control, and these cover a wide range of different issues. This section will set out the areas of decision making of Local Authorities in their capacity as Education Authorities. Pre-school education, Primary and Secondary schooling, and Additional Support Needs will be discussed.

By way of example, some of the decision making areas of Education Authorities are:

- Placing Requests
- The Provision of Additional Support for Learning
- Exclusion and Punishment
- Attendance Orders
- Educational Support for Pupils who cannot attend school
- School Closures, and other changes to the School Estate

Pre-School & Early Learning

6.4 Local Authorities provide nurseries and early learning centres to pre-school children. Placing requests for certain nurseries can involve being placed on a waiting list. There are no informal or formal appeal procedures for placement refusal, unlike in Primary and Secondary schooling.¹⁰⁷ Parents are expected simply to look elsewhere.

Primary & Secondary Schooling

6.5 Local Authorities, in their capacity as Education Authorities, manage the vast majority of Primary and Secondary schools in Scotland.¹⁰⁸ Individual schools, under the control of the Education Authorities, take a large number of decisions themselves regarding educational provision for individual pupils on a daily basis – from placing requests to pupil discipline to course provision. This section details the main areas of decision making of the Education Authorities (or individual schools under their authority) which give rise to specified redress processes. Note that Additional Support for Learning is detailed at sections 6.15-6.18, below.

¹⁰⁶ Education is also the largest area of expenditure for Local Authorities – The Accounts Commission, *An Overview of Local Government in Scotland 2014*, Audit Scotland (March 2014)

¹⁰⁷ Education (Scotland) Act 1980, s.28A, specifically excluding placement requests for nursery places from jurisdiction of the Education Appeal Committees

¹⁰⁸ There are 2,056 primary schools, 364 secondary schools and 149 special schools managed by Local Authorities in Scotland, in contrast to only 102 independent schools (Scottish Government, Dec 2013) -

<http://www.gov.scot/Topics/Education/Schools/FAQs>

School Placing Requests

6.6 Requests can be made that a pupil is placed in a specified school, other than the school which they would normally attend.¹⁰⁹ Under the terms of the Additional Support for Learning legislation (detailed at sections 6.15-6.18, below), there is also a right to request that a pupil with additional support needs is placed in an independent or grant-aided special school.¹¹⁰ These are termed “placing requests”, and can be made to the relevant Education Authority.

6.7 The Education Authority will assess placing requests, and can refuse such requests on certain grounds, or on the basis that refusal is appropriate in the circumstances.¹¹¹ These include, for example, that to grant the request would cause significant expenditure to the Education Authority, or that it would be detrimental to the pupil’s continuity of education, or to continuity of education of the pupils already attending that school.

6.8 A decision to refuse a placing request can be appealed. In the first instance, this is to the Education Appeal Committee of the relevant Local Authority, within 28 days of the decision.¹¹² The Education Appeal Committee can confirm the Education Authority’s decision, or it can reverse the decision and order that the child is placed in the school specified in the request.¹¹³

6.9 There is an onward right of appeal against the decision of an Education Appeal Committee to the Sheriff Court, should it confirm the Education Authority’s decision. This must be made within 28 days.¹¹⁴ The Court can confirm or reverse the Education Authority’s decision. This decision of the Sheriff is final.¹¹⁵

Exclusion & Attendance Orders

6.10 The decision of an Education Authority to exclude a pupil from a school can be appealed. The Education Authority can also stipulate the conditions of the exclusion, and this is also subject to appeal. The appeal is to the Education Appeal Committee of the relevant Local Authority.¹¹⁶ The Education Appeal Committee can confirm or annul the exclusion, or could confirm the exclusion but modify the conditions.¹¹⁷ There is an onward right of appeal to the Sheriff Court.¹¹⁸ The Sheriff Court can make any decision that the Education Appeal Committee could have made. This decision is final.

¹⁰⁹ Education (Scotland) Act 1980, s.28 and s.28A

¹¹⁰ Education (Additional Support for Learning) (Scotland) Act 2004, Schedule 2. But note that placing requests for a child in respect of whom there is in place a Co-ordinated Support Plan, or where there is an allegation of disability discrimination, come under the jurisdiction of the Additional Support Needs Tribunals for Scotland. The Tribunals also deals with placing request appeals for special schools for any child with additional support needs. This is detailed at paras. 6.15-6.17.

¹¹¹ Education (Scotland) Act 1980, s.28A(3)

¹¹² *Ibid*, s.28C

¹¹³ *Ibid*, s.28E

¹¹⁴ *Ibid*, s.28F

¹¹⁵ *Ibid*

¹¹⁶ *Ibid*, s.28H

¹¹⁷ *Ibid*, s.28H(2)

¹¹⁸ *Ibid*, s.28H(6)-(7)

6.11 Parents of children who attend public school are under a duty to ensure that the child attends at school, subject to reasonable reasons for non-attendance.¹¹⁹ The Education Authorities are empowered to ensure that parents of pupils comply with this duty.¹²⁰ Attendance Orders can be made in respect of a child who fails to attend school without reasonable excuse, and this is served upon the parents of the child requiring them to ensure the child attends school.¹²¹ Continued failure constitutes a criminal offence.¹²² There is a right of appeal for the parents of a child against the making of an Attendance Order. This is to the Sheriff Court.¹²³ The Sheriff can confirm, annul or vary the Order.¹²⁴ This decision is final.

“Section 70 Complaints”

6.12 Any interested party may complain to the Scottish Ministers if he or she believes that an educational establishment – including Education Authorities and others, such as independent schools – has failed to discharge a statutory duty under any of the Education Acts.¹²⁵ The Scottish Ministers will then investigate the alleged failure and can, if satisfied that a failure has occurred, make an order ensuring that the educational establishment performs its statutory duty.¹²⁶

Proposed School Closures

6.13 The Children and Young People (Scotland) Act 2014 amended the law to introduce an independent panel to have the final say on the legality of an Education Authority’s proposed closure of a school.¹²⁷ The proposal will require to be “called-in” by the Scottish Ministers, but will then be put to the Panel for a final decision rather than remaining with the Ministers. The Scottish Ministers can call-in a proposal if they believe that the Education Authority has failed to comply with the Act or failed to take account of “material considerations”.

6.14 Parents, and pupils deemed of sufficient maturity and understanding are treated as “relevant consultees” under the 2010 Act and therefore have the right to appeal the decision of the Panel further if they disagree with the outcome.¹²⁸ This is to the Sheriff Court, but the appeal can only be made on a point of law.

¹¹⁹ *Ibid*, s.35

¹²⁰ *Ibid*, s.36

¹²¹ *Ibid*

¹²² *Ibid*

¹²³ *Ibid*, s.38(5)

¹²⁴ *Ibid*

¹²⁵ *Ibid*, s.70

¹²⁶ *Ibid*

¹²⁷ Amending the Schools (Consultation) (Scotland) Act 2010

¹²⁸ Schools (Consultation) (Scotland) Act 2010, s.17D

Primary and Secondary Schooling – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Education Appeal Committees	Hears appeals from parents/ carers or young people in regard to: a) A Local Authority's refusal of a placing request (where there are no disability discrimination issues or a coordinated support plan for additional support needs) b) Exclusions of pupils from school	Education (Scotland) Act 1980; Education (Additional Support for Learning) Scotland Act 2004	Can confirm or reverse the Education Authority's decision	There is an onward right of appeal against the decision of the Education Appeal Committee, to the Sheriff Court.
The Sheriff Court	Hears appeals from parents of pupils against Attendance Orders that have been imposed upon them	The Education (Scotland) Act 1980	The Sheriff can amend, confirm or annul the Order	None.
The School Closure Review Panel	Hears cases of recommended school closures by Education Authorities, where the Scottish Ministers have "called in" the proposal on the grounds that they believe the proposal fails to comply with the law or fails to take account of material considerations	Schools (Consultation) (Scotland) Act 2010	The Panel can: refuse the proposal to close the school; remit the proposal to the Education Authority for a fresh decision; or grant consent to the proposal, with or without conditions	There is an onward right of appeal against the decision of the Panel by any relevant consultee. This is to the Sheriff Court, but this must be on a point of law.
The Scottish Ministers	Hears complaints in relation to a failure by a responsible body – such as an Education Authority or independent school - to carry out its statutory duties under education law	Education (Scotland) Act 1980	The Scottish Ministers are empowered to make an order requiring that the relevant duty is carried out	None.

Additional Support for Learning

6.15 Local Authorities are placed under a duty by the Education (Additional Support for Learning) (Scotland) Act 2004 to provide additional support to children and young people in primary and secondary education who are deemed to have “additional support needs”. Children or young people are deemed as having additional support needs if they require additional support above that which is normally provided in order to benefit fully from their education.¹²⁹ If the additional support needs are deemed to be enduring and complex, then the Local Authority is required to create a Coordinated Support Plan (CSP) for the child.¹³⁰

6.16 Independent adjudication is provided as a dispute resolution process in relation to disputes between the Education Authority and the child or young person (or their parent/s), regarding any of the Education Authority’s functions under the 2004 Act.¹³¹ The process is free for children, young people and/or their parent/s.¹³² This involves an independent adjudicator hearing from both parties to the dispute before making recommendations as to resolution. This can help resolve a dispute early, but does not affect the right to subsequently proceed to more formal redress procedures, where available.¹³³

6.17 Certain disputes arising over the decisions of Education Authorities relating to additional support for learning can be brought to the Additional Support Needs Tribunals for Scotland, by way of a “reference”. The Tribunals can hear references relating to children or young people who have in place a CSP, or who may be entitled to one. The Tribunals can also hear cases relating to placing requests if they relate to disability discrimination, and cases relating to post-school transition.¹³⁴

6.18 Additional support for learning is an area of administrative justice where parents and young people are offered a range of support services both to help avoid disputes and to guide them through disputes should they arise. In particular, section 14 of the 2004 Act provides parents and young people with the support of free advocacy services should they wish, in order to help guide them through the tribunals process and to allow them to better understand their rights.¹³⁵

¹²⁹ Education (Additional Support for Learning) Scotland Act 2004 s.1

¹³⁰ *Ibid*, s.2

¹³¹ *Ibid*, s.16

¹³² *Ibid*, s.16(3)(a)

¹³³ *Ibid*, s.16(3)(b)

¹³⁴ *Ibid*, ss.17-21

¹³⁵ *Ibid*, s.14

Additional Support for Learning - Redress Processes				
Redress Mechanism	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Mediation	The Education Authority must make arrangements for the provision of independent mediation services, free of charge. Mediation is available at any stage in disputes with the Education Authority regarding additional support needs. The service is provided free of charge	Education (Additional Support for Learning) Scotland Act 2004	Aims to allow both parties to come to a mutually agreeable solution before more formal redress processes are required	Mediation is entirely voluntary and need not be used. The agreement at the end is also voluntary, although parties are generally expected to abide by it.
Independent Adjudication	Adjudication is also available free of charge at any stage in the proceedings where the dispute could not be resolved more informally. An independent adjudicator will hear from both parties before coming to a decision on the case	Education (Additional Support for Learning) (Scotland) Act 2004	Aims to resolve disputes before more formal redress processes are required	The decision will include recommendations to resolve the dispute and parties are generally expected to abide by them. However, should a party remain aggrieved, they are free to proceed to more formal redress procedures.
The Additional Support Needs Tribunals for Scotland	Hears "references" by parents or young people in relation to CSPs or entitlement to CSPs; placing requests where there is a CSP; and disability discrimination in education	Education (Additional Support for Learning) (Scotland) Act 2004	Can confirm or overturn the Local Authority decision, and can direct the Local Authority to take appropriate action as the Tribunal sees fit	There is a right to ask the Tribunal to review its own decisions which can confirm, vary or revoke orders; and there is a limited onward right of appeal to the Court of Session, on a point of law only.

The Scottish Qualifications Authority (SQA)

6.19 The SQA is Scotland's national organisation responsible for the accreditation and award of national qualifications other than degrees.¹³⁶ The SQA operates an internal appeal service for candidates who wish to challenge their award called the Results Service. There are two types of consideration. In both circumstances, the school or educational facility requires to support the candidate in their appeal and will provide evidence for the candidate:

- a) Exceptional Circumstances Consideration Service – candidates can appeal to this service if they believe that exceptional circumstances – such as bereavement or medical illness – have affected their performance in an examination.
- b) Post-Results Service - the educational establishment can appeal to this service if they are concerned that the published result is not reflective of the level of work achieved by the candidate throughout their study of the course.

6.20 There is no onward appeal or review from the SQA's Results Service decision. Similarly, an appeal will not even be possible should the school or other establishment refuse or fail to support the candidate's claim.¹³⁷ There are no formal challenge routes available to question the school's failure or refusal to do so. The SQA and all education establishments are, however, under the remit of the Scottish Public Services Ombudsman (SPSO) should there be a complaint regarding maladministration or service failure.

Scottish Qualifications Authority – Redress Process				
Redress Mechanism	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Qualifications Authority (SQA) – Results Service	Can reconsider the award of grades for SQA accredited examinations on a joint application by the student and education establishment	Education (Scotland) Act 1996	Can decide that, in the circumstances, the grade awarded does not reflect the student's ability, and can re-award a higher grade	None.

Further & Higher Education

6.21 Colleges and universities in Scotland are independent institutions which administer and manage their own affairs independently of local and central government. However, they perform a public service and operate in part with public funds.

¹³⁶ Education (Scotland) Act 1996 s.2

¹³⁷ See: <http://www.sqa.org.uk/sqa/65427.html>

By way of example, a few areas of decision making by colleges and universities are:

- Admissions
- Student Accommodation
- Discretionary Grants and Bursaries
- Course Provision
- Exam Results and Degree Awards
- Disciplinary Action
- The Provision of Additional Support for Learning
- Pastoral Care Provision

6.22 Colleges and universities were brought under the remit of the SPSO by the Further and Higher Education (Scotland) Act 2005.¹³⁸ The SPSO remains the only independent body which can investigate complaints against colleges and universities in Scotland.

6.23 There are no external appeal or review procedures. Those who disagree with a decision by a university or college must therefore follow the individual institution's internal complaints procedures, or raise the matter with their Student Union.

Student Awards Agency for Scotland (SAAS)

6.24 SAAS is the government funded body responsible for providing financial support to eligible students studying a course of higher or further education in Scotland. The body's main function involves processing applications for the payment of tuition fees on behalf of Scottish and EU domiciled students¹³⁹ studying at a Scottish Institution. However, the agency also processes and administers the Disabled Student Allowance, the NHS Bursary Scheme and Part-Time Fee Grants.¹⁴⁰

6.25 Applicants can appeal both the decision of SAAS on an application and the amount of support offered.¹⁴¹ This is an internal appeal to SAAS itself, which must be in writing with evidence in support of the appeal. There is a further internal right of appeal against the appeal decision to the Chief Executive of SAAS. The decision of the Chief Executive is final.

Student Awards Agency for Scotland (SAAS)				
Redress Mechanism	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Student Awards Agency for Scotland (SAAS)	Administers the payment of tuition fees and other financial allowances for students in Scotland and can re-consider the award or non-award on application	Further and Higher Education (Scotland) Act 2005	Can make a fresh decision on the award, including making an award where the initial decision was not to award, or increasing the amount awarded	To the Chief Executive of SAAS, whose decision will be final.

¹³⁸ Further and Higher Education (Scotland) Act 2005, s.27

¹³⁹ Excluding students domiciled elsewhere in the UK

¹⁴⁰ SAAS, *Funding Guide 2015-2016* - http://www.saas.gov.uk/_forms/funding_guide.pdf

¹⁴¹ See: http://www.saas.gov.uk/contact_us/appeals.htm

The Role of Regulators & Scrutiny Bodies

6.26 Within the education sector, there are a number of bodies in Scotland which have oversight of the initial decision making bodies and the professionals who work within them.

Education Scotland & HM Inspectorate of Education

6.27 Education Scotland is the national improvement agency for education in Scotland. The body is responsible for leading on the development and implementation of the national curriculum for Scottish schools. Her Majesty's Inspectorate of Education (HMIe), part of Education Scotland, takes the lead in ensuring that educational standards are being met in pre-school, primary and secondary education establishments. It does this through the use of inspections. HMIe will then publish a report in which it can mandate that the establishment takes particular actions to improve its standards. Whilst HMIe cannot handle complaints directly, it can take the concerns of parents and pupils into account as part of its investigations and as part of its role in evaluating individual schools' consultations – which must be conducted when an Education Authority proposes a change to the school estate.

The Care Inspectorate

6.28 The Care Inspectorate is the body responsible for ensuring that Scotland's national care standards are being met. The care standards apply to Local Authority nurseries, private nurseries, day care centres, early learning centres and residential educational establishments, such as boarding schools. These establishments require to be registered with the Inspectorate.¹⁴² Complaints regarding standards of care provided at these establishments can be brought directly to the Care Inspectorate. Further, there is no requirement to exhaust local redress routes first. The Inspectorate is empowered to take enforcement action against an establishment if it deems this necessary and, in extreme cases, can cancel an establishment's registration with the Inspectorate.

The General Teaching Council for Scotland (GTCS)

6.29 The GTCS is an independent self-regulating body for teaching in Scotland.¹⁴³ It is responsible for setting professional teaching standards in Scotland and for maintaining a register of teachers in Scotland. Inclusion on the register is equivalent to a licence to teach. Members of the public can complain to the GTCS about a teacher's conduct insofar as it relates to their "fitness to teach".¹⁴⁴ Should there be sufficient grounds for a complaint, the GTCS will refer the matter to a Fitness to Teach Panel. The Panel is empowered to take one of four actions:-

- a) No action and to dismiss the complaint
- b) Formally reprimand the teacher
- c) Make a Conditional Registration Order
- d) Order the teacher to be removed from the Register (ordering the teacher be "struck off")

¹⁴² Regulation of Care (Scotland) Act 2001, Part 1

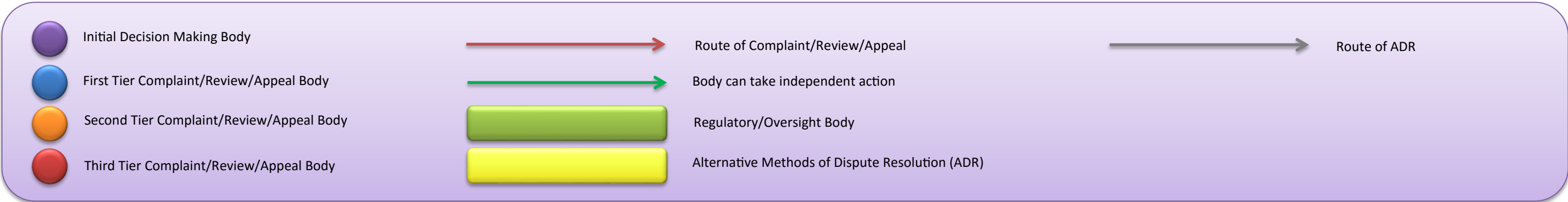
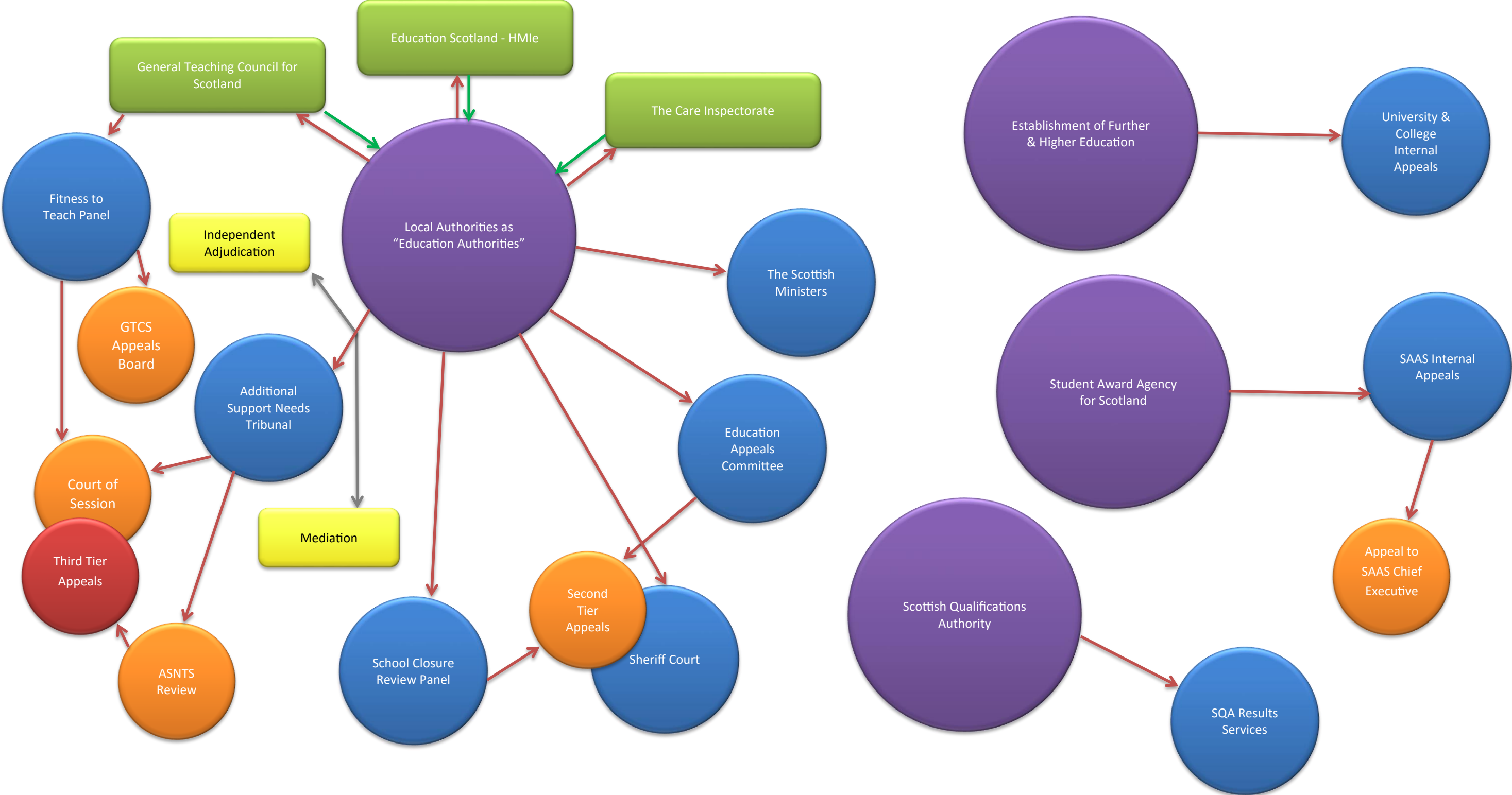
¹⁴³ The Public Services Reform (General Teaching Council for Scotland) Order 2011

¹⁴⁴ *Ibid*, Part 3

6.30 Teachers have a right of appeal against decisions of the Panel. There is an internal appeal to the GTCS Appeals Board and an external right of appeal, in certain circumstances, to the Court of Session. These may reverse, vary or confirm decisions of the Panel.

Education - Regulatory and Oversight Bodies				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Education Scotland – HM Inspectorate of Education (HMIe)	Regulates and inspects Scotland’s education establishments. Education Scotland sets the national curriculum for Scotland’s schools and ensures that this is adhered to. Her Majesty’s Inspectorate of Education (HMIe) inspects Scotland’s education establishments to ensure that educational standards are being met.	Standards in Scotland’s Schools etc. Act 2000	HMIe can mandate education establishments to take improvement action in regard to educational standards	n/a
The Care Inspectorate	Regulates and inspects registered care services, including nurseries, day care centres and early learning centres. Can take complaints directly, without the need for local routes to be exhausted first.	Public Services Reform (Scotland) Act 2010	Can impose requirements upon the service to improve standards; can revoke or vary a service’s registration	None. Although there is a right to complain to the SPSO about the way the Care Inspectorate handled a complaint – but this is not a review or appeal of the decision made.
The General Teaching Council for Scotland (GTCS)	Considers complaints regarding the “fitness to teach” of registered teachers in Scotland	The Public Services Reform (General Teaching Council for Scotland) Order 2011	Can reprimand the teacher, place conditions upon their registration or strike them off the register	Internally to the GTCS Appeals Board. Externally to the Court of Session.

Education and Learning



Social Services, Care, Health & Well-Being

Chapter 7

7.1 Social services, care services and health are all areas devolved to the Scottish Parliament. There are, however, some bodies which interact within these areas which are UK-wide.

7.2 Major changes have occurred in these areas in Scotland, notably the recent integration of health and social care – and with it, the creation of integrated joint boards to take responsibility for the management and delivery of these services. This Chapter will set out the social services and health landscape. This will take into account social work services, the health services, mental health services, adult and child protection and gender recognition.



Health and Social Care Integration

7.3 The Public Bodies (Joint Working) (Scotland) Act 2014 mandated the creation of integrated joint boards for the purposes of providing health and social care services. The joint boards comprise members from both Health Boards and Local Authorities. The three key areas which must currently, as a minimum, be managed by the joint boards are: adult social care services; adult community health services; and adult acute services.¹⁴⁵ The Act gives discretion to the boards to decide whether to integrate children's services "now or in the future".¹⁴⁶

7.4 The joint boards for each of Scotland's Local Authority areas were required to be established by April 1st 2015. Whilst this has changed the landscape in terms of service provision, the Act did not mandate the integration of complaints services. As such, the social work complaints procedures and the NHS complaints procedures remain separated for now.¹⁴⁷ This presents a potentially complex administrative justice landscape – a challenge by a user will require to be broken down in order to be routed through the correct complaint process, and in cases where the challenge relates to both the social work and NHS elements of the service, this could potentially require two separate complaints and investigations. These would progress through different procedures and take different lengths of time.

Social Work Services

7.5 The following section will outline the main social work services provided by Local Authorities. The three broad areas of social work relevant here are: community or social care; children and families; and alcohol and substance misuse. Challenges to social work decisions in relation to the services below must follow a staged statutory process – this is outlined at the end of this section, at 7.16, as it is a generic process for all services.

7.6 The services detailed under Adult Services are now the responsibility of integrated joint boards. Those under Children's Services, and particularly Children and Families Units, may be coordinated by integrated joint boards, but this is not mandatory.

Adult Services

Social Care

7.7 The care services provided to adults in the community are organised by Local Authorities. This area falls within the remit of the integrated joint boards. The needs of the service user may require the provision of services from both the council and the Health Board.

¹⁴⁵ The Scottish Government, *Health and Social Care Integration Narrative* (April 2014) - <http://www.gov.scot/Topics/Health/Policy/Adult-Health-SocialCare-Integration/About/Narrative>

¹⁴⁶ *Ibid*

¹⁴⁷ The Patient Rights (Scotland) Act 2011 and the Social Work (Scotland) Act 1968, and their respective guidance, as far as they relate to complaints are to remain for the time being

Selected services available in Social Care.		
Care & Support at Home – Social Workers &/or NHS Workers	Residential Care	Home Help
Short Term support after a Hospital stay	Personal Care – including hygiene & dressing	Home Adaptations
Day Care	Provision of Meals	Provision of Equipment for easier day-to-day living

7.8 The Local Authority will carry out a community care needs assessment to assess the needs of service users. This will be used to formulate a Support Plan. The council will also carry out a financial assessment to work out how much a service user may have to pay towards the cost of the services offered. The assessment, the assessment results, the Support Plan and the financial assessment are all open to challenge.

Adult Protection

7.9 Local Authorities are also responsible for the protection of vulnerable persons over 16 years of age within their council area whom they deem to be an “adult at risk”.¹⁴⁸ Councils must assess whether action or the provision of services is required to prevent harm to the person’s well-being, property or finances. Local Authorities may deem that they can offer services to the adult which could prevent the harm from occurring. These can include day care or educational services. The Council can also, with the agreement of the adult, involve a medical professional to assess their needs.

Alcohol & Substance Misuse Services

7.10 Local Authorities also take an active role in the area of alcohol and substance misuse. Local Authorities can provide rehabilitation services, supported housing, counselling and social worker visits to persons who are struggling with addiction or alcohol or drug problems. Social workers can also offer services provided by the NHS.

Children’s Services

Children & Families in Need of Services

7.11 Local Authorities are under a duty to protect and promote the welfare of children within their Council area.¹⁴⁹ The Council must provide services if it believes these are required to: maintain a reasonable standard of health and development for the child; prevent harm to the child’s health or development; support a disabled child or a child who is affected by another family member’s disability.¹⁵⁰

¹⁴⁸ The Adult Support and Protection (Scotland) Act 2007

¹⁴⁹ Children (Scotland) Act 1995, Part II, Chapter 1

¹⁵⁰ *Ibid*, s.17

7.12 In cases of child disability, or the disability of a family member, the Local Authority must carry out a needs assessment if the family request one.¹⁵¹ This will determine which services the child requires. This could include: help at home, day care or family centres, respite or financial assistance.

“Looked After” Children

7.13 Local Authorities will often require to look after children.¹⁵² This may happen in cases where the child’s parents are no longer in a position to do so themselves or have been neglecting the child, or where the child has been involved in a criminal offence. Local Authorities may be looking after the child in Local Authority accommodation through a voluntary arrangement with the child’s parents, or by way of a compulsory order granted by a Children’s Hearing or Court.¹⁵³

7.14 Local Authorities are under a duty to create a Child’s Plan for each child they are looking after.¹⁵⁴ The child and the child’s parents, if they still retain parental rights and responsibilities, should be involved in creating the plan.¹⁵⁵ An assessment will be carried out to assess the child’s needs and the Child’s Plan will detail the services to be provided. Challenges to decisions in regard to the Child’s Plan and services offered follow the statutory complaints process, described below.

7.15 It should be noted that Local Authorities provide fostering and adoption services which may have a large impact upon “looked after” children, their parents or guardians, and prospective foster carers or adopters. Challenges to decisions regarding fostering and adoption do not, however, follow the statutory social work complaints process. Fostering and adoption is detailed at 7.18-7.23, below.

Social Work Complaints

7.16 Complaints against social work services follow a statutory procedure – set out in the Social Work (Representation Procedures) (Scotland) Directions 1996.¹⁵⁶ Whilst these are termed “complaints”, they entail a review of the decision and process followed by the department and can result in the recommendation of a different decision. The table below outlines the process for complaints against all social work department services.

¹⁵¹ *Ibid*, s.23

¹⁵² See: The Children (Scotland) Act 1995, s.17 for the full list of duties of a Local Authority to “Looked After” children

¹⁵³ *Ibid*, s.70. See also: 7.24, below

¹⁵⁴ Looked After Children (Scotland) Regulations 2009, s.5

¹⁵⁵ *Ibid*, s.5(2)

¹⁵⁶ As mandated by the Social Work (Scotland) Act 1968, s.5B

The Social Work Complaints Process

Stage	Body	Process	Forms of Redress	Onward Appeal or Review
One – Informal problem solving	Frontline Social Work staff	An informal stage where the service user complains to their social worker or other frontline staff, and the Council will try to resolve the dispute	Informal resolution after discussion with frontline staff	Stage Two – Progress complaint to next stage of process.
Two – Formal Complaint: Investigation	Designated complaint handling staff from the Social Work Service	The service user makes a complaint to the social work department, which is formally recorded and investigated. Designated staff will try to resolve the dispute. A 28 day timescale applies	Formal resolution. Given in writing, after involvement of designated complaint handlers.	Stage Three – requesting a Complaint Review Committee to consider the dispute.
Three – Complaint Review Committee (CRC)	Complaint Review Committee (CRC): An administrative panel with an independent Chair set up by the Council	The CRC will assess the complaint and can look at the professional judgement of the social workers involved. The CRC can make recommendations to the Council to resolve the matter, including to change the decision. A CRC has to make recommendations within 56 days from the date the complainant requested it, & the local authority then has a further 42 days from the date of the CRC decision to agree actions & notify the complainant in writing of the decision. Local Authorities can have alternative appeals arrangements for responding to certain types of complaints	Formal resolution: the CRC can make recommendations to the local authority. These are, however, non-binding and need to be ratified by the relevant social work committee of the Council which can decide whether or not to approve the recommendations. Guidance states that it is only in exceptional circumstances that CRC recommendations should not be approved	Stage Four – after exhausting local redress processes, requesting that the independent SPSO looks into the matter.
Four - SPSO	The independent Scottish Public Services Ombudsman	The final step in the procedure if the CRC fails to resolve the dispute. The SPSO cannot look at the professional judgement of social workers, but will look at the process and take into account maladministration and service failure. The SPSO can make recommendations to the Council to resolve the dispute	Formal resolution: the SPSO can only look into the process of the handling of the complaint, rather than the actual decision. Can make recommendations to the Council to try to resolve the issue, but is not a review or appeal of the CRC	None.

Fostering and Adoption

7.18 Local Authorities are responsible for the provision of fostering and adoption services in their areas.¹⁵⁷ In providing these services, the Council may enter into partnerships with local independent or voluntary fostering or adoption agencies that are registered with the Care Inspectorate.¹⁵⁸ Local Authorities must also establish Fostering and Adoption Panels (or joint Panels) to carry out certain functions, including making recommendations regarding the suitability of applicants to become foster carers or adopters.

Fostering

7.19 The Local Authority or an organisation working in agreement with the Local Authority (the approving body), must approve persons as foster carers and can attach terms to any approval it grants.¹⁵⁹ This will involve assessments as to suitability, including relevant background checks, and third party references. This process involves the approving body referring the case to the Fostering Panel (or joint Panel) for its consideration.¹⁶⁰ The Panel will make recommendations as to approval and will intimate this to the approving body, which will then make the final decision to approve or otherwise. This decision does not need to be in line with the recommendations but, where these are departed from, reasons must be given to justify this. The approving body reserves the right to make a decision to terminate, or vary the terms of, an approval in light of new circumstances.¹⁶¹ These decisions are similarly subject to referral and recommendations from the Panel.

7.20 There is a right to request that the approving body reviews any decision it has made in respect of approval of potential foster carers, or termination of an approval.¹⁶² This includes a request to review or vary any terms attached to an approval of a foster carer. This must be requested within 28 days of the decision. The review will be referred to the Fostering Panel (or joint Panel), which must be differently constituted to the Panel involved in making recommendations in the first instance. This new Panel will make fresh recommendations to the approving body, which will then make a fresh decision on the matter.¹⁶³

Adoption

7.21 The Local Authority and other adoption agencies must approve persons as adopters.¹⁶⁴ This will involve assessments as to suitability, including relevant background checks. If the adoption agency is minded to approve a person as an adopter, it must refer the case to the Adoption Panel (or joint Panel).¹⁶⁵ Where the adoption agency considers that a child should be placed for

¹⁵⁷ Adoption and Children (Scotland) Act 2007; Looked After Children (Scotland) Regulations 2009

¹⁵⁸ These services must be registered with the Care Inspectorate under the terms of the Regulation of Care (Scotland) Act 2001, Part 1

¹⁵⁹ Looked After Children (Scotland) Regulations 2009, Regulation 21

¹⁶⁰ *Ibid*, Regulation 20(a)

¹⁶¹ *Ibid*, Regulation 25

¹⁶² *Ibid*, Regulation 26(2)

¹⁶³ *Ibid*, Regulation 26(8)

¹⁶⁴ Adoption Agencies (Scotland) Regulations 2009, Regulations 7-8

¹⁶⁵ *Ibid*, Regulation 6

adoption, The Panel will review the case and make recommendations to the Agency Decision Maker of the adoption agency, which will then make the final decision to approve or not. This decision does not need to be in line with the recommendations, but departure from them must be justified.

7.22 The adoption agency, where it considers that a child should be placed for adoption, must allow for a period of representations.¹⁶⁶ The child, and the child's parents or guardians can make their views known through representations. The adoption agency must refer the case (including any representations) to the Adoption Panel (or joint Panel) for its consideration.¹⁶⁷ The Panel will then make recommendations to the Agency Decision Maker, which will make the final decision.

7.23 There is a right to request the Agency Decision Maker to review a decision it has made to reject approval of a prospective adopter.¹⁶⁸ The prospective adopter can request this within 28 days of the decision. The review will be referred to the Adoption Panel (or joint Panel), which must be differently constituted to the Panel involved in making recommendations in the first instance. The new Panel will make fresh recommendations to the Agency Decision Maker, which will then make a fresh decision on the matter.¹⁶⁹

Fostering and Adoption Services – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Adoption Service (as approving body) - Review	On review, makes a fresh decision based on fresh recommendations from the Adoption Panel, regarding the approval of persons as adopters	Adoption and Children (Scotland) Act 2007; Adoption Agencies (Scotland) Regulations 2009	This can result in a different decision being made – and approval as an adopter awarded	None.
Fostering Service (as approving body) - Review	On review, makes a fresh decision based on fresh recommendations from the Fostering Panel, regarding the approval of persons as foster carers	Children (Scotland) Act 1995; Looked After Children (Scotland) Regulations 2009	This can result in a different decision being made - including approval or re-approval as a foster carer, or a variation in terms attached to an approval awarded	None.

7.24 The Children's Hearings system in Scotland operates under the Children's Hearings (Scotland) Act 2011. The Hearings system concerns both welfare and justice for children and young people.

¹⁶⁶ *Ibid*, Regulation 12

¹⁶⁷ *Ibid*

¹⁶⁸ *Ibid*, Regulation 9

¹⁶⁹ *Ibid*

7.25 Children or young people who are giving cause for concern with some aspect of their lives can be referred to the Children’s Reporter who will decide if a hearing is necessary. Anyone can make a referral but most come from the Police, Social Work and Education Authorities.¹⁷⁰

7.26 The Hearing considers whether compulsory measures of supervision are required to ensure the welfare of the child or young person. If an Order is made, it can specify where the child should live (including away from the family home), and who the child can see and when.

7.27 Any “relevant person”, the child or young person, or a “safeguarder” can appeal against the decision of the Hearing.¹⁷¹ This is to the Sheriff Court, where the Sheriff may continue, vary or terminate any Order or warrant in effect, decide to discharge the child from further hearing proceedings, or order another hearing take place. There is a limited further right of appeal, against the decision of the Sheriff Court. This is to the Sheriff Principal or the Court of Session, on a point of law or in respect of a procedural irregularity. Where the appeal is to the Sheriff Principal, there is then a further right of appeal to the Court of Session. The decision of the Court of Session is final. The Sheriff Principal or Court of Session will remit the case back to the Sheriff Court with directions.

The Children’s Hearing Process				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
The Children’s Panel	Considers whether compulsory measures of supervision are required for a child who presents cause for concern	The Children’s Hearings (Scotland) Act 2011	Can make Compulsory Supervision Orders regarding the child, including measures of residence and contact	There is an onward right of appeal by a child, relevant person or Safeguarder to the Sheriff Court.
The Sheriff Court	The Sheriff hears appeals against decisions made at the Children’s Hearing regarding compulsory measures of supervision	The Children’s Hearings (Scotland) Act 2011	Can discharge the case, order another hearing to be held for a fresh decision, or can substitute its own decision	There is a limited onward right of appeal to the Sheriff Principal or Court of Session, on a point of law or in respect of a procedural irregularity. There is a further right of appeal to the Court of Session for appeals first going to the Sheriff Principal. This decision is final.

7.28 NHS Scotland is the nation’s publicly funded healthcare system. The organisation is divided into 14 regional Health Boards and 7 national Special Boards which are responsible for service coordination and provision.¹⁷² As mentioned above, the regional Health Boards have integrated

¹⁷⁰ The Children’s Hearings (Scotland) Act 2011, Part 6

¹⁷¹ *Ibid*, Part 15

¹⁷² For a definitive list, see: <http://www.show.scot.nhs.uk/organisations/>

with Local Authorities to provide and coordinate integrated services in Health and Social Care. Challenge mechanisms, however, remain separated.

By way of example, some areas of NHS decision making are:

- Registration and de-registration with a GP Practice
- Carrying out a specific assessment
- Specific forms of treatment
- The offer of specific drugs
- Diagnosis
- Continuing treatment
- Consultant or specialist involvement
- Discharge
- Waiting list priority

7.29 The NHS operates a specific staged complaints process, which is outlined below.¹⁷³ Similarly to the social work complaints process, whilst these are called “complaints”, the process can involve a review of the decisions taken.¹⁷⁴ The final stage involves review by the Scottish Public Services Ombudsman (SPSO). In contrast to the SPSO’s usual role, the SPSO is empowered in health cases to take into account and scrutinise clinical judgement. The SPSO uses a “reasonableness” test in health cases – questioning whether the decision or treatment given was reasonable under the circumstances.¹⁷⁵

The National Health Service Complaints Process				
Stage	Body	Process	Forms of Redress	Onward Appeal or Review
One – Frontline Resolution	Frontline NHS Staff	An informal stage where the service user complains directly to frontline staff – such as Doctors or Nurses – who are providing the care or treatment, or refusing to provide a service. They will try to resolve the dispute	Informal resolution after discussion with frontline staff	Stage Two – Formal Complaint in writing.
Two – Formal Complaint	Designated Complaint Handling Staff from the NHS organisation concerned	The service user complains in writing to the organisation concerned – the Health Board, GP Practice, or Ambulance Service, for example. The organisation will have designated staff who will try to resolve the dispute	Formal resolution. Given in writing, after involvement of designated complaint handlers	Stage Three – after exhausting the previous two stages, requesting the independent SPSO to look into the matter.

¹⁷³ Patient Rights (Scotland) Act 2011, ss.14-16

¹⁷⁴ *Ibid*

¹⁷⁵ Scottish Public Services Ombudsman Act 2002, s.7(2)

The National Health Service Complaints Process (continued)				
Stage	Body	Process	Forms of Redress	Onward Appeal or Review
Three – Scottish Public Services Ombudsman (SPSO)	The independent Scottish Public Services Ombudsman	The final step in the procedure, and only available if the first two stages have been completed without resolution. The SPSO will look at all the circumstances surrounding the dispute, and this includes the clinical judgement of medical staff. This can involve looking at the service user's medical records. The SPSO can make recommendations to resolve the dispute	Formal resolution: the SPSO can look at the professional judgement of medical staff and consider the decision that has caused the dispute. The SPSO can make recommendations to the NHS organisation to resolve the issue	None.

7.30 The Mental Health Tribunal for Scotland was established by the Mental Health (Care and Treatment) (Scotland) Act 2003.¹⁷⁶ The Tribunal acts as a first instance decision maker for longer term orders in that it determines applications for compulsory treatment orders of people with mental disorders, made under the 2003 Act.¹⁷⁷ The Tribunal must undertake periodical reviews of such compulsory measures.¹⁷⁸ The patient, or the patient's named person,¹⁷⁹ can also request the Tribunal to review a compulsory treatment order.¹⁸⁰ This can result in the variation or revocation of an order.

7.31 The Mental Welfare Commission, detailed further at sections 7.36-7.38, can also make a "reference" to the Tribunal to review specific cases relating to compulsory treatment orders.¹⁸¹

7.32 The Tribunal also acts in an appellate role in relation to compulsory measures, such as the compulsory short-term detention of a patient in hospital, made under the 2003 Act.¹⁸² The patient, the patient's named person and in certain cases other "relevant persons" can appeal.¹⁸³

7.33 There is a right to appeal against decisions of the Tribunal regarding compulsory treatment orders, and an onward right of appeal from the Tribunal's decision on an appeal against compulsory measures. This is to the Sheriff Principal, which may make an Order as it sees fit or remit the case to the Tribunal.¹⁸⁴ Decisions of the Sheriff Principal can be further appealed to the Court of Session, which can also make an Order as it sees fit or remit the case to the Tribunal.¹⁸⁵

¹⁷⁶ Mental Health (Care and Treatment) (Scotland) Act 2003, s.21

¹⁷⁷ *Ibid*, Part 7; in particular s.63

¹⁷⁸ *Ibid*, ss.77-78

¹⁷⁹ *Ibid*, ss.99-100

¹⁸⁰ *Ibid*

¹⁸¹ *Ibid*, ss.98 and 162

¹⁸² *Ibid*, Part 7, chapter 6; Part 10, chapter 3; Part 12

¹⁸³ *Ibid*; the provisions define those persons who can appeal

¹⁸⁴ *Ibid*, s.320

¹⁸⁵ *Ibid*, s.321

Appeals in cases which involve restricted and high risk patients are directly to the Court of Session.¹⁸⁶

7.34 There is also a right for patients who have been compulsorily detained at the State Hospital, Carstairs, or in medium secure units to request a review by the Tribunal.¹⁸⁷ This review can be sought on the grounds that the patient is being held in greater conditions of security than they, or another relevant person, deems necessary.

The Mental Health Tribunal for Scotland				
Body	Remit	Legislative Basis	Powers/ Form of Redress	Onward Appeal or Review
The Mental Health Tribunal for Scotland (MHTS)	The Tribunal must agree to the making of a compulsory treatment order	Mental Health (Care and Treatment) (Scotland) Act 2003	Can authorise the order or refuse the application	There is an onward right of appeal to the Sheriff Principal.
MHTS – Reviews	Undertakes review of orders, including compulsory treatment orders, or does so on request	Mental Health (Care and Treatment) (Scotland) Act 2003	Can result in the variation or revocation of an order	There is an onward right of appeal to the Sheriff Principal.
MHTS – Appeals	Hears appeals from a relevant person regarding compulsory measures, such as a short-term detention certificate	Mental Health (Care and Treatment) (Scotland) Act 2003	Can result in the variation or revocation of an order	There is an onward right of appeal to the Sheriff Principal, or direct to the Court of Session in cases of restricted patients.
Sheriff Principal	Hears onward appeals from the Tribunal regarding compulsory measures, and appeals regarding compulsory treatment orders	Mental Health (Care and Treatment) (Scotland) Act 2003	Can substitute the Tribunal's decision with another decision, or can remit the case to the Tribunal for a fresh decision	There is an onward right of appeal to the Court of Session.
Court of Session	Hears onward appeals from the Sheriff Principal, and also hears appeals direct from the Tribunal in cases of restricted patients	Mental Health (Care and Treatment) (Scotland) Act 2003	Can substitute the Tribunal's decision with another decision, or can remit the case to the Tribunal for a fresh decision	None.

¹⁸⁶ *Ibid*, s.322

¹⁸⁷ *Ibid*, Part 7, chapter 6; in particular s.126

The Gender Recognition Panel

7.32 The Gender Recognition Panel is administered by the UK HM Courts and Tribunals Service.¹⁸⁸ It assesses applications from transsexual people to gain legal recognition of a gender change. Applications can only be made if the applicant:

- a) has or previously had gender dysphoria
- b) has lived for a minimum of two years in their acquired gender
- c) intends to live permanently in their acquired gender¹⁸⁹

7.33 The Panel may award a Gender Recognition Certificate. There is a right of appeal to the Court of Session, but this is only allowed on a point of law.¹⁹⁰

The Gender Recognition Panel				
Body	Remit	Legislative Basis	Powers/Form of Redress	Onward Appeal or Review
The Gender Recognition Panel	Considers applications to gain legal recognition of a change of gender	The Gender Recognition Act 2004	Can award or refuse a Gender Recognition Certificate	There is a limited onward right of appeal to the Court of Session, on a point of law only.

The Role of the Regulators, Scrutiny Bodies and Professional Bodies

7.35 There are a number of regulatory and professional bodies which operate in this sector which ensure that standards are being met by both organisations and the professionals who work for them. Professional bodies which regulate those working in the sector can also take complaints regarding professional conduct directly which can result in disciplinary action or dismissal. The NHS also operates its own disciplinary committees and the NHS Tribunal also serves to handle complaints about the conduct of NHS professionals.

The Regulators

The Mental Welfare Commission for Scotland

7.36 The Mental Welfare Commission for Scotland is responsible for monitoring the care and treatment of people under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the welfare part of the Adults with Incapacity (Scotland) Act 2000.¹⁹¹

7.37 The Commission performs its own monitoring function of providers of these services and conducts its own monitoring visits. It also operates a national advice and issues service where service users can report issues to it directly.

¹⁸⁸ The Gender Recognition Act 2004

¹⁸⁹ *Ibid*, s.2

¹⁹⁰ *Ibid*, s.8

¹⁹¹ See: The Mental Health (Care and Treatment) (Scotland) Act 2003, Part 2

7.38 If the Commission identifies any issues with a particular service, it is empowered to investigate and report on these. It can produce a report with recommendations to improve the services and this will be served upon the relevant organisations.¹⁹² In cases of patients in respect of whom there is a Compulsory Treatment Order in place, the Commission is empowered to make a “reference” to the Mental Health Tribunal for Scotland to have the Order reviewed.¹⁹³

The Care Inspectorate

7.39 The Care Inspectorate¹⁹⁴ is responsible for the regulation and scrutiny of all registered care services in Scotland against the National Care Standards. These span a wide range of services from adoption agencies to care homes, to supported accommodation for people with drug and alcohol problems.¹⁹⁵

7.40 The Care Inspectorate takes complaints from service users about the standards of care services directly, as well as performing a monitoring function in inspecting such services, often unannounced. Crucially, the Care Inspectorate does not require that local complaints procedures be exhausted before it can investigate the situation.

7.41 The Care Inspectorate is empowered to take action following its investigations. This can take the form of imposing requirements on the service to make improvements, or could even result in the service’s registration being cancelled.¹⁹⁶

The Professional Bodies

7.42 Professional workers in social services and health are highly regulated. National regulatory bodies monitor and register workers which grants them a “licence” to practice. Removal from the registers will prevent that person from being employed as a social services or health professional. Such bodies take complaints regarding the fitness to practice of their members from service users.

The Scottish Social Services Council (SSSC)

7.43 The SSSC is the national body which regulates the social services workforce in Scotland.¹⁹⁷ It can investigate complaints against registered social services workers if it considers that the actions taken, or lack of action taken, is so serious that it calls into question a worker’s suitability to be registered.¹⁹⁸

7.44 The SSSC conducts hearings for registered workers where it could be decided that:

- a) a warning should be issued and kept on the worker’s record for a period of time
- b) conditions should be placed on the worker’s registration
- c) the worker should be suspended from the register for a period of time
- d) a combination of a) – c)
- e) the worker should be removed from the register (“strike them off”)

¹⁹² *Ibid*

¹⁹³ *Ibid*, ss.98 and 162; see also: sections 7.30-7.34, above

¹⁹⁴ Formally known as: Social Care and Social Work Improvement Scotland

¹⁹⁵ Public Services Reform (Scotland) Act 2010, s.47

¹⁹⁶ *Ibid*, Chapter 3

¹⁹⁷ The Regulation of Care (Scotland) Act 2001, Schedule 2

¹⁹⁸ *Ibid*

The General Medical Council (GMC), the General Dental Council (GDC), & the Nursing & Midwifery Council (NMC)

7.45 The GMC, GDC and NMC are all UK-wide bodies that regulate the conduct of doctors, nurses and midwives across the UK.¹⁹⁹ There are similar professional bodies which regulate opticians, physiotherapists and pharmacists and these operate in a similar manner. These bodies can take referrals from service users and NHS Boards regarding the fitness to practice of their members which call into question their registration.

7.46 The three bodies operate in a very similar way to the SSSC, and can result in the health professional being “struck off” their registers, and therefore banned from working anywhere in the UK. The table below uses the GMC as an indicative example of how these bodies work.

The NHS Disciplinary Committees and the NHS Tribunal

The NHS Disciplinary Committees

7.47 Each NHS Board is required by the NHS (Disciplinary Committees) (Scotland) Regulations 2006 to establish disciplinary committees to investigate alleged breaches of the conditions of employment by NHS professionals. Only an NHS Board can refer a case to a Disciplinary Committee. The Board can choose to do this if it believes that the case requires further investigation, but it is also open to the Board to refer the matter directly to the relevant professional body as listed at sections 7.42-7.46, the NHS Tribunal as described at sections 7.49-7.50, or to Police Scotland in the most serious of cases.

7.48 The NHS Disciplinary Committee will report its findings to the NHS Board, where the case will then be referred to the NHS Tribunal, the relevant professional body or to Police Scotland. There is a right of appeal available to a professional who is the subject of the investigation – this is by way of writing to the Scottish Ministers.²⁰⁰ The Ministers may dismiss the findings of the Committee or reject the appeal.

The NHS Tribunal

7.49 The NHS Tribunal is independent of the NHS Boards and can hear referrals from both the NHS Boards and members of the public. On referral, the Tribunal will decide whether there is sufficient evidence to hold a full hearing into the matter. The Tribunal can dismiss the case, or order that a professional is conditionally or unconditionally disqualified from working for the NHS in the United Kingdom.

7.50 There is a right of review against the decision of the Tribunal.²⁰¹ The review may revoke any order made in the original judgement. There is a further right of appeal against the findings of the review – this is to the Court of Session.²⁰²

¹⁹⁹ Medical Act 1983; Dentists Act 1984; Nursing and Midwifery Order 2001

²⁰⁰ NHS (Disciplinary Committees) (Scotland) Regulations 2006, Regulation 9.

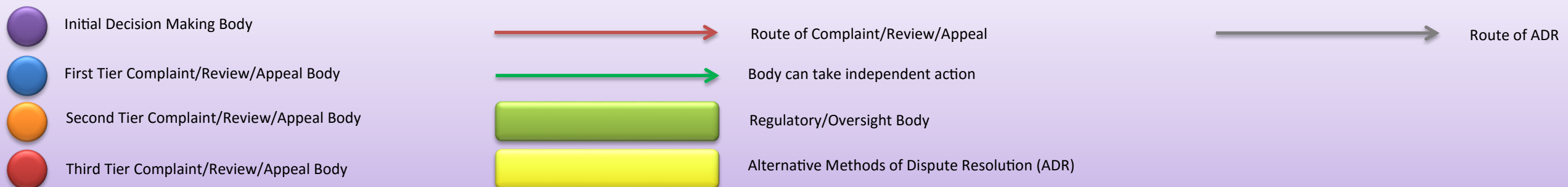
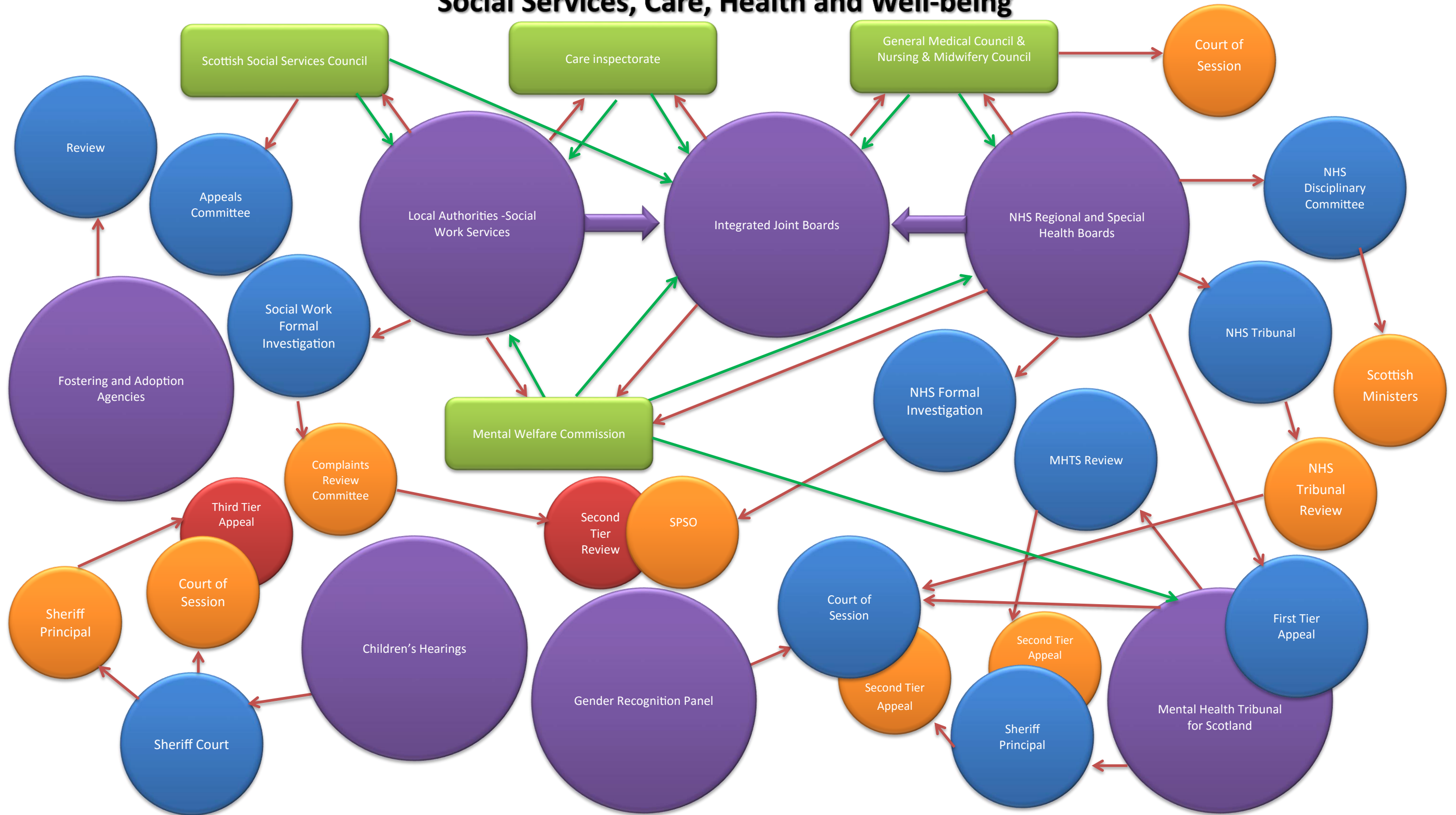
²⁰¹ *Ibid*, Regulation 24

²⁰² The Tribunals and Inquiries Act 1992 s.11

Regulatory, Scrutiny and Professional Bodies in Social Services, Care, Health & Wellbeing

Body	Remit	Legislative Basis	Powers/ Form of Redress	Onward Appeal or Review
The Mental Welfare Commission	Responsible for monitoring the care & treatment of people under the Mental Health (Care & Treatment) (Scotland) Act 2003 & the welfare part of the Adults with Incapacity (Scotland) Act 2000, through the use of investigations & reporting	Mental Health (Care & Treatment) (Scotland) Act 2003 Adults with Incapacity (Scotland) Act 2000	Is empowered to take enforcement action against the bodies it regulates and monitors to ensure improvements are made where deemed necessary	n/a
The Care Inspectorate	Regulates & scrutinises the services it regulates to ensure that National Care Standards are being met; can take complaints direct from members of the public.	The Public Services Reform (Scotland) Act 2010	Can take enforcement action against the services it regulates to ensure improvements and can cancel a service's registration in severe cases	n/a
The Scottish Social Services Council	Regulates registered social services workers and can investigate complaints against individuals' "fitness to practice"	The Regulation of Care (Scotland) Act 2001	Can take disciplinary action against registered social services workers, including and up to revocation of registration	Registered workers can appeal disciplinary action to the SSSC Appeals Committee.
The General Medical Council	Regulates registered medical doctors and can investigate complaints against individual's "fitness to practice"	The Medical Act 1983	Can take disciplinary action against registered medical doctors, up to and including revocation of registration	Registered medical doctors can appeal disciplinary action to the Court of Session.
The NHS Disciplinary Committees	Hears referrals from NHS Boards to investigate a case against a medical professional where disciplinary action may require to be taken	NHS (Disciplinary Committees) (Scotland) Regulations 2006	The Committee will report back to the NHS Board with the outcome of its investigation which may recommend that certain disciplinary action will be required	There is a right of appeal for professionals who are the subject of the investigation to the Scottish Ministers.
The NHS Tribunal	Hears referrals from both NHS Boards and members of the public regarding the misconduct of family health practitioners in the NHS	The NHS (Scotland) Act 1978	The Tribunal, if it finds that there has been misconduct, can disqualify, conditionally or unconditionally, a professional from working for the NHS in the United Kingdom	There is a right of review for professionals who are the subject of the investigation which will be carried out by the Tribunal. There is then a further right of appeal against the findings of the review to the Court of Session.

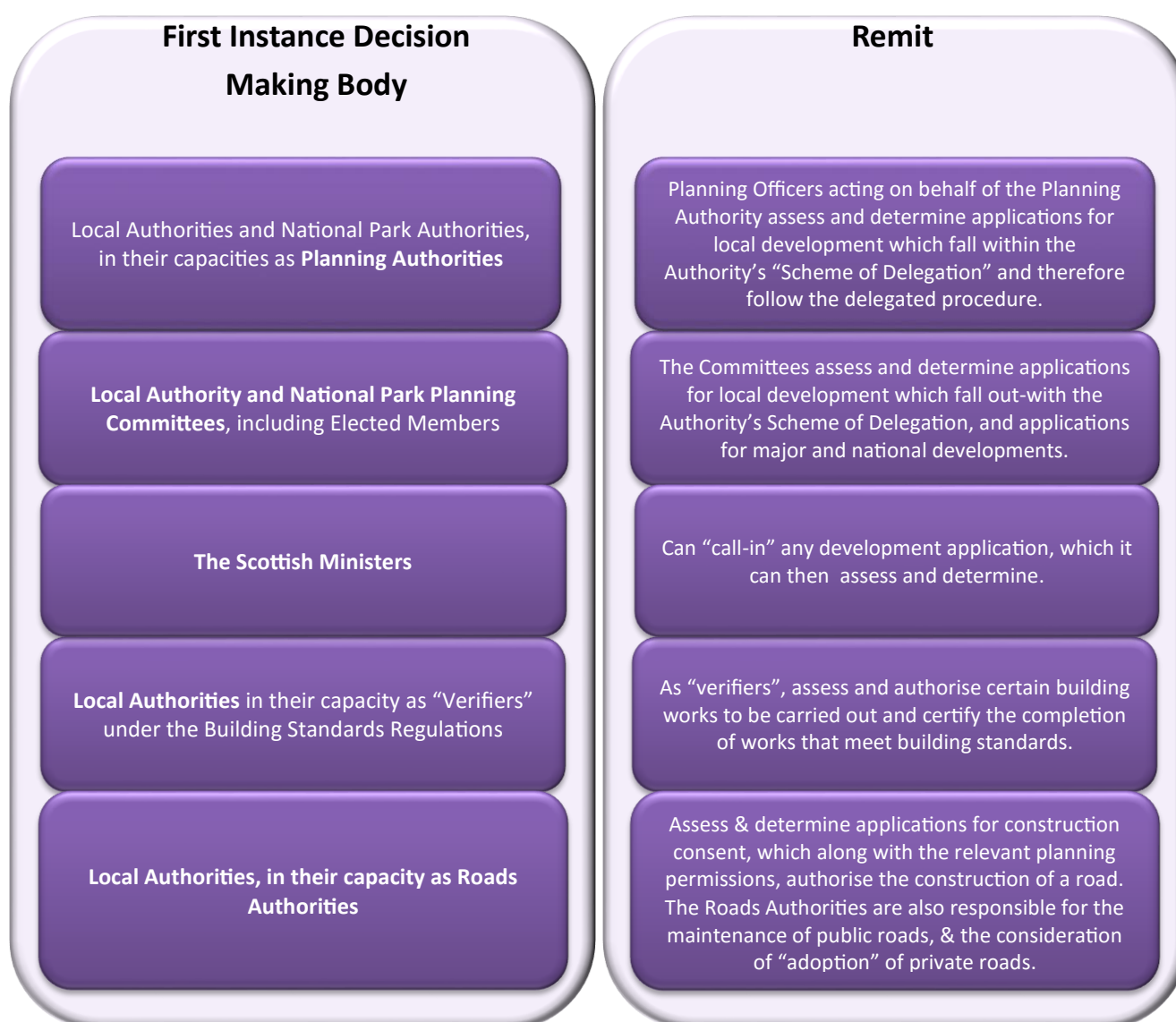
Social Services, Care, Health and Well-being



Development Management, Planning & Building Standards

Chapter 8

8.1 Planning and building standards are areas devolved to the Scottish Parliament. This chapter details the development management, building standards and private road construction processes. Most of the responsibilities in these areas fall to the Local Authorities, in their various capacities. In terms of development management and planning, Local Authorities and the two National Park Authorities are responsible for certain types of decisions. Planning Committees (which are composed of Councillors or Elected Members²⁰³ of both types of authority) and the Scottish Ministers also have responsibility for certain types of these decisions.



²⁰³ Planning Committees of Local Authorities are entirely comprised of elected Councillors from the Local Authority, whereas those of the National Park Authorities need only contain a majority of Elected Members (Councillors or members elected in National Park Authority elections)

Development Planning & Development Management

8.2 The Development Planning and Development Management systems are the frameworks through which land use is determined, and how Scotland's settlements and countryside are shaped. There are 34 Planning Authorities in Scotland – the 32 Local Authorities and two National Park Authorities - which take thousands of decisions each year in regard to planning permission and the authorisation of building works.²⁰⁴ Planning decisions are based on Development Plans for each area and region which are determined by the Scottish Government, Local Authorities and the National Park Authorities. These plans outline where, and how, development can and cannot take place. The Scottish Government's National Planning Framework designates developments deemed to be of national importance.

The Planning System

8.3 Scotland's planning system can be broken down into three main areas:

1. Development Planning: the process whereby National, Strategic and Local Development Plans are drawn up detailing how development nationally, regionally, and at a local level, will take shape over the coming years.
2. Development Management: the process whereby the Planning Authorities advise and take decisions on planning applications within their areas in accordance with the Development Plans.
3. Enforcement: the process whereby the Planning Authorities ensure that planning standards are being met and can take action where this has not been met.

Planning Permission

8.4 Planning permission is the main process by which an applicant can apply to the Planning Authority to construct a new building, make major changes to a building, or change the use of a building. This section outlines the generic planning permissions process. Other applications, such as conservation area consent are listed at 8.15-8.16, below.

8.5 There are three classifications of development:

1. Local Development – for example, householder development or business and commercial development up to certain Scottish Government defined thresholds.
2. Major Development – for example, the construction of a shopping centre or the construction of a large housing development, which are over the Scottish Government's defined thresholds.
3. National Development – for example, the redevelopment of a city waterfront or the construction of a major bridge, as designated in the National Planning Framework by the Scottish Government.

²⁰⁴ Planning Authorities made 30,030 decisions on local development alone in 2013/14 – *Planning Authority Performance Statistics Annual Report 2013/14*, The Scottish Government, available: <http://www.gov.scot/Publications/2014/07/2731>

Determination of Planning Applications

8.6 The body responsible for the determination of a planning application depends on the type of application submitted. Planning legislation mandates the Planning Authorities to create Schemes of Delegation for local developments.²⁰⁵ This specifies which local applications can, and cannot, be determined through a delegated procedure. Planning Officers from the respective Authorities will have delegated authority to determine local applications which fall within the Scheme of Delegation. This could include the full range of local developments, depending on the terms of the Scheme. More contentious local developments may be determined by a Planning Committee of elected Councillors or Members. Major and national developments are both determined by elected Councillors or Members. In addition, the Scottish Ministers reserve the right to “call in” any application for determination which would normally fall to the competence of another body.²⁰⁶ In practice, this is rarely used.²⁰⁷

8.7 All applications are subject to a consultation period before determination, whereby members of the public and organisations can submit a formal comment in relation to a proposal.²⁰⁸ The period for consultation must last at least 14 days. Neighbour Notification is the process whereby the Planning Authority must notify persons with an interest in neighbouring properties or land of proposed adjacent developments, and for certain applications, the Planning Authority may advertise the proposals in the local press.²⁰⁹ Anyone may make a representation in relation to an application, whether or not they have received notification. Generally, Schemes of Delegation for local developments make provision for applications which receive a certain number of representations to fall out-with the Scheme.²¹⁰ In consequence, such applications would not be determined by the delegated procedure and would instead be determined by a Planning Committee. The body responsible for determination must take these representations into account in making its decision.

8.8 Certain applications will also raise implications for the environment or heritage, in which case various impact assessments may require to be carried out. These types of applications may also attract the right of certain Public Authorities – such as the Scottish Environment Protection Agency or Scottish Natural Heritage, for example – to make statutory representations in relation to the proposals.²¹¹ Such representations may object to, or favour, the proposal, or may suggest certain changes to the proposals or that conditions should be attached to any permission granted. The body responsible for determination of the application must take these representations into account in making its decision.

²⁰⁵ The Town and Country Planning (Scotland) Act 1997 s.43A(1)

²⁰⁶ *Ibid* s.46

²⁰⁷ From September 2011 to September 2014, the Scottish Ministers had called in 14 applications – see: *Scottish Ministers’ Power to Call-In Planning Applications*, SPICe Briefing (November 2014)

²⁰⁸ The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, Part 4

²⁰⁹ *Ibid*

²¹⁰ The Town and Country Planning (Scotland) Act 1997 s.43A(1)

²¹¹ These bodies are termed “statutory consultees” and include, among others: Transport Scotland, Scottish Water, Scottish Natural Heritage, Historic Environment Scotland, and the Scottish Environment Protection Agency. See: The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, Schedule 5

8.9 Applications require to be determined in line with the Development Plans²¹², however, these can be departed from if “material considerations” justify doing so.²¹³ Such considerations include national policy, representations from the public or statutory consultees, and the effect of the proposals on the environment.

8.10 The final decision on the application may include conditions upon the grant of the application. These can control, for example, the way in which a particular development is carried out.

Redress

8.11 The body responsible for reviewing or handling the appeal of a planning decision is determined by the body which made the first instance decision. The Planning etc. (Scotland) Act 2006 amended the way in which the decisions on an application can be appealed or reviewed.²¹⁴ In general, decisions (or failure to make decisions within statutory timescales)²¹⁵ on applications falling within the Planning Authority’s Scheme of Delegation are open to review by a Local Review Body (LRB).²¹⁶ This is a quasi-independent body of the Council, comprised of elected members.

8.12 Where the application was determined by a Council committee (or in the case of a major or national application the Council committee failed to make a decision within the required timescales), the available challenge route is an appeal to the Scottish Ministers.²¹⁷ In practice, this involves an appeal to a reporter of the Directorate for Planning and Environmental Appeals (DPEA). Both the review and the appeal routes can result in either a confirmation of the original decision or the overturn of that decision and substitution with a fresh decision. In all circumstances, it remains open to both the LRB and the DPEA to add, vary or revoke any conditions upon the grant of planning permission.

8.13 There is a limited right of onward appeal from both the LRB and the DPEA to the Court of Session. This is on a point of law only.

8.14 Under section 46 of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers can “call-in” an application to determine it themselves. The decision of the Ministers is final and cannot be appealed or reviewed, save by way of judicial review proceedings.

²¹² National, Strategic and Local – see sections 8.2 – 8.3, above

²¹³ The Town and Country Planning (Scotland) Act 1997, s.25

²¹⁴ The Act created the hierarchy of developments, and led to The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

²¹⁵ These are termed “deemed refusals” – the relevant time period for local development applications within the Scheme of Delegation is usually two months. It should be noted: where the Planning Authority fail to decide within two months, and the LRB subsequently fail to decide within three months, there is a right to appeal to the Scottish Ministers, by way of the DPEA – see: Town and Country Planning (Scotland) Act 1997 ss.43A and 47, and The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, regulation 8

²¹⁶ The Town and Country Planning (Scotland) Act 1997, s.43A

²¹⁷ The Town and Country Planning (Scotland) Act 1997, s.47

Planning – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Local Review Body	Reviews decisions of the Planning Department – for applications that fall within the Planning Authority’s Scheme of Delegation	The Town and Country Planning (Scotland) Act 1997	Can confirm the Planning Department’s decision, or substitute it with a fresh decision. Can also vary, revoke or add any planning condition	There is a limited onward right of appeal to the Court of Session, on a point of law only.
The Scottish Ministers – by way of the Directorate for Planning and Environmental Appeals (DPEA)	Hears appeals against Planning decisions made by a Local Authority’s planning committee – for applications which fall out-with the Scheme of Delegation. Can also hear appeals for applications which do fall under the Scheme of Delegation if they failed to be decided within two months, and then the LRB failed to decide within three months	The Town and Country Planning (Scotland) Act 1997	The DPEA can hear the appeal itself, or can conduct an Local Inquiry before determining the appeal. The DPEA can dismiss the appeal and uphold the previous decision, or can substitute a fresh decision. Can also vary, revoke, or add any planning condition	There is a limited onward right of appeal to the Court of Session, on a point of law only.

Other Planning Decisions

8.15 The following decisions of the Planning Authority, under the Town and Country Planning (Scotland) Act 1997, are all subject to an external appeal to the Scottish Ministers. In practice, this is by way of the Directorate for Planning and Environmental Appeals (DPEA):

- Certificates of lawful use or development (section 154)
- Tree works consents or Tree replacement notices by virtue of a Tree Protection Order (sections 47, 160 and 169)²¹⁸
- Planning obligations (section 75B)
- Good neighbour agreements (section 75F)
- Amenity Notices (section 180)
- Enforcement Notices (section 130)

8.16 Similarly, the following decisions, based in other legislation, are also subject to an external appeal to the DPEA:

- Advertisements (Regulation 25 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984)

²¹⁸ See also: The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 2010; and the role of Forestry Commission Scotland in the regulation of certain tree works and consents, detailed at sections 10.19-10.21, in *Chapter 10 – Environment, Heritage, Water and Waste Management*

- Listed Building Consent and Conservation Area Consent (section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997²¹⁹)

Other Planning Decisions – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers – by way of the Directorate for Planning and Environmental Appeals (DPEA)	Can hear appeals against the decisions of the Planning Authorities in relation to other planning applications, listed at sections 8.15-8.16, above	Town and Country Planning (Scotland) Act 1997; and others – see section 8.16, above	Can confirm or overturn Planning Authority decisions. In the case of enforcement action, notices will be suspended until the DPEA has made a determination on the appeal	There is a limited onward right of appeal to the Court of Session, on a point of law only.

Third Party Planning Rights

8.17 There are no third party²²⁰ rights to challenge a decision in planning law, meaning that the only remedy available for a third party would be to raise Judicial Review proceedings.²²¹ Third parties can also complain, in regard to maladministration and service failure, to the Scottish Public Services Ombudsman (SPSO).

8.18 However, as detailed above at section 8.7, under the legislative framework third parties can make representations on a planning application (either in objection or support) during the consultation period, and these will be taken into account by the Planning Authority.²²²

8.19 Further, interested parties (which include those who have made representation on an application) are notified of any review or appeal of a planning decision and may be afforded the opportunity to make further representations at that stage.

Building Standards

8.20 The Building (Scotland) Act 2003 mandates the Scottish Ministers to produce Building Regulations which ensure that building works in Scotland are carried out to a suitable standard as to be safe, efficient and sustainable.²²³ Local Authorities, as “verifiers”, are responsible for the administration of the building standards system.²²⁴ This means that they authorise building works to be carried out – through issuing a Building Warrant – and then authorise a completed building

²¹⁹ See also: the role of Historic Environment Scotland in adding buildings to the “List”, and in assessing applications for Scheduled Monument Consent, detailed at sections 10.41-10.47, in *Chapter 10 – Environment, Heritage, Water and Waste Management*

²²⁰ Third parties can be defined as those who are not the applicant or planning body, such as members of the public and local community

²²¹ For further information, see: *Chapter 3 – Judicial Review*

²²² The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, Part 4

²²³ The Building (Scotland) Act 2003 s.1

²²⁴ *Ibid* s.7

to be occupied or used – through acceptance of a Completion Certificate.²²⁵ The applicant submits the Completion Certificate to the verifier and this is accepted once the verifier has satisfied itself that the works have been carried out in accordance with the Building Warrant and building standards.

8.21 The Local Authority can grant a Building Warrant with terms or continuing requirements and can also issue an interim Completion Certificate subject to conditions - whereby upon satisfactory fulfilment of the conditions, a full Certificate will be issued.

Redress

8.22 Where a dispute arises between the verifier (Local Authority) and an applicant as to the interpretation of the Building Regulations as set out by the Scottish Ministers, a definitive view of the regulations can be sought from the Scottish Ministers.²²⁶ This requires a joint referral by the verifier and the applicant and *is not* a form of appeal or review. This is called a referral for “Ministerial View”.

8.23 It is open to an applicant to apply to the Scottish Ministers, by way of the Building Standards Division of the Scottish Government, for the relaxation or dispensation of certain Building Regulations in regard to a particular application. This is contained in section 3 of the Building (Scotland) Act 2003. The decision of the Ministers in this regard is open to an onward appeal to the Sheriff Court.

8.24 For all other decisions (or deemed refusals, where the decision is not taken within the statutory timeframe) by a Local Authority in regard to Building Standards – such as those listed immediately below – the appeal route lies with the Sheriff Court.

- Verifier refuses to grant or amend the terms of a Warrant
- Verifier refuses to extend the life of a limited-life building
- Verifier rejects a Completion Certificate
- Verifier imposes Continuing Requirements
- Verifier refuses to vary or discharge a Continuing Requirement
- Verifier issues a Notice (such as a building regulations compliance notice or a building warrant enforcement notice)

²²⁵ *Ibid* Part 2

²²⁶ The Building (Procedure) (Scotland) Regulations 2004, Regulation 20

Building Standards – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of Local Authority “Verifiers” in relation to Building Warrants and enforcement, Completion Certificates, Continuing Requirements and Terms.	Building (Scotland) Act 2003	Can dismiss the appeal or quash the original decision and substitute another	None.
The Scottish Ministers – Building Standards Division	Hears joint applications for a “Ministerial View” on the interpretation of the Building Regulations	Building (Procedure) Scotland Regulations 2004	Will give a definitive interpretation of the Regulations	n/a
	Hears applications by applicant to relax or dispense with a provision of the Regulations for a particular application.	Building (Scotland) Act 2003	Can relax or dispose of a regulation for a particular application, or can refuse the application	There is an onward right of appeal to the Sheriff Court.

Construction , Adoption and Maintenance of Private Roads & Footpaths

Construction

8.25 The construction and maintenance of roads and footpaths is regulated by the Roads (Scotland) Act 1984. Local roads and footpaths are normally maintained by Local Authorities, in their capacity as Roads Authorities. The Roads Authority is responsible for the granting of construction consent, which is required for the construction of new roads and footpaths along with planning permission from the relevant Planning Authority.²²⁷

8.26 The Scottish Ministers are responsible for handling appeals against a Roads Authority’s refusal to grant construction consent for roads, or against conditions attached to a consent.²²⁸ In practice, this is done by way of the Directorate for Planning and Environmental Appeals (DPEA). There is provision for the appeal to be paper-based or for a hearing to be held before a decision is made. The appeal can result in confirmation of the decision, or substitution with another decision.²²⁹ It can also vary or revoke any conditions attached to a consent. The decision of the Scottish Ministers is final.

²²⁷ Roads (Scotland) Act 1984, s.21

²²⁸ Road Construction Consent (Appeals Procedure) (Scotland) Regulations 1986

²²⁹ Roads (Scotland) Act 1984, s.21

Adoption

8.27 Not all roads are administered and maintained by the Roads Authority – those that are, are kept on a publicly available list by the Authority.²³⁰ Some roads are private roads, which will be the responsibility of the owners of that road. In practice, this is normally the “frontagers” – those who own property which fronts onto the road. However, in some circumstances, the Roads Authority will, on application, voluntarily take over responsibility for the maintenance of a private road – but it should be noted that this in itself does not necessarily mean that legal ownership of the road changes. The 1984 Act requires the Roads Authority to “adopt” any private road within a period of 12 months where the standard of the road is satisfactory to the Authority, and a majority of frontagers of that road apply for it to be adopted.²³¹ The Roads Authority reserves the right, however, to reject this application should the road, within the time period allowed for adoption, deteriorate to a standard below that which is satisfactory to the Authority.²³²

8.28 There is a specific redress mechanism in cases of dispute with the Roads Authority regarding the “adoption” of a private road. A party to the dispute requires to apply to the Sheriff Court, which will then appoint a single arbiter to determine the facts of the case.²³³

8.29 The Roads Authority also reserves the right to add or delete entries from the public list of roads on its own initiative.²³⁴ In order to make a change, it must notify the frontagers and advertise its intention in the local press. The frontagers can make representations on the proposal, and the Roads Authority must take these into account before deciding whether to issue a Notice to the frontagers confirming the change to the public list.²³⁵

8.30 There is a right of appeal for the frontagers who have received official Notice of the Roads Authority’s intention to change the list. This appeal is to the Sheriff Court, but requires a majority of notified frontagers to appeal jointly.²³⁶ The Sheriff can direct the Roads Authority to amend or leave the list unchanged as it sees fit.

Maintenance

8.31 Where a Roads Authority is of the opinion that a private road requires to be “made up” to a reasonable standard, it may serve Notice upon the frontagers of that road.²³⁷ The Notice shall specify the works that require to be carried out (including, for example, levelling, paving, lighting or drainage works), a period within which the work must be carried out, and an estimate of costs apportioned to each frontage as appears equitable to the Roads Authority.²³⁸

²³⁰ *Ibid* s.1

²³¹ *Ibid* s.16(1)

²³² *Ibid*

²³³ *Ibid*, s.16(3)

²³⁴ *Ibid*, s.1(4)

²³⁵ *Ibid*

²³⁶ *Ibid*, s.1(5)

²³⁷ *Ibid*, s.13

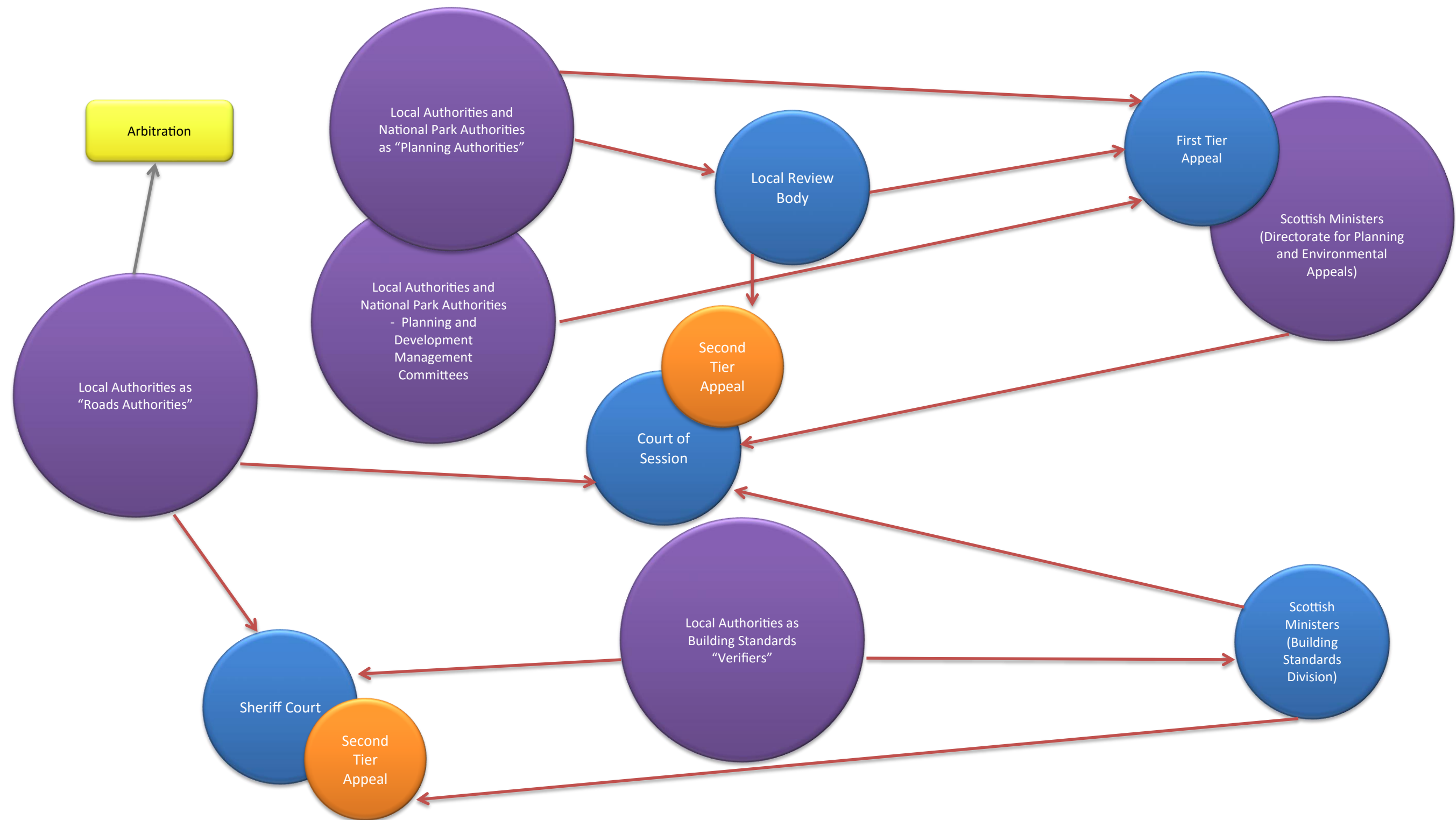
²³⁸ *Ibid*, s.13(3)

8.32 There is a right of appeal against the Notice for any of the frontagers. This is to the Sheriff Court, which can revoke or modify the Notice as it sees fit.²³⁹ This decision is final.

Private Roads – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
The Scottish Ministers – by way of the DPEA	Hear appeals against the refusal of a Roads Authority to grant construction consent for a new road; and against conditions imposed	The Roads (Scotland) Act 1984; Road Construction Consent (Appeals)	Can confirm the Roads Authority's decision, or modify the decision in any way. Can also vary, revoke or add any conditions attached to the consent	None.
Sheriff Court appointed Arbitrator	Hears disputes regarding the refusal of a Roads Authority to take over responsibility for the maintenance of a private road	The Roads (Scotland) Act 1984	Can only determine issues of fact which have caused the dispute, and cannot offer any remedies to an aggrieved party	None.
The Sheriff Court	Hears appeals from a majority of "frontagers" of a particular road against a Notice from the Roads Authority to change the listed status of that road	The Roads (Scotland) Act 1984	Can confirm the Notice, or can direct the Roads Authority to amend the public list of roads, or to leave it unchanged	None.
	Hears appeals from a frontage of a private road served with a Notice to "make up" that road by the Roads Authority.	The Roads (Scotland) Act 1984	Can confirm the Notice, or can revoke or modify it as the Court sees fit	None.

²³⁹ *Ibid*, s.13(7)

Development Management, Planning and Building Standards

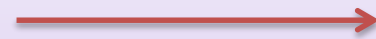


Initial Decision Making Body

First Tier Complaint/Review/Appeal Body

Second Tier Complaint/Review/Appeal Body

Third Tier Complaint/Review/Appeal Body



Route of Complaint/Review/Appeal



Body can take independent action



Regulatory/Oversight Body



Alternative Methods of Dispute Resolution (ADR)



Route of ADR

Housing, Homelessness, Property & Land

Chapter 9

9.1 Housing and homelessness, as well as areas relating to property and land, are areas devolved to the Scottish Parliament. The area of housing in particular is undergoing a period of change in Scotland – of particular note is the forthcoming introduction of new housing tribunal jurisdictions as a result of the Housing (Scotland) Act 2014,²⁴⁰ which are due to commence operation in late 2016.

9.2 The social housing stock in Scotland is administered and maintained by a combination of Local Authorities and Registered Social Landlords (RSLs). All must be registered with the Scottish Housing Regulator under the terms of the Housing (Scotland) Act 2001.²⁴¹ The Scottish Housing Regulator is empowered to take enforcement action if necessary.

9.3 Private rented housing is also an area which is increasingly regulated in Scotland. Local Authorities play a part in the registration of private landlords and the licensing of Houses in Multiple Occupation. Landlords are also required by regulations to secure tenants' rental deposits with an independent third party holding company, and disputes concerning the return of deposits are subject to an independent dispute resolution process.

9.4 Local Authorities play an important role in ensuring that housing, both privately owned and social, is maintained to decent standards. They are also responsible, to a degree, for ensuring that tenants, both private and social, do not behave in an antisocial manner.

9.5 Disputes between private tenants and their landlords concerning the standard of repair in their rented accommodation and the amount of rent charged can be brought to the Private Rented Housing Panel (prhp), a devolved tribunal.

9.6 Furthermore, the Scottish Ministers are responsible for the regulation of property factors in Scotland – maintaining the Scottish Property Factor Register and ensuring that factors meet statutory standards of conduct. Disputes between property owners and property factors can be brought to the Homeowner Housing Panel (hohp).

9.7 Local Authorities are under a duty to provide assistance to persons who are homeless, or at risk of becoming homeless. There is a right to challenge a Council's Homelessness Assessment.

9.8 Finally, there are rights of appeal against the confirmation of an order authorising a public authority to compulsorily purchase land or property, and against the compensation offered. The Lands Tribunal for Scotland also hears disputes relating to title to land.

²⁴⁰ See: The Housing (Scotland) Act 2014, Part 3

²⁴¹ The Housing (Scotland) Act 2001, s.57, and the Housing (Scotland) Act 2010



Social Housing

9.9 Social housing in Scotland is managed and administered by social landlords, which comprise Local Authorities and Registered Social Landlords (RSLs), which include housing associations, co-operative societies and others. Both RSLs and Local Authorities are regulated by the Scottish Housing Regulator. Most commonly, a social housing tenant will have a Scottish Secure Tenancy (SST) agreement with the Council or RSL.²⁴² An SST sets out the rights and duties that the tenant

²⁴² The Housing (Scotland) Act 1987

and landlord have in respect of the tenancy. Under an SST, for example, a tenant can only be evicted by a court order, and has the “right to repair” for small and urgent repairs.

Allocation of Social Housing

9.10 Social landlords are allowed to develop their own allocation policy, however housing legislation determines certain factors which must be taken into account and certain factors which must not be taken into account. For example, “reasonable preference” must be given to: social housing tenants who are under-occupying their home; homeless persons with unmet housing needs; and persons living in unsatisfactory housing conditions with unmet housing needs. Social landlords must also not base decisions on the length of time the applicant has lived in the area; their age (unless below 16); or any outstanding rent arrears which are less than one month’s rent.²⁴³

Regulation and Redress

9.11 All social landlords are within the jurisdiction of the Scottish Public Services Ombudsman (SPSO), and complaints regarding maladministration and service failure can be routed there.²⁴⁴

9.12 All RSLs and Local Authority landlords are also regulated and monitored by the Scottish Housing Regulator. The regulator exercises the powers of the Scottish Ministers under the Housing (Scotland) Act 2001. The Regulator maintains a register of all RSLs (but not Local Authorities) and being on the list is a requirement in order to administer and maintain social housing stock.²⁴⁵ The Regulator can deal with complaints regarding social landlords in relation to “significant performance failure”.²⁴⁶ However, the Regulator requires that the complaint is raised with the social landlord in the first instance in order that they are given a chance to remedy the breach themselves. The Regulator has the power to enforce improvements, or remove an organisation from the register of social landlords.²⁴⁷ There is an onward right of appeal, against the Regulator’s decision, to the Court of Session.²⁴⁸

Social Housing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The SPSO	Can hear complaints regarding maladministration and service failure by all social landlords	Scottish Public Services Ombudsman Act 2002	The Ombudsman can make recommendations to the social landlord to: apologise, amend their procedures; in rare circumstances to compensate the complainant	None.
The Scottish Housing Regulator	Can hear complaints regarding significant performance failure of social landlords	Housing (Scotland) Act 2001	Can enforce improvements, or remove the organisation from the list of social landlords	There is a right of appeal to the Court of Session.

²⁴⁵ The Housing (Scotland) Act 2001, s.57 and the Housing (Scotland) Act 2010

²⁴⁶ The Housing (Scotland) Act 2010, s.47(1)

²⁴⁷ *Ibid*, Part 5

²⁴⁸ *Ibid*, s.29

Private Rented Housing

9.13 Local Authorities have duties in regard to the regulation of private rented accommodation. They are responsible for issuing Houses in Multiple Occupation (HMO) Licences to private landlords, allowing them to let a property to three or more unrelated persons. The HMO Licence places additional safety and living requirements on the accommodation. Local Authorities are also responsible for maintaining a register of private landlords - registration is required to act as a private rented landlord within that Council area.

9.14 In 2011, a Tenancy Deposit Scheme was introduced by the Scottish Government.²⁴⁹ This aims to secure private tenants' rental deposits with an independent holding company. A dispute resolution process was also established which aims to resolve disputes relating to the return of deposits at the end of a tenancy.

9.15 Certain disputes arising between a tenant and private landlord can be brought to a tribunal – the Private Rented Housing Panel (prhp) – and this is also addressed below.

Houses in Multiple Occupation (HMO) Licences

9.16 The Housing (Scotland) Act 2006 introduced HMO Licences.²⁵⁰ Such a licence is necessary for living accommodation where there are three or more persons who are unrelated living in that property. It is the responsibility of the owner of the property to obtain an HMO licence.

9.17 Local Authorities are mandated to inspect properties in respect of HMO applications and to assess whether they meet the additional safety and living requirements attached to such a licence.

9.18 The Local Authority reserves the right to fix conditions to any HMO licence that it grants, and also to revoke the licence should it be deemed necessary.

9.19 There is a right of appeal to the Sheriff Court by an aggrieved property owner or landlord who has had their HMO application rejected, revoked or who wishes to challenge conditions attached.²⁵¹

Landlord Registration

9.20 The Antisocial Behaviour etc. (Scotland) Act 2004 mandates Local Authorities to keep and maintain a register of landlords.²⁵² The Act proscribes a “fit and proper person” test in order to be included on the register of landlords. It is for Local Authorities to assess applications for registration and to remove persons from the register if it deems them to fail to meet the test.

9.21 There is a right of appeal against removal from the register or refusal to include a person on the register. This is to the Sheriff Court and must be made within 21 days of the Local Authority's decision. There is a further right of appeal against the decision of the Sheriff to the Sheriff Principal, and this decision is final.

²⁴⁹ The Tenancy Deposit Scheme (Scotland) Regulations 2011

²⁵⁰ The Housing (Scotland) Act 2006, Part 5

²⁵¹ *Ibid*, s.159

²⁵² The Antisocial Behaviour etc. (Scotland) Act 2004, Part 8

Tenancy Deposit Schemes

9.22 The Tenancy Deposit Schemes (Scotland) Regulations 2011 established a legal framework for the protection of private tenants' rental deposits until they are due to be repaid at the end of the tenancy. All landlords are required to pass their tenants' deposits on to an approved independent third party holding company. The deposit will be released at the end of the tenancy, on application by the landlord. The amount to be returned to the tenants is decided by the landlord – the full amount less any costs for damage to the property. The regulations establish a dispute resolution process to resolve disputes regarding the amount to be returned to tenants. This involves independent adjudication and is provided free to both landlord and tenant by the independent holding company.²⁵³ It remains open, however, to the tenant to decide to pursue a civil claim through the Sheriff Court.

9.23 Should the dispute proceed through adjudication, an adjudicator will be appointed who will decide how much a tenant should receive back from their deposit based on the evidence provided by both parties. The decision of the adjudicator is subject to a further right of review on request of either party. This will be carried out by a different adjudicator, and this decision will be final.²⁵⁴

Private Tenant – Landlord Disputes

9.24 The Private Rented Housing Panel (prhp) was established by the Housing (Scotland) Act 2006.²⁵⁵ It took on the functions of the Rent Assessment Panel and was also granted the jurisdiction to deal with landlord-tenant disputes in the private sector relating to the state of repair of the rented accommodation. The disputes that can be brought to the tribunal are:

Rent Disputes

9.25 The prhp can hear appeals brought under the Housing (Scotland) Act 1988.²⁵⁶ Where there is a statutory assured tenancy, and the landlord proposes a rent increase, the tenant can apply to the prhp to fix an open market rent. Similarly, under a short assured tenancy, a tenant can apply to the prhp to decide what the rent should be.

Repair Disputes

9.26 The 2006 Act introduced the “repairing standard” – a standard which the rented property must meet.²⁵⁷ Landlords in the private sector are under a duty to ensure that this standard is met. Tenants can apply to the prhp if they think that this standard is not being met.

9.27 It is also worthy of note that the prhp operates an in-house mediation service which aims to resolve disputes regarding the repairing standard early in suitable cases.²⁵⁸

Tenancy Terms

9.28 The prhp is also empowered to hear appeals from either the landlord or tenant where a review of the tenancy terms is proposed.

²⁵³ The Tenancy Deposit Scheme (Scotland) Regulations 2011, Part 6

²⁵⁴ *Ibid*

²⁵⁵ The Housing (Scotland) Act 2006, s.21

²⁵⁶ *Ibid*

²⁵⁷ *Ibid*, Chapter 4

²⁵⁸ See: <http://www.prhpscotland.gov.uk/prhp/467.html>

Private Rented Sector – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of Local Authorities regarding Houses in Multiple Occupation (HMO) Licences	Housing (Scotland) Act 2006	The Sheriff Court can direct that the licence is granted, and can revoke, vary or add any conditions to the licence	None.
	Hears appeals against decisions of Local Authorities regarding the registration of private landlords	Antisocial Behaviour etc. (Scotland) Act 2004	Can make a determination as to the amount of rental deposit to be returned	There is a further right of appeal against the Sheriff's decision to the Sheriff Principal.
Tenancy Deposit Schemes – Adjudication	Adjudicates disputes as to the amount of rental deposit to be returned to tenants by the landlord on termination of a tenancy agreement	Tenancy Deposit Schemes (Scotland) Regulations 2011	The Sheriff Court can direct that the licence is granted, and can revoke, vary or add any conditions to the licence	There is a right to request a review, which will involve a different adjudicator.
The Private Rented Housing Panel (prhp)	Hears disputes between tenants and landlords in the private sector regarding the repairing standard; and rent disputes	The Rent (Scotland) Act 1984 The Housing (Scotland) Act 1988 The Housing (Scotland) Act 2006	Can find a landlord in breach of the repairing standard duty and can enforce action to meet the standard. Can set a fair or market value rent in rent cases	There is a limited onward right of appeal in rent cases to the Court of Session, on a point of law only. There is a limited onward right of appeal in repairing standard cases to the Sheriff Court, on a point of law only.

Antisocial Behaviour

9.29 Antisocial behaviour in relation to housing spans criminal, civil and administrative justice. This section deals only with the administrative justice aspects of antisocial behaviour in housing which relate to the responsibilities of Local Authorities, Registered Social Landlords and private landlords. The powers that a landlord or a Local Authority has in relation to controlling antisocial behaviour are different for social housing and private rented accommodation.

Social Housing

9.30 Most commonly, a tenant in social housing will have a Scottish Secure Tenancy (SST), which provides a wide range of rights for the tenant. In cases where the tenant, or another person residing at the accommodation, is subject to an Antisocial Behaviour Order or has pursued a course of antisocial conduct, the landlord has the right to convert the tenancy from an SST to a

Short Scottish Secure Tenancy (SSST).²⁵⁹ This not only limits the duration of the tenancy to 12 months from the date of conversion, but also provides fewer rights for tenants.

9.31 The conversion to an SSST allows the landlord to serve notice upon the tenant for repossession of the accommodation if it is considered that the terms of the SSST have been breached. There is a right for the tenants to request the landlord (Local Authority or RSL) to review the decision to convert the SST and/or to serve a notice for repossession.

Private Rented Accommodation

9.32 A Local Authority has the power to serve an Antisocial Behaviour Notice on the landlord of a property where the tenants of, or others at, that property are behaving in an antisocial manner.²⁶⁰ This Notice requires the landlord to take action to stop or prevent the tenants from behaving in such a manner. The Local Authority reserves the right to vary the terms of the Notice.

9.33 There is a right for the Landlord to request that the Local Authority reviews its decision to issue an Antisocial Behaviour Notice, or to vary any terms of the Notice. The Local Authority can suspend or revoke the Notice at this point, or can confirm it.

9.34 If the landlord fails to take reasonable action upon receiving a Notice, the Local Authority can take the following enforcement action:-

- a. An Order as to Rental Income can be granted by the Sheriff Court on application by the Local Authority. This will direct that no rent is to be paid to the landlord until the situation is resolved. There is a right of appeal against this Order. This is to the Sheriff Principal and must be made within 21 days of the Order being made.
- b. The Local Authority can also apply to the Sheriff for a Management Control Order. This will direct that the management, including the collection of rent, is to be taken over by the Local Authority. The Order cannot be for more than 12 months. It is open for the landlord to take the action as specified in the Antisocial Behaviour Notice and then to apply to the Sheriff. The Sheriff will then, if satisfied that the action has been taken, revoke the Order which will transfer management of the tenancy back to the landlord.

²⁵⁹ The Housing (Scotland) Act 1987, as amended by the Antisocial Behaviour etc. (Scotland) Act 2004

²⁶⁰ Antisocial Behaviour etc. (Scotland) Act 2004, Part 7

Private Rented Sector – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
Local Authorities or Registered Social Landlords – Internal Review	Conducts internal reviews of decisions to seek to convert a tenancy from a Short Secured Tenancy (SST) to a Short Scottish Secure Tenancy (SSST); and/or to seek repossession of a property, on grounds of antisocial behaviour	Housing (Scotland) Act 1987, as amended by the Antisocial Behaviour etc. (Scotland) Act 2004	Can result in a different decision being made	None.
The Sheriff Court	Hears applications from landlords to revoke a Management Control Order if the actions in the Antisocial Behaviour Notice have been fulfilled	Tenancy Deposit Schemes (Scotland) Regulations 2011	The Sheriff Court can direct that the licence is granted, and can revoke, vary or add any conditions to the licence	None.
The Sheriff Principal	Hear appeals from landlords against the decision of the Sheriff to grant an Order as to Rental Income	Housing (Scotland) Act 1987, as amended by the Antisocial Behaviour etc. (Scotland) Act 2004	The Sheriff Principal can revoke the Order	None.

Condition of Housing

9.35 Local Authorities have a number of powers and duties relating to the condition and state of repair of housing within their Council area.

Social Housing – repairing duties

9.36 As landlords of social housing tenants, Registered Social Landlords and Local Authorities are responsible for carrying out repairs to the properties which form part of the social housing stock. Social housing tenants have a “right to repair”, which binds the social landlords to carry out small and urgent repairs within a prescribed timescale.²⁶¹ If these are not carried out, there is a statutory right to compensation, and to claim any costs back for carrying out the repairs through another contractor.

Private rented accommodation – repairing standard

9.37 For private rented accommodation, landlords are under a duty to ensure that the accommodation they rent out meets the “repairing standard”.²⁶² Disputes arising regarding this standard can be brought to a tribunal – the Private Rented Housing Panel (prhp). The prhp deals with private tenant – landlord disputes and is explained in greater detail at 9.24-9.28, above.

²⁶¹ Housing (Scotland) Act 2001

²⁶² Housing (Scotland) Act 2006

Condition of privately owned housing

9.38 The following sections detail the powers that a Local Authority has in relation to the condition of *privately owned* housing within its Council area.

a) Housing Renewal Areas (HRA)

9.39 HRAs were introduced by the Housing (Scotland) Act 2006.²⁶³ They empower Local Authorities to designate areas where improvement is required in the condition of housing. In order to designate an area as an HRA, the Local Authority requires to carry out a period of consultation and obtain confirmation from the Scottish Ministers. Homeowners, tenants and landlords are offered an opportunity to comment on the proposal during the consultation period.²⁶⁴ Inclusion within an HRA can require homeowners to take action to improve or repair the condition of their house, or to demolish a property if it is in a serious state of disrepair as to be unfit for human habitation. The designation of an HRA slightly alters the powers that a Council has in relation to the condition of housing within that area.

b) Demolition of Property and Property Unfit for Habitation

9.40 Local Authorities have a duty to ensure that inhabited houses within their Council area meet the “Tolerable Standard” of basic standards of repair. Houses which do not meet the criteria can be demolished, prohibited from human habitation or brought up to the tolerable standard.²⁶⁵

b)(i) Housing within an HRA

9.41 If a Local Authority believes that a house within an HRA is in a serious state of disrepair, such that it should be demolished, then the owner of that property may be served with a Demolition Notice.²⁶⁶ The owner of that property will already have been aware of the Council’s view that the property ought to be demolished, as this would have been set out in the HRA proposals. The homeowner would have had the opportunity to comment on these proposals at the consultation stage.

9.42 The Notice must specify the reasons why the Council considers demolition necessary, the standard to which demolition is to be carried out, and the period of time that the homeowner is permitted to carry out the demolition. If the homeowner fails to carry out the demolition, or is unable to do so, the Local Authority is empowered to carry out the demolition itself. The Local Authority can then issue a Notice to the owner of the property to recover any expenses incurred in carrying out the demolition.

9.43 There is a right of appeal against a Demolition Notice, and a Notice to recover costs. This is to the Sheriff Court, and the appeal must be lodged within 21 days of receiving the Notice.

²⁶³ Housing (Scotland) Act 2006, s.1

²⁶⁴ *Ibid*, schedule 1

²⁶⁵ Housing (Scotland) Act 1987

²⁶⁶ Housing (Scotland) Act 2006, s.33

b)(ii) Housing out-with an HRA

9.44 The Council also has the power to require a property out-with an HRA to be demolished if it is in a serious state of disrepair.²⁶⁷ The Council in this instance can serve a Demolition Order on the owner of the property. This Order will specify a period for the property to be vacated and that the property must be demolished within 6 weeks of the vacation. The Act provides that the owner of the property, on service of the Order, can give an undertaking to the Council that the property will not be used for human habitation. It is then up to the Council to decide whether to accept this undertaking and suspend the Order, or to reject it and enforce the Order. If the Council finds the undertaking acceptable and suspends the Demolition Order, it remains open to it to revoke the suspension and re-enforce the Demolition Order if it believes the undertaking to have been breached.

9.45 The Local Authority is empowered to carry out the demolition itself if the owner fails to do so, and is further empowered to make a Charging Order to recuperate any costs from the property owner in carrying out the demolition.²⁶⁸

9.46 There is a right of appeal against the service of a Demolition Order and a Charging Order. This is to the Sheriff Court, and the appeal must be lodged within 21 days of receiving the Order.²⁶⁹ There is a further right of appeal, against the Sheriff's decision, to the Sheriff Principal. This decision is final.

b)(iii) Housing which forms only part of a Building

9.47 If a Local Authority considers that a house is in a state of disrepair, such that it is unfit for human habitation, but it forms only part of a building, then it can issue a Closing Order.²⁷⁰ A house is defined widely for these purposes, and can include a single room "habitually used as a sleeping place"²⁷¹. The effect of the Closing Order is to prohibit the human habitation of the house. On service of the Order, the owner of the property may give an undertaking to the Council to bring the property up to the tolerable standard of basic levels of repair. The Council can suspend the Closing Order or reject the undertaking. It is open to the Council, should it accept the undertaking, to revoke the suspension at any point if it believes that the undertaking has been breached.

9.48 There is a right of appeal against a Closing Order.²⁷² This is to the Sheriff Court, and the appeal must be lodged within 21 days of receiving the Order.

c) Housing Repairs

9.49 The Housing (Scotland) Act 2006 empowers Local Authorities to issue Work Notices to the owner of a house.²⁷³ This can be done to implement the Council's Housing Renewal Area (HRA) Action Plan, or simply to bring any house (whether or not in an HRA) up to a reasonable standard of repair.

²⁶⁷ Housing (Scotland) Act 1987, s.115

²⁶⁸ *Ibid*, s.131

²⁶⁹ *Ibid*, s.129

²⁷⁰ *Ibid*, s.114

²⁷¹ *Ibid*, s.114(3)

²⁷² *Ibid*, s.129

²⁷³ Housing (Scotland) Act 2006, s.30

9.50 The Notice must specify the reason the Council believes the work is necessary; the work required to be carried out and to what standard; and the period within which the work must be carried out.

9.51 The Local Authority is empowered to carry out the works itself if the owner fails to do so or is unable to do so. The Council can then issue a Notice to claim the expenses incurred back from the owner.

9.52 There is a right of appeal against a Work Notice, and a Notice to recover costs.²⁷⁴ This is to the Sheriff Court, and must be lodged within 21 days of receiving the Notice. There is a further right of appeal, against the decision of the Sheriff, to the Sheriff Principal. This decision is final.

Condition of Housing – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against the issue of a Demolition Notice for Housing within a Housing Renewal Area	Housing (Scotland) Act 2006	Can result in the order being cancelled	None.
	Hears appeals against the issue of a Demolition Order for Housing out-with a Housing Renewal Area	Housing (Scotland) Act 1987	Can result in the order being cancelled	There is a right of appeal against the decision of the Sheriff, to the Sheriff Principal.
	Hears appeals against the issue of a Closing Order, prohibiting the occupation of housing	Housing (Scotland) Act 1987	Can result in the Notice being cancelled	None.
	Hears appeals against the issue of a Work Notice, ordering the carrying out of works to bring housing up to a reasonable standard of repair	Housing (Scotland) Act 2006	Can result in the Notice being cancelled	There is a right of appeal against the decision of the Sheriff, to the Sheriff Principal.

Property Factors

9.53 In private housing developments and flatted accommodation where there are common areas, such as stairwells and gardens, the owners of the properties generally have responsibility for the repair and maintenance of those areas. It is common for a property factor to be appointed to organise common repairs and maintenance on behalf of the owners in return for a fee.

The Scottish Property Factors Register

9.54 The Property Factors (Scotland) Act 2011 created the Scottish Property Factor Register. Registration is compulsory to carry out business as a property factor in Scotland and carries a “fit

²⁷⁴ *Ibid*, s.64

and proper person” test.²⁷⁵ The Register is maintained by the Scottish Ministers. The Act also created a statutory Code of Conduct to which all factors must adhere.²⁷⁶

9.55 The Scottish Ministers assess applications for registration against the statutory test, and can remove a property factor from the Register if they believe that the property factor no longer meets that test or has otherwise failed in its duties and/or conduct.

9.56 There is a right of appeal against removal from or refusal of inclusion on the Register.²⁷⁷ This is to the Sheriff Court, and must be made within 21 days. There is a further right of appeal to the Sheriff Principal against decisions of the Sheriff, and this decision is final.

The Homeowner Housing Panel (hohp)

9.57 The hohp was established by the Property Factors (Scotland) Act 2011 to resolve disputes between homeowners and property factors.²⁷⁸ It applies to all residential property and land managers.

9.58 The Act allows homeowners to apply to the hohp for a determination as to whether their property factor has failed in its factoring duties under the 2011 Act and/or failed to adhere to the statutory Code of Conduct.

9.59 The hohp is empowered to take enforcement action if it believes that a property factor has failed to carry out its duties properly. The hohp has been piloting a mediation service to try to resolve disputes between homeowners and property factors without the need to go to a hearing, which is voluntary and requires both parties to agree to it.

9.60 There is a limited onward right of appeal against decisions of the hohp. This is to the Sheriff Court, on a point of law only.²⁷⁹

Property Factors – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against a property factor registration decision of the Scottish Ministers	Property Factors (Scotland) Act 2011	The Sheriff Court can direct that the property factor is registered, or returned to the register	There is a right of appeal against the decision of the Sheriff, to the Sheriff Principal.
The Homeowner Housing Panel (hohp)	Hears disputes between homeowners and their property factors relating to failures to carry out factoring duties or failure to adhere to the statutory Code of Conduct	Property Factors (Scotland) Act 2011	Can find a factor in breach of their duties and can issue an enforcement order to ensure the duties are carried out	There is a limited onward right of appeal to the Sheriff Court, on a point of law only.

²⁷⁵ The Property Factors (Scotland) Act 2011, s.4

²⁷⁶ *Ibid*, s.14

²⁷⁷ *Ibid*, s.11

²⁷⁸ *Ibid*, s.16

²⁷⁹ *Ibid*, s.22

Homelessness

9.61 Homelessness legislation in Scotland places Local Authorities under a duty to assess whether persons are homeless, or at risk of becoming homeless, and whether they are eligible for assistance under that legislative framework.²⁸⁰ The framework provides that should someone be assessed as unintentionally homeless, then there is a right to accommodation. This framework also applies to people who are at risk of becoming homeless within the next two months.²⁸¹

The Assessment Process

9.62 Whilst the Council is making its inquiries, the person will be offered temporary accommodation. The Council will first look at whether or not the person has become intentionally or unintentionally homeless.²⁸² A person may be assessed as intentionally homeless if they leave a home voluntarily or continually fail to pay rent. The Council will then look at whether the person has a local connection to the Council area.²⁸³ The Council may refer a person to another Council if it deems them to have no connection to its own particular area, but this cannot be done if this would place the person at risk of domestic abuse.²⁸⁴ The Council will inform the person of their decision in writing, and should the person pass the tests then they will have a right to permanent accommodation.

9.63 The Local Authority may offer accommodation from its own social housing stock, but can also request a Registered Social Landlord to provide a home for the person.²⁸⁵ If the RSL and Local Authority disagree on this, the framework provides for arbitration to resolve the dispute.²⁸⁶

Redress

9.64 The Housing (Scotland) Act 2001 introduced a statutory review mechanism for homelessness decisions of Local Authorities.²⁸⁷ It is an internal review, which is conducted by a senior member of staff who was uninvolved in the initial decision. The following decisions can all be reviewed: whether the Council deems a person eligible for support; whether the Council deems them homeless or threatened with homelessness; whether they are intentionally homeless; if the Council refers a person on to another Authority area; the type of accommodation the Council offers.

9.65 There is no right to external review or appeal as regards these decisions. However, an action for Judicial Review could be raised in the Court of Session.²⁸⁸

²⁸⁰ The Housing (Scotland) Act 1987

²⁸¹ *Ibid*, s.24

²⁸² *Ibid*, s.26

²⁸³ *Ibid*, s.27

²⁸⁴ *Ibid*, s.20(2)(aa)(vi)

²⁸⁵ The Housing (Scotland) Act 2001, s.5

²⁸⁶ *Ibid*, s.6

²⁸⁷ The Housing (Scotland) Act 1987, s.35A

²⁸⁸ For further information, see: *Chapter 3 – Judicial Review*

Homelessness – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
Local Authority: Homelessness Internal Review	Reviews decisions, when requested, of Local Authorities in relation to homelessness determinations and offers of support	Housing (Scotland) Act 1987	Can find the initial decision was wrong and can replace it with a fresh decision; can offer alternative accommodation or support	None.

Land and Property

9.66 This section considers the compulsory purchase of land, and disputes arising over title to land. Note that agricultural land is dealt with at sections 16.43-16.64 in *Chapter 16 – Food and Agriculture*. Similarly, land designated as natural parks and sites of special scientific interest, for example, are dealt with at sections 10.37-10.40 in *Chapter 10 – Environment, Heritage, Water and Waste Management*.

The Compulsory Purchase of Land and Property

9.67 A Compulsory Purchase Order (CPO) can be made by various public authorities in Scotland to buy a property without the owner's consent, if it is in the public interest to do so. Most commonly, CPOs are made by Local Authorities for the construction of projects for the benefit of the public, such as local roads, housing developments or schools.²⁸⁹ They can also be made by executive agencies of the Scottish Government, such as Transport Scotland. The procedure followed by Transport Scotland is based on the Roads (Scotland) Act 1984, but generally follows the procedures outlined below. The procedure for the compulsory purchase of land in relation to certain other transport works is different²⁹⁰, and this is detailed at sections 11.22-11.27 in *Chapter 11 - Transport, Driving and Traffic Management*.

The CPO Process

9.68 To complete the compulsory purchase, all CPOs must be confirmed or signed off by the Scottish Ministers. The Ministers will take into consideration the interests of the property owners and the potential public benefit before coming to a decision.

9.69 Initially, the public authority is responsible for drafting the CPO and identifying the property, and the owners of the property, to which the order is to have effect. The Authority will then give Notice to the owners of the property affected that they intend to compulsorily purchase the property. This will inform the owners of their right to object to the proposed Order. The Authority, after the period of notice, will send the proposed Order and any objections to the Scottish Ministers for their consideration. In practice, this is done by way of the Directorate for Planning and Environmental Appeals (DPEA). Where there have been objections, the DPEA will organise a Public Local Inquiry or a Hearing. Objectors can give evidence to these if they wish. The DPEA will

²⁸⁹ The Town and Country Planning (Scotland) Act 1997, s.189

²⁹⁰ Such projects include new railways, tramways and canals covered by the Transport and Works (Scotland) Act 2007, whereby compulsory purchase of land can be obtained as part of a TAWS Order granted by Scottish Ministers.

then prepare a report with recommendations to the Scottish Ministers, who can choose to accept the recommendations or not. If the Order is confirmed, then the owners will be served with a Notice to inform them, and the Authority will begin the legal process of acquiring ownership.

9.70 At this stage, there is a right of appeal against the decision of the Scottish Ministers. This is only on the grounds that the CPO is invalid, and the appeal is to the Court of Session. This can result in cancellation of the Order.

The Compensation Process

9.71 In general, the owners of a property subject to a CPO should be compensated so that they are in the same financial position they were in before the CPO was confirmed. This usually involves a payment of compensation from the Authority of the market value of the property before the threat of CPO was made. This can be negotiated with the relevant Authority. Compensation may also be granted for disturbance, loss of business earnings and reasonable fees paid to professionals as part of the process.

9.72 If a dispute arises as to the amount of compensation or payment offered, then the matter can be referred to the Lands Tribunal for Scotland. This will result in a determination of the compensation.

Compulsory Purchase Orders – Redress Processes				
Body	Remit	Legislative Basis	Powers/Forms of Redress	Onward Appeal or Review
Directorate of Planning and Environmental Appeals (DPEA) – Public Local Inquiry or Hearing	The DPEA will hold a Public Local Inquiry or Hearing if there are unresolved objections to the proposals	Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; Roads (Scotland) Act 1984; Town & Country Planning (Scotland) Act 1997	An independent reporter will provide recommendations to the Scottish Ministers on whether to confirm the CPO or otherwise	None as such, but objectors' views will be taken into account in the report and recommendations provided to the Scottish Ministers.
The Scottish Ministers	Confirms or rejects the CPO	Town and Country Planning (Scotland) Act 1997 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; Roads (Scotland) Act 1984; Town and Country Planning (Scotland) Act 1997	The Scottish Ministers will decide, following consideration of all unresolved objections and the recommendations from the DPEA, whether or not to confirm the CPO	The property owners have a right to appeal the decision of the Scottish Ministers, to the Court of Session, if they believe that the CPO is invalid.
The Lands Tribunal for Scotland	Hears cases of disputed compensation offered as a result of a compulsory purchase order	Land Compensation (Scotland) Act 1963; Land Compensation (Scotland) Act 1973	Can find a factor in breach of their duties and can issue an enforcement order to ensure the duties are carried out	There is a limited onward right of appeal to the Sheriff Court, on a point of law only.

Title to Land

9.73 Disputes can arise as to the title held over property. This can relate to conditions – real burdens or servitudes – contained in the title deeds, or can relate to disputes with the Keeper of the Registers of Scotland as to the registration of title to land.

a) Title Conditions

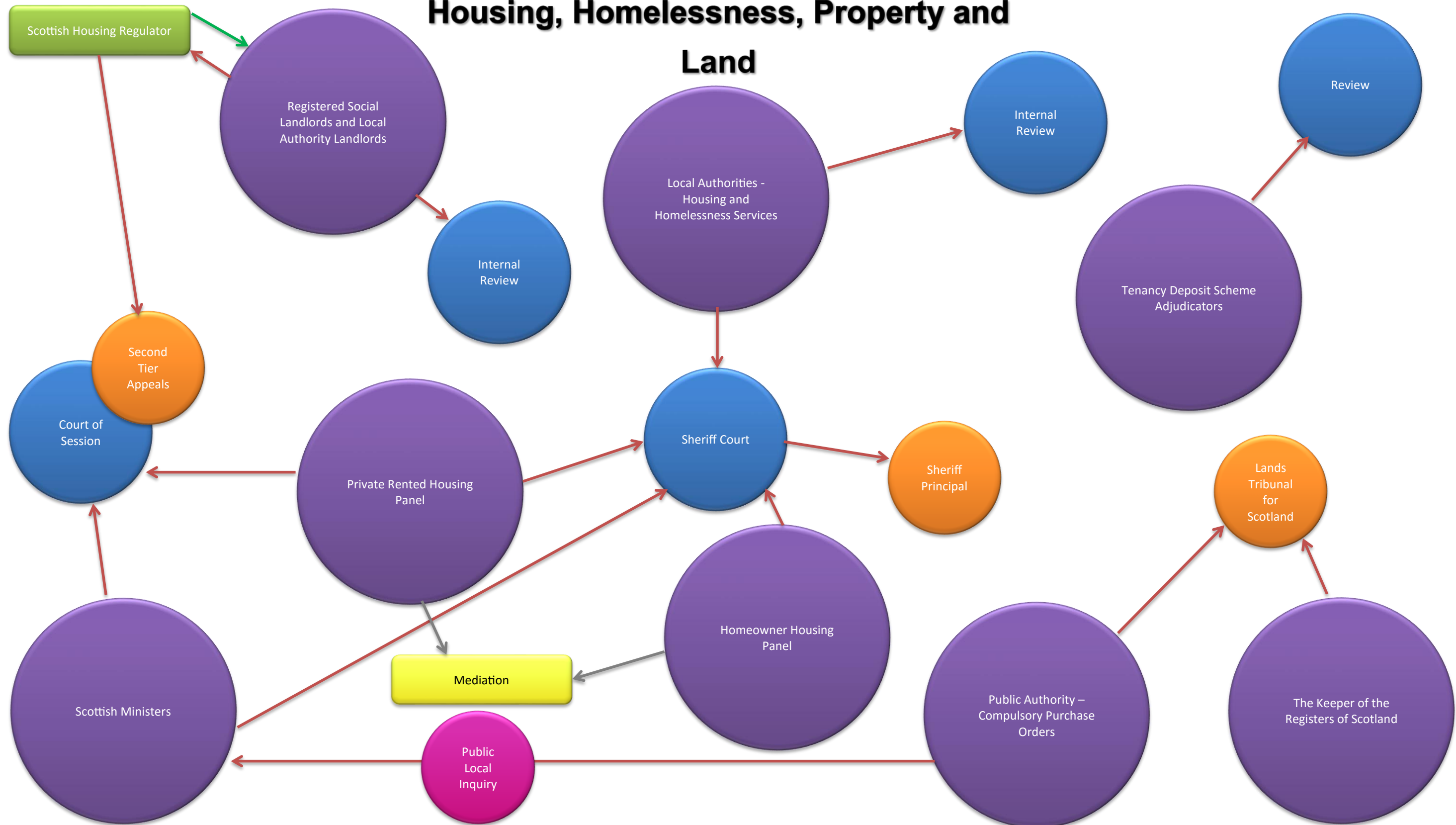
9.74 Persons aggrieved by conditions contained within the title deeds to property they own (or rent if the title conditions affect them) may apply to the Lands Tribunal for Scotland to have the condition(s) discharged or varied. Unopposed applications can be granted without a formal hearing. However, should an interested party (such as a benefited neighbouring proprietor) contest the application then the tribunal has the powers to determine the application.

b) Title Registration

9.75 Any interested person may appeal a decision of the Keeper of the Registers of Scotland to the Lands Tribunal for Scotland. This could relate to an inaccurate registration of title concerning the boundary of properties, for example.

Title Disputes – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Lands Tribunal for Scotland	Hears applications or discharge or vary title conditions; and hears disputes regarding the registered title to property	Title Conditions (Scotland) Act 2003; Land Registration (Scotland) Act 1979; Land Registration (Scotland) Act 2012	Can vary or discharge title conditions; and can determine levels of indemnity to be paid to applicants as a result of inaccurate recording of title by the Keeper	None.

Housing, Homelessness, Property and Land



The Environment, Heritage, Water & Waste Management

Chapter 10

10.1 The environment, heritage, water and waste management are areas devolved to the Scottish Parliament. The Scottish Environment Protection Agency (SEPA) is the national environmental regulator and administers and monitors licences for activities which could impact upon the environment. Similarly, Marine Scotland administers licences for activities which could impact upon Scotland's sea environment, and Forestry Commission Scotland regulates and monitors the management of Scotland's forests.

10.2 In their capacity as Planning Authorities, Local Authorities also have a role in this area in regard to the consideration of consent for mineral workings and hazardous substances. The Planning Authorities are also responsible for environmental development and planning, including the preservation of trees and the control of high hedges.

10.3 Public water and sewerage services in Scotland are managed by Scottish Water for domestic customers and by several licensed providers for non-domestic customers, but all providers are regulated by the same regulators – the Water Industry Commission for Scotland and the Drinking Water Quality Regulator. Both are also generally subject to the same complaints procedures.²⁹¹

10.4 The promotion and protection of Scotland's natural and historic heritage – including its wildlife, landscapes and historically significant buildings – falls to the responsibility of Scottish Natural Heritage and Historic Environment Scotland. Both agencies regulate certain activities which may impact upon the natural or historic heritage.

²⁹¹ But only if the private companies opt-in to the jurisdiction of the Scottish Public Services Ombudsman, otherwise the complaint route differs. See Water at sections 10.26-10.31, below.

**First Instance Decision
Making Body**

**The Scottish Environment Protection Agency
(SEPA)**

Local Authorities

Marine Scotland

The Forestry Commission Scotland

Scottish Water

Scottish Natural Heritage

Historic Environment Scotland

Remit

Scotland's national environment regulator and improvement agency. Regulates and administers licences for activities which may impact upon the environment.

In their capacity as Planning Authorities, Local Authorities are responsible for approval of mineral workings consent and hazardous substances consent. They are also responsible for controlling and regulating environmental development and planning, including the preservation and planting of trees and the control of high hedges.

An agency of the Scottish Government, Marine Scotland is responsible for the administration of marine licences for certain activities in Scottish waters.

Manages and administers grants for the maintenance and creation of woodland, and is responsible for the regulation of private forestry, including the administration of licences for tree felling.

Publicly owned company which provides water & sewerage services to all domestic customers in Scotland, & is the wholesale provider of water to the non-domestic market. Manages & maintains the public water and sewerage infrastructure in Scotland & is responsible for the connection of new properties to the network.

The agency is responsible for the protection and improvement of Scotland's natural heritage, including its wildlife and landscapes. It regulates certain activities which may impact upon the natural heritage through the operation of licensing regimes.

The agency is responsible for the protection and improvement of Scotland's historic heritage. It regulates certain activities which may impact upon sites or buildings of historic importance.

The Scottish Environment Protection Agency (SEPA)

10.5 SEPA is Scotland's national environmental regulator. SEPA's general purpose is to carry out its functions for the purpose of protecting and improving the environment, including the sustainable management of natural resources.²⁹² One of the main duties of SEPA is to regulate and monitor activities that may have an impact upon the environment. In this role, the organisation is responsible for the granting of licences for certain regulated activities ranging from the operation of large industrial installations, to waste management activities to the disposal of radioactive waste.

Environmental Licensing

10.6 SEPA considers and decides upon applications for licences in the following main areas:

- **Pollution Prevention and Control:** operators of certain listed activities which are potentially harmful to water, air and land, or just air, require to apply for a permit from SEPA. There are a wide range of activities covered, including: the energy industry; waste management activities such as landfill and incineration; slaughterhouses; large scale pig and poultry farming; mineral industries; food and drink processing.²⁹³
- **Water Environment (groundwater, wetlands, watercourses, lochs, estuaries):** many activities that may have an effect on Scotland's water environment require authorisation. Such activities include: aquaculture; dams; engineering in, or in the vicinity of, certain parts of the water environment; abstraction; and discharge of potentially polluting substances into water.²⁹⁴
- **Waste Management:** activities involving the treatment, storage or disposal of controlled waste products require to be licensed or covered by an exemption.²⁹⁵
- **Radioactive Substances:** registration is required in order to store or use radioactive material and authorisation is required for the disposal of radioactive waste.²⁹⁶

Redress in respect of licensing decisions by SEPA

10.7 The appeal route for the environmental licensing decisions of SEPA is to the Scottish Ministers, by way of the Directorate for Planning and Environmental Appeals (DPEA).²⁹⁷ An aggrieved applicant can appeal to the DPEA should their application be refused, if unacceptable conditions are attached to the licence or if the licence is revoked or varied. The DPEA is also the appeal body for appeals against Notices of Enforcement Action by SEPA.

²⁹² Environment Act 1995, as amended

²⁹³ Pollution Prevention and Control (Scotland) Regulations 2012

²⁹⁴ Water Environment (Controlled Activities) (Scotland) Regulations 2011

²⁹⁵ Environmental Protection Act 1990 Part II, and Waste Management Licensing (Scotland) Regulations 2011

²⁹⁶ Radioactive Substances Act 1993

²⁹⁷ *Ibid* fn2-5, and Pollution Prevention and Control Act 1999

SEPA Licensing and Enforcement Action – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers by way of the Directorate for Planning and Environmental Appeals (DPEA)	Hears appeals against licensing decisions or enforcement notices issued by the Scottish Environment Protection Agency (SEPA)	Pollution Prevention and Control (Scotland) Regulations 2012; Water Environment (Controlled Activities) (Scotland) Regulations 2011; Waste Management Licensing (Scotland) Regulations 2011; Radioactive Substances Act 1993	The DPEA can uphold the appeal; uphold the original decision; uphold the decision subject to changes or conditions; or direct SEPA to make a different decision	There is an onward right of appeal to the Sheriff Court, but only in the case of licenses or permits granted under the Pollution Prevention and Control (Scotland) Regulations 2012.

Local Authorities and the Environment

10.8 Local Authorities in Scotland, in their capacity as Planning Authorities, are responsible for the granting of consent for mineral workings and the holding and use of hazardous substances.²⁹⁸ They are also responsible for controlling and regulating environmental development and planning, including the preservation and planting of trees²⁹⁹ and the control of high hedges.

Mineral Workings

10.9 Planning Authorities will consider applications for mineral workings according to their local development plans, as with all planning applications.³⁰⁰ Planning Authorities are under a duty to review mineral consent every fifteen years, and are also free to attach conditions upon any consent that they grant. Applicants have a right of appeal to the Scottish Ministers, by way of the Directorate for Planning and Environmental Appeals (DPEA) should they be aggrieved by refusal of an application or the attachment of conditions.³⁰¹

Hazardous Substances

10.10 Planning Authorities are also required to consider applications for the storage or use of Hazardous Substances. The aim is to ensure that the risk to the environment and public is at a minimum. Consent is required when the applicant proposes to store quantities of a hazardous substance above the controlled quantities specified in the regulations. Applicants have a right of appeal to the Scottish Ministers, by way of the DPEA if they are aggrieved by refusal of consent.³⁰²

²⁹⁸ Town and Country Planning (Scotland) Act 1997

²⁹⁹ See: *Chapter 8 – Development Management, Planning and Building Standards*, sections 8.15-8.16

³⁰⁰ *Ibid*, sections 8.3-8.10

³⁰¹ Town and Country Planning (Scotland) Act 1997

³⁰² Planning (Hazardous Substances) (Scotland) Act 1997, s.19

There is also a right of appeal to the DPEA in respect of enforcement action by the Planning Authority by way of a Hazardous Substances Contravention Notice.³⁰³

High Hedges

10.11 Where a hedge of above two metres in a neighbouring property is obstructing light, an aggrieved neighbour who has tried to resolve the dispute informally first, may then make an application to their Local Authority. If the Local Authority determines that the hedge constitutes a high hedge and that it is obstructing light, then it can issue an Enforcement Notice ordering that action is taken to reduce or remove the negative effects of the high hedge.³⁰⁴

10.12 There is a right of appeal for both the applicant and the recipient of the Notice.³⁰⁵ The applicant can appeal against a finding that the hedge causes no adverse effect, a determination that no action should be taken, and a withdrawal or variation to a Notice issued. The recipient of the Notice can appeal against it, and against a variation. This is to the Scottish Ministers, by way of the DPEA.

Local Authority Consents and Enforcement Action – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers – by way of the Directorate for Planning and Environmental Appeals (DPEA)	Hears appeals against consent decisions or enforcement notices issued by Local Authorities in relation to mineral workings or the storage or handling of hazardous substances	Town and Country Planning (Scotland) Act 1997; Planning (Hazardous Substances) (Scotland) Act 1997	The DPEA can find that the original decision was correct, or can issue a fresh decision. It can also vary or revoke any conditions upon a licence	There is a limited onward right of appeal to the Court of Session, on a point of law only.
	Hears appeals against decisions of a Local Authority in relation to High Hedges	High Hedges (Scotland) Act 2013	The DPEA can confirm or quash a Notice and any variations to it, and can decide to issue a Notice where this was refused	None.

³⁰³ *Ibid*

³⁰⁴ High Hedges (Scotland) Act 2013, s.8

³⁰⁵ *Ibid*, s.12

Marine Environment

10.13 Marine Scotland, a Directorate of the Scottish Government, is the body responsible for managing Scotland's seas and marine environment and regulating activities which may impact upon that environment.

Marine Licences

10.14 The Marine Scotland Licensing Operations Team provides a "one stop shop" for marine licence applications in Scotland.³⁰⁶ Such licences include:

- The deposit of substances and/or objects into the sea or onto the sea bed
- The removal of substances and/or objects from the sea or sea bed
- Construction or improvement works
- Dredging
- The deposit or use of explosives

10.15 Marine Scotland reserves the right to vary, revoke or suspend a licence as it sees fit.³⁰⁷ The agency also has enforcement powers which it can use to issue Notices on persons to stop or suspend certain activities, or to take certain steps as is deemed necessary to stop or prevent harm to the marine environment.³⁰⁸

10.16 A right of appeal exists for applicants who have had their application for a licence refused, or had their licence varied or revoked.³⁰⁹ Persons served with an enforcement Notice also have a right of appeal.³¹⁰ These appeals are to the Sheriff Court.

Marine Scotland Licensing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against licensing and enforcement decisions of the Marine Scotland Licensing Operations Team	Marine (Scotland) Act 2010; Marine Licensing Appeals (Scotland) Regulations 2011	The Sheriff can confirm the original decision, or can direct that a new decision is made. The Sheriff can also revoke or vary any enforcement Notice issued, or remit the case to Marine Scotland for a fresh decision	None.

³⁰⁶ Marine (Scotland) Act 2010 Part 4; Marine and Coastal Access Act 2009 Part 4

³⁰⁷ Marine (Scotland) Act 2010, s.30

³⁰⁸ *Ibid*, ss.43-44, 55 and 57

³⁰⁹ *Ibid*, s.38 and The Marine Licensing Appeals (Scotland) Regulations 2011, Regulation 3

³¹⁰ Marine (Scotland) Act 2010, s.61 and The Marine Licensing Appeals (Scotland) Regulations 2011, Regulation 4

Forestry

10.17 Forestry Commission Scotland (FCS) acts as the Forestry Directorate of the Scottish Government and reports directly to it.³¹¹ The body is responsible for the regulation, management and improvement of standards of Scotland's forestry.

10.18 As part of its responsibilities over forestry in Scotland, the Commission considers and issues licences for the felling of trees; considers and produces Environmental Impact Assessments and consent for projects which may impact upon the forestry environment; and maintains and administers a variety of grants for the promotion and maintenance of forestry.³¹² FCS works closely with the Scottish Government Rural Payments and Inspections Directorate in relation to grants and support. As such, FCS grants and support is dealt with generally at sections 16.37-16.42 in *Chapter 16 – Food and Agriculture*.

Tree Felling Licences

10.19 The licensing framework for tree felling is contained in the Forestry Act 1967, as amended.³¹³ FCS will decide whether to refuse, grant or grant with conditions attached, a licence authorising the felling of the tree/s in the application. Should the trees in question also happen to be covered by a Tree Preservation Order issued by a Planning Authority, then FCS will send its comments to the Planning Authority which will decide whether the felling licence should be granted instead.³¹⁴

10.20 FCS is also empowered to take enforcement action should a landowner fell trees without consent, or in breach of conditional consent:-

- The Commission may issue a Restocking Notice which can require the landowner to restock the land with trees as agreed by the Commission and can also require that those trees are maintained for a period of up to ten years.³¹⁵
- The Commission may serve an Enforcement Notice where there has been non-compliance with conditional felling consent or a restocking notice.³¹⁶

10.21 Decisions of FCS in relation to Tree Felling Licences and enforcement can be appealed to the Scottish Ministers.³¹⁷ FCS specifies the Forestry Minister for Scotland, which is in practice the Minister for Environment, Climate Change and Land Reform of the Scottish Government. The appeal will usually be investigated and considered by an Independent Reference Committee which will make recommendations to the Minister.³¹⁸

³¹¹ Forestry Act 1967

³¹² *Ibid*

³¹³ *Ibid*, Part 2

³¹⁴ Town and Country Planning (Scotland) Act 1997, Part 7; see also: *Chapter 8 – Development Management, Planning and Building Standards*, section 8.16

³¹⁵ Forestry Act 1967

³¹⁶ *Ibid*

³¹⁷ *Ibid*

³¹⁸ *Ibid*, s.27

Environmental Impact Assessments

10.22 FCS is also responsible for carrying out Environmental Impact Assessments (EIA) to determine whether consent should be granted for forestry projects which are deemed likely to significantly impact upon the forestry environment.³¹⁹ Such projects include: afforestation; deforestation; forest roads; and forestry quarries.

10.23 The Commission will base its decision on consent for the project on the EIA, and can also attach conditions on any consent it grants. The regulations allow appeals against the refusal of consent, or against any conditions imposed. There are rights of appeal for both the applicant and third parties.

10.24 The applicant can appeal to the Scottish Ministers against refusal, conditions or time constraints placed on the project.³²⁰ A third party who is aggrieved by the Commission's decision to grant consent can also appeal to the Court of Session.³²¹

10.25 The Commission also has enforcement powers in relation to EIA project consent, and can issue an Enforcement Notice where it is discovered that work has been carried out without consent or against conditions attached to the consent. The persons served with the Notice can appeal against it, again to the Scottish Ministers.³²²

Marine Scotland Licensing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers - Forestry Minister for Scotland, ie. The Minister for Environment, Climate Change and Land Reform of the Scottish Government	Hears appeals against decisions of the Commission in relation to Tree Felling Licences	Forestry Act 1967; The Town and Country Planning (Scotland) Act 1997	The Minister may decide that the original decision was correct, or may direct that a licence is granted. The Minister may attach, vary or revoke any conditions	None.
	Hears appeals against decisions and enforcement action of the Commission in relation to Environmental Impact Assessment Project Consent	Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999	The Minister may decide that the original decision was correct, or may direct that consent is granted. The Minister may attach, vary or revoke any conditions	None.

³¹⁹ Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999

³²⁰ *Ibid*, Regulation 17

³²¹ *Ibid*, Regulation 19

³²² *Ibid*, Regulation 21

Marine Scotland Licensing – Redress Processes (Continued)				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Court of Session	Hears appeals from third parties aggrieved by the decision of the Forestry Commission Scotland to grant consent for a forestry project by way of an Environmental Impact Assessment	Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999	The Court of Session can dismiss the appeal, or can allow it and substitute a decision of its own, or remit the case back to the Commission for a fresh decision	None.

Water and Sewerage

10.26 In Scotland, there are two types of service providers for water and sewerage services: domestic and non-domestic. For domestic water and sewerage services, there is one public service provider – Scottish Water.³²³ Scottish Water is a publicly owned company, and in addition to providing services to the vast majority of domestic properties (all except for those with private water and sewerage supplies), the corporation also owns the entirety of the water and sewerage infrastructure in Scotland. Local Authorities also have a role in the water industry in Scotland. Councils are responsible for ensuring that all residents within their area have access to a satisfactory and wholesome supply of fresh water and can carry out examinations of private supplies to ensure that these standards are met.³²⁴

Water and Sewerage Supply

10.27 Scottish Water is the sole provider for domestic properties, other than those which have their own private supply. For non-domestic properties, competition was introduced to the sector in 2007. The default provider was Business Stream, a subsidiary of Scottish Water, but other providers are now available.

10.28 In relation to complaints against Scottish Water, the Scottish Public Services Ombudsman (SPSO) is the final body for complaint handling, once Scottish Water's internal complaints process has been followed. The SPSO also has jurisdiction to hear complaints against private suppliers of water for non-domestic customers if those companies have opted into its jurisdiction.³²⁵ Business Stream, which is a subsidiary of Scottish Water and is the largest licensed provider, has opted in. For the remaining non-domestic suppliers of water and sewerage services, complaints are handled by the Water Industry Commission for Scotland.³²⁶

³²³ Water Industry (Scotland) Act 2002

³²⁴ Water (Scotland) Act 1980

³²⁵ See: http://www.watercommission.co.uk/view_SPSO.aspx

³²⁶ *Ibid*

Connection to the Public Network

10.29 For new properties, or properties which have their own private water supply and sewerage system but which wish to be connected to the public system, applications can be made to Scottish Water.³²⁷ The corporation will consider all applications based on whether the cost of connecting the property to the public infrastructure is reasonable. Should the application be refused, or a dispute arise, then the applicant is entitled to apply to the regulator – The Water Industry Commission for Scotland – for a “reasonable-cost determination.”³²⁸ This will determine whether Scottish Water has properly determined reasonable cost, and whether it has discharged its duty to make network connections available. The decision of the Commission is final, and Scottish Water is bound to follow its directions.

Water Quality

10.30 Local Authorities may determine that a property with a private water supply does not have sufficient access to a wholesome supply of fresh water necessary for domestic purposes, and have the authority to serve a notice on the owners to take remedial action within a specified time.³²⁹ Alternatively, the Local Authority may take the remedial action itself and serve a notice requiring the owners to reimburse the costs of the actions.³³⁰ There is a right of appeal against the notice or the time period given for action in the notice. This is similarly to the Scottish Ministers, by way of the Directorate for Planning and Environmental Appeals (DPEA).³³¹ Again, a limited onward right of appeal exists from the DPEA to the Court of Session, but on a point of law only.³³²

10.31 The Drinking Water Quality Regulator in Scotland (DWQR) also plays a role here. The DWQR is the national regulator for water quality. As part of its remit, it ensures that Local Authorities are discharging their duty to inspect private water supplies, and also conducts tests on the water provided to the public supply by Scottish Water. Complaints about the quality of water in the public supply should, in the first instance, be made to Scottish Water. If this does not resolve the water quality issue, then a complaint can be made to the DWQR who can take action to ensure that Scottish Water resolve the matter.

³²⁷ Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015

³²⁸ *Ibid*

³²⁹ Water (Scotland) Act 1980 s.76G

³³⁰ *Ibid*

³³¹ *Ibid*

³³² *Ibid*

Water and Sewerage Supply – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of Scottish Water not to connect a property to the public water and sewerage system based on their determination of “reasonable cost”	Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2015	Can decide that Scottish Water made the correct decision or can direct that Scottish Water connect the property to the public system	None.
The Scottish Ministers - by way of the DPEA	Hears appeals against Water Quality notices issued by a Local Authority	Water (Scotland) Act 1980	Can decide that the notice should be revoked, or can vary the time limits for remedial action imposed by the notice	There is a limited onward right of appeal to the Court of Session, on a point of law.
Drinking Water Quality Regulator in Scotland	Regulates the drinking water quality in Scotland & can take complaints in the final instance regarding the public supply	Water (Scotland) Act 2002	Can take enforcement action to ensure that Scottish Water takes remedial action to resolve a water quality complaint	None.
The Scottish Public Services Ombudsman	Hears complaints regarding maladministration and service failure by Scottish Water in regard to the public water and sewerage system, <i>and</i> by those private companies that have opted into its jurisdiction for non-domestic water services	Water (Scotland) Act 2002	Can take enforcement action to ensure that Scottish Water takes remedial action to resolve a water quality complaint	None.

Natural Heritage

10.32 Scotland’s natural heritage includes its wildlife, habitats and landscapes. Scottish Natural Heritage (SNH) is the public body responsible for ensuring the protection, promotion and improvement of Scotland’s natural heritage. It does this through the licensing and regulation of certain activities which may impact upon the natural heritage.

Species Licensing

10.33 A Species Licence allows an individual to carry out certain activities in relation to protected species that would otherwise be a breach of wildlife protection law.³³³ There are a number of licenses which can be applied for relating to different classes of protected species. SNH has the authority to approve or reject an application, and to attach any conditions as it sees fit. It also reserves the right to revoke or vary a licence it has granted.

³³³ Wildlife and Countryside Act 1981, s.16

10.34 For the majority of species licenses, there is no right to appeal or to request review of a SNH decision. However, SNH operate an appeals procedure for aggrieved parties in relation to restrictions placed on a General Licence.³³⁴ A General Licence relates to a class of actions that can be taken which affect birds. Should an applicant or interested party be aggrieved at a decision to attach restrictions on the licence – for example, excluding areas of land from which the licence has effect – then there is an internal right of appeal to SNH’s Director of Policy and Advice. There are no further rights of appeal.

Species Control Orders

10.35 Non-native species may threaten indigenous species or the natural heritage. SNH, along with other relevant bodies,³³⁵ has the power to enter into a Voluntary Species Control Agreement with landowners in order to manage and control the establishment of certain non-native species. Where this agreement fails, or the landowner otherwise fails to act in accordance with it, SNH has the power to issue a Species Control Order.³³⁶ The Order requires the landowner to take certain actions, the breach of which can result in criminal liability.

10.36 There is a right of appeal for the landowner against the issue of an Order, or against the terms of the Order.³³⁷ This is to the Sheriff Court, which can confirm the Order, substitute it with its own Order, or direct SNH (or other relevant body) to revoke or amend the Order as it sees fit. There is a limited onward right of appeal against the Sheriff’s decision to the Court of Session, on a point of law only.³³⁸

Protected Areas

10.37 There are a number of designations which can protect an area of land from activities or developments which could harm the natural heritage. These include designation as a Special Protected Area or Special Area of Conservation under European regulations, or as a Nature Reserve or Site of Special Scientific Interest. Under planning legislation, SNH is a statutory consultee for any development within these protected areas and will make comments regarding the impact of the proposal on the land.³³⁹

10.38 In relation to Sites of Special Scientific Interest, SNH also licence activities which may impact upon the natural features of the site, and take a role in helping in the management of the site.³⁴⁰ If the site requires on-going management to ensure that the natural heritage of the area is protected, SNH may offer a management agreement. This can involve compensation for carrying out the management.

³³⁴ Scottish Natural Heritage, *General Licence Restriction: Framework for Implementing Restrictions* (Oct, 2014), available at: <http://www.snh.gov.uk/docs/A1417398.pdf>

³³⁵ These Orders can be made by the following bodies: Scottish Natural Heritage; the Scottish Environment Protection Agency; Marine Scotland; and the Forestry Commission Scotland

³³⁶ Wildlife and Countryside Act 1981, s.14D-14E

³³⁷ *Ibid*, s.14H

³³⁸ *Ibid*, s.14H(5)

³³⁹ See: *Chapter 8 – Development Management, Planning and Building Standards*, section 8.8

³⁴⁰ Nature Conservation (Scotland) Act 2004, ss.16-17

10.39 There is a right of appeal against decisions of SNH in relation to Sites of Special Scientific Interest.³⁴¹ These decisions include those relating to consent to carry out activities or development of the land and refusal to offer a management agreement. The appeal is to the Scottish Land Court.

10.40 In relation to land which is designated as a Site of Special Scientific Interest, land bordering that site or land which is considered to be associated with that site, SNH may propose to the Scottish Ministers that a Land Management Order is put in place.³⁴² This Order is available where a management agreement between the owner(s)/occupier(s) of the land and SNH has failed to be agreed, or where the agreement has been breached. The Scottish Ministers can make the Order if it deems it necessary for the protection and management of the natural features of the site. There is a right of appeal against the decision of the Scottish Ministers to impose a Land Management Order, and this is to the Scottish Land Court.³⁴³

Scottish Natural Heritage – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Scottish Natural Heritage – Director of Policy and Advice	Hears appeals against restrictions placed on General Licences under the species licensing regulations	Wildlife and Countryside Act 1981	The Director can confirm the restrictions, or lift them	None.
The Sheriff Court	Hears appeals against the issue, or terms attached to, Species Control Orders issued by SNH (or other relevant bodies)	Wildlife and Countryside Act 1981	Can confirm the Order, substitute it with another Order, or direct SNH (or another relevant body) to revoke or modify the Order	There is a limited onward right of appeal to the Court of Session, on a point of law only.
Scottish Land Court	Hears appeals against decisions of SNH and the Scottish Ministers in relation to Sites of Special Scientific Interest and Land Management	Nature Conservation (Scotland) Act 2004	Can dismiss the appeal, or quash any decisions of SNH, and can direct SNH to make a different decision	None.

³⁴¹ *Ibid*, s.18

³⁴² *Ibid*, s.30

³⁴³ *Ibid*, s.34

Historical Heritage

10.41 Historic Environment Scotland (HES) is the public body responsible for safeguarding Scotland's historic heritage - including buildings, battlefields and monuments of historical importance.

Listed Buildings

10.42 HES may designate a building as a listed building if it is of historical importance.³⁴⁴ "Listing" has the effect of restricting the planning and building work that may be done to the building in efforts to preserve its historic heritage. Applications to make changes to the building can be made by obtaining Listed Building Consent from the relevant Planning Authority, where HES will be a statutory consultee and give its recommendations on the application.³⁴⁵

10.43 The owner, occupier or tenant of a listed building can appeal against an HES decision to include a building on the schedule of listed buildings.³⁴⁶ This is to the Scottish Ministers, by way of the Directorate for Planning and Environmental Appeals (DPEA). There is a further onward right of appeal to the Court of Session, but only on the grounds that the appeal decision does not comply with the principal Act.³⁴⁷

Scheduled Monuments

10.44 HES may list a monument as a Scheduled Monument if it is of historic importance.³⁴⁸ This will restrict the planning and building work that can be done to, and nearby, the monument. There is a right of appeal against the decision of HES to add a monument to the schedule.³⁴⁹ This is to the Scottish Ministers, by way of the DPEA.

10.45 Applications can also be made to HES for Scheduled Monument Consent which will allow certain works to be carried out on or around a scheduled monument.³⁵⁰ The owner, occupier or tenant of the monument can appeal a decision to refuse consent to the DPEA.³⁵¹

10.46 Where work is carried out without consent, HES can serve an Enforcement Notice.³⁵² There is a right of appeal against the issue of an Enforcement Notice and this is also to the DPEA.³⁵³

10.47 There is a limited further right of appeal in regard to the above appeal decisions of the DPEA to the Court of Session, but only on the grounds that the appeal decision does not comply with the principal Act.³⁵⁴

³⁴⁴ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.1

³⁴⁵ See: *Chapter 8 – Development Management, Planning and Building Standards*, sections 8.8 and 8.15-8.16

³⁴⁶ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.5B

³⁴⁷ *Ibid*, s.5C(4) and ss.57-58. The principal Act being the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

³⁴⁸ Ancient Monuments and Archaeological Areas Act 1979, s.1

³⁴⁹ *Ibid*, s.1C

³⁵⁰ *Ibid*, s.3

³⁵¹ *Ibid*, s.4B

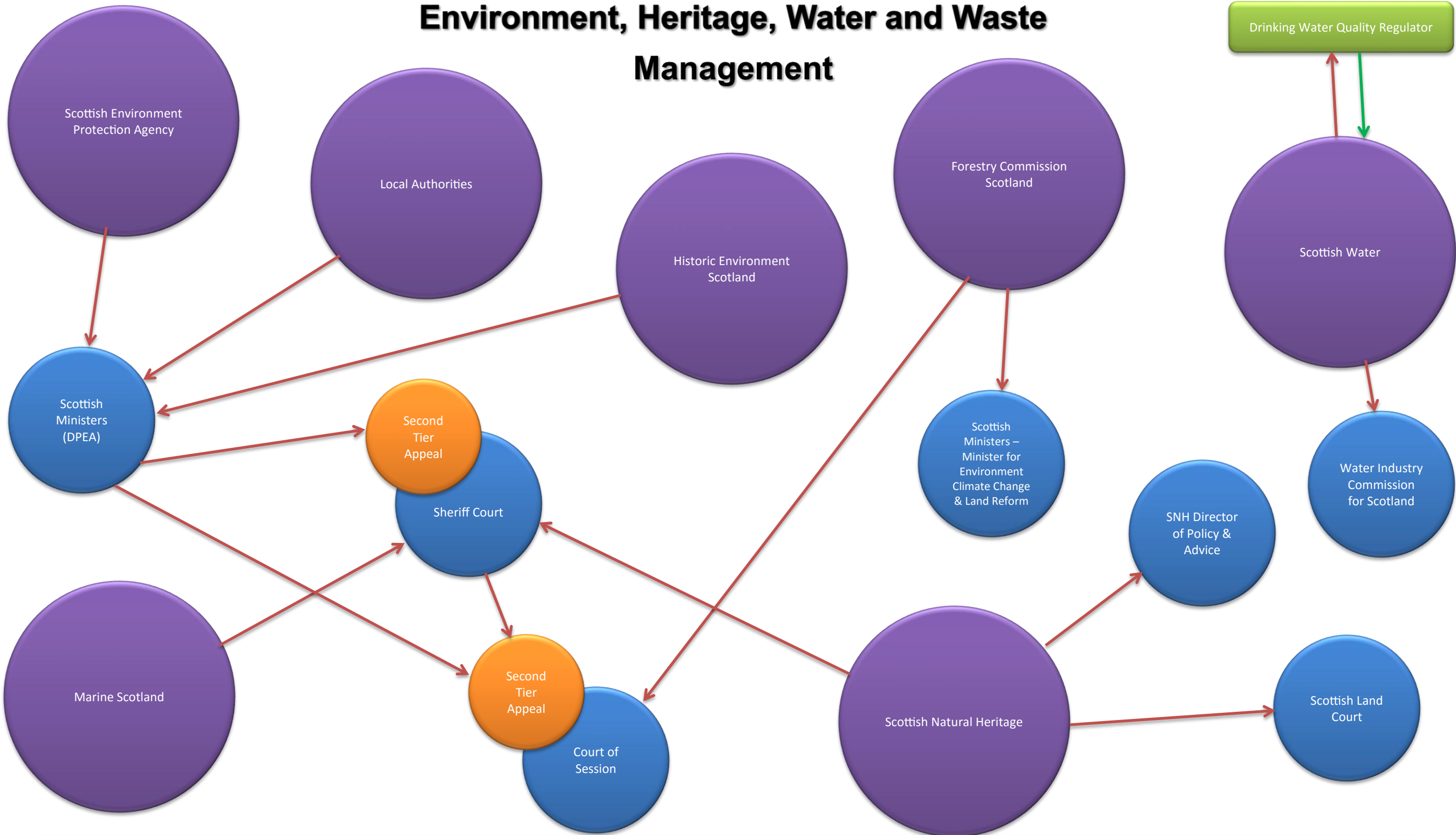
³⁵² *Ibid*, s.9A

³⁵³ *Ibid*, s.9C and s.55

³⁵⁴ *Ibid*, ss.1D, 4D, 9CA and 55. The principal Act being the Ancient Monuments and Archaeological Areas Act 1979

Historic Environment Scotland – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers – by way of the Directorate for Planning and Environmental Appeals (DPEA)	Hears appeals against decisions of HES to designate a building as a Listed Building	Town and Country Planning (Scotland) Act 1997	Can confirm the listing, or quash the decision.	There is a limited onward right of appeal to the Court of Session, but only on the grounds that the appeal decision does not comply with the principal Act.
	Hears appeals against decisions of HES in relation to Scheduled Monument listing and enforcement action	Ancient Monuments and Archaeological Areas Act 1979	Can confirm the listing, or quash the decision; and can confirm the Enforcement Notice, quash it, or vary it.	There is a limited onward right of appeal to the Court of Session, but only on the grounds that the appeal decision does not comply with the principal Act.

Environment, Heritage, Water and Waste Management



Initial Decision Making Body

First Tier Complaint/Review/Appeal Body

Second Tier Complaint/Review/Appeal Body

Third Tier Complaint/Review/Appeal Body



Route of Complaint/Review/Appeal



Body can take independent action



Regulatory/Oversight Body



Alternative Methods of Dispute Resolution (ADR)



Route of ADR

Transport, Driving & Traffic Management

Chapter 11

11.1 Transport spans both devolved and reserved matters. The Scottish road network, bus policy, ports and harbours are devolved matters. Railways, air regulation and transport, and other aspects of road transport and regulation are reserved.

11.2 This chapter considers 1) the role of Public Authorities in local road, trunk road and motorway construction, and also in the construction of new railways, tramways and inland waterways; 2) the responsibility of Local Authorities for local road, traffic and parking management; and 3) the role of Public Authorities in driving and vehicle standards, and vehicle licensing.

First Instance Decision Making Body	Remit
Local Authorities, in their capacity as local Roads Authorities and Traffic Authorities	As Roads Authorities, are responsible for the construction and maintenance of local roads (which are not part of the trunk road network). As Traffic Authorities, are responsible for the provision or construction of traffic calming measures and traffic regulation. Local Authorities can also be responsible for the operation of decriminalised parking and bus lane enforcement schemes.
The Scottish Ministers	The Scottish Ministers are the Roads Authority in respect of the trunk road network. The Ministers are also responsible for confirming orders made in relation to the delivery of certain road projects, traffic regulations, compulsory purchase orders, and for assessing applications for certain other transport works.
Transport Scotland, acting on behalf of the Scottish Ministers	As the national transport agency for Scotland, Transport Scotland acts on behalf of the Scottish Ministers in the delivery of trunk road construction and maintenance, and other major transport infrastructure projects.
The Traffic Commissioners for Great Britain	The Commissioners form the Great Britain wide regulator and licensing authority for the operators of certain vehicles and public transport services.
The Driving and Vehicle Standards Agency (DVSA)	The DVSA is responsible for setting the minimum standards for driving and vehicles throughout Great Britain; for the testing of learner drivers and minimum-standard vehicle road-worthiness; and for the maintenance of a register of approved driving instructors.
The Driving and Vehicle Licensing Agency (DVLA)	The DVLA is responsible for maintaining a register of drivers and vehicles throughout the UK; and the issue and revocation of driving licences throughout Great Britain.

Public Authority Transport and Road Works

11.3 A number of Public Authorities can construct or improve transport and road networks for the benefit of the public. It should be noted that this section deals only with the construction and improvement of transport networks by Public Authorities. A different regime covers the private construction of roads (for the purpose of, for example, a housing development) and this is detailed at sections 8.25-8.32 in *Chapter 8 – Development Management, Planning and Building Standards*. In addition, the construction and improvement of roads will often entail the compulsory purchase of land. That matter is dealt with in detail in *Chapter 9 – Housing, Property and Land* at sections 9.67-9.72, and will not be dealt with further here.

11.4 In terms of major road infrastructure projects – such as motorways or works to the trunk road network – the Scottish Ministers are the relevant Roads Authority, with Transport Scotland taking the lead on delivery of the projects on their behalf. For local road projects, it is Local Authorities which are the relevant Roads Authorities, and they take the lead on delivering these projects.

Local Road Works

11.5 Local Authorities, in their capacity as Roads Authorities, are responsible for the construction, improvement and maintenance of public roads within their areas. The Roads Authorities have the statutory powers to make the improvements or construct new roads as they see necessary.³⁵⁵

11.6 In order to proceed to construct or improve a road, Local Authorities, unlike in cases of private construction of roads³⁵⁶, do not require to obtain Roads Construction Consent. However, Local Authorities *do* require to obtain planning permission.³⁵⁷ This is obtained from themselves, as the Planning Authority. Certain regulations apply in such cases where the Authority has an interest in an application. In these cases, if the Authority is minded to grant planning permission, and 1) the application is contrary to the Development Plan; and/or 2) a substantial number of objections are received; then the Scottish Ministers must be notified.³⁵⁸

11.7 The Scottish Ministers could “call-in” the application and determine it themselves.³⁵⁹ There are no third party rights to appeal or to request a review of a planning decision.³⁶⁰ The only potential remedy for an aggrieved objector, for example, would be to raise Judicial Review proceedings.³⁶¹

Trunk Road and Major Road Project Works

11.8 The Scottish Ministers are the Roads Authority in respect of trunk roads and the wider trunk road network. Transport Scotland, acting on behalf of the Scottish Ministers, takes the lead on the

³⁵⁵ Roads (Scotland) Act 1984 s.20

³⁵⁶ See: *Chapter 8 – Development Management, Planning and Building Standards*, sections 8.25-8.32

³⁵⁷ The Town and Country Planning (Scotland) Act 1997, s.26; unless the proposed works are simply improvements within the boundaries of the existing road.

³⁵⁸ The Town and Country Planning (Notification of Applications) (Scotland) Directions 2009

³⁵⁹ The Town and Country Planning (Scotland) Act 1997, s.46

³⁶⁰ See: *Chapter 8 – Development Management, Planning and Building Standards*, sections 8.18-8.19

³⁶¹ For further information, see: *Chapter 3 – Judicial Review*

delivery of trunk road construction and maintenance.³⁶² The Scottish Ministers derive the responsibility and powers in the construction of roads and road improvements from the Roads (Scotland) Act 1984.³⁶³ Unlike construction of roads by Local Authorities, planning legislation classifies roads construction or maintenance by the Scottish Ministers as “permitted development”, thereby dispensing with the need to obtain planning permission.³⁶⁴ Instead, a separate scheme operates under the 1984 Act.³⁶⁵

11.9 An Order must be promoted by the Scottish Ministers, and Transport Scotland does this on their behalf. Further, Notice detailing the proposals must be served upon the owners or occupiers of any land which the proposals affect, the Local Authorities in whose area the Orders are to have effect, and certain other Public Authorities.³⁶⁶ Those notified are termed “statutory consultees”.

11.10 The proposals must also be made publicly available and a period for consultation must be held. Anyone can comment on, or make an objection to the proposals during the consultation period. The Scottish Ministers will attempt to resolve objections before the end of the consultation period. If there remain unresolved objections from any statutory consultees, then the matter must be referred to the Directorate for Planning and Environmental Appeals (DPEA) which will facilitate a Public Local Inquiry.³⁶⁷ The Ministers have the discretion to dispense with a Public Local Inquiry if there are no unresolved objections from statutory consultees,³⁶⁸ but can still hold such an Inquiry if a large number of non-statutory objections are received, for example.

11.11 The Inquiry will involve a reporter hearing the case. The reporter will then produce recommendations for the Scottish Ministers, who will have the final say on whether or not to confirm the Order. The Scottish Ministers may decide that the Order should be confirmed but in a modified way, in which case the Order will be finalised accordingly.

11.12 If no Public Local Inquiry is to be held, the Scottish Ministers can decide themselves – after consideration of any non-statutory objections – whether to confirm the Order, or otherwise.

11.13 There is a right to challenge the confirmation of an Order by the Scottish Ministers. This can only be on the grounds that the Order is invalid or that the Regulations have not been complied with, and the appeal is to the Court of Session.³⁶⁹

Other Road Orders

11.14 Certain other Roads Orders can be made by Local Authorities and the Scottish Ministers respectively, as Roads Authority.³⁷⁰ These are set out below.

³⁶² *Ibid*, s.19

³⁶³ *Ibid*

³⁶⁴ Town and Country Planning (General Permitted Development) (Scotland) Order 1992, Class 3

³⁶⁵ Roads (Scotland) Act 1984, s.5 and Schedule 1. See also: Special Road Schemes in terms of s.9 of the 1984 Act, which follows the same procedure as laid out in Schedule 1.

³⁶⁶ *Ibid*, Schedule 1; such Authorities include: Scottish Water, Scottish Natural Heritage, and the Scottish Environment Protection Agency

³⁶⁷ *Ibid*

³⁶⁸ *Ibid*, Schedule 1, paragraph 5

³⁶⁹ *Ibid*, Schedule 2

³⁷⁰ *Ibid*, ss.12, 68, 69 and 152(2)

a) Side Road Order

11.15 The Roads Authority (both Local Authorities and Scottish Ministers) can make a Side Road Order, which provides for wide ranging powers to stop-up, divert, improve or alter any side road which crosses, enters or will be affected by the construction or improvement of another main road. Where the Roads Authority in question is the Scottish Ministers, the procedure for making this Order must follow that specified at sections 11.9-11.13, above.³⁷¹ Where it is the Local Authority, the Order must be confirmed by the Scottish Ministers, who will take into account any objections received.

11.16 There is a right to challenge the confirmation of such an Order, on the grounds that it is invalid or that the Regulations have not been complied with. This is to the Court of Session.³⁷²

b) Stopping-Up Order and Redetermination of Public Rights of Passage

11.17 The Roads Authority also has the power to “stop-up” a road.³⁷³ This can be done if the road has become dangerous in some way, or the road will become unnecessary as a result of other road improvements or construction. Similarly, the Roads Authority has certain powers to stop-up a private access from a road to other land, if it believes that the access poses a danger or potential danger.³⁷⁴

11.18 The Roads Authority also reserves the right to re-determine certain public rights of passage over public roads.³⁷⁵ For example, the Authority may wish to restrict vehicular traffic on a certain road, but preserve the right of way for pedestrians and cyclists.

11.19 Roads Authorities must follow a statutory procedure for the making of Stopping-Up and Redetermination Orders.³⁷⁶ The regulations mandate a period of consultation and advertisement for the proposed Order. Notice must also be given to certain Public Authorities and the owners of any land to be affected. Anyone can object to the proposed Order.³⁷⁷

11.20 If objections remain outstanding at the end of the consultation then, where the Roads Authority is the Local Authority, the Order must be referred to the Scottish Ministers for determination.³⁷⁸ If the Roads Authority is the Scottish Ministers, then they must consider the objections before making a final decision.³⁷⁹

11.21 The Regulations make no provision, in these cases, for a hearing or Public Local Inquiry. Furthermore, there is no right of appeal or review in these cases.

³⁷¹ Roads (Scotland) Act 1984, Schedule 1; detailed at sections 11.9-11.13, above.

³⁷² *Ibid*, Schedule 2

³⁷³ *Ibid*, s.68

³⁷⁴ *Ibid*, s.69

³⁷⁵ *Ibid*, s.152(2)

³⁷⁶ Stopping Up of Roads and Private Accesses and the Redetermination of Public Rights of Passage (Procedure) (Scotland) Regulations 1986

³⁷⁷ *Ibid*, regulation 11

³⁷⁸ *Ibid*, regulation 13

³⁷⁹ *Ibid*, regulation 16

Public Authority Road Works – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Public Local Inquiry – facilitated by the Directorate for Planning and Environmental Appeals (DPEA)	Hears cases where there are outstanding objections from statutory consultees (or where the Scottish Ministers have otherwise decided that it would be appropriate) regarding proposed Trunk Road Orders and Side Road Orders, promoted by the Scottish Ministers	Roads (Scotland) Act 1984	An independent reporter will consider the objections, before making recommendations to the Scottish Ministers, which may suggest approval, rejection or modification of the Order	The Scottish Ministers will then, based on the recommendations of the reporter, decide whether or not to approve the order.
The Scottish Ministers - by way of the DPEA	Make the final decision on confirmation of Trunk Road Orders and Side Road Orders	Roads (Scotland) Act 1984	May, on the basis of the recommendations and after consideration of any objections, decide to confirm the proposed Order, abandon it, or modify it	There is a right of appeal against a confirmation by the Scottish Ministers to the Court of Session, on the grounds that Regulations have not been followed, or the Order is out-with the scope of the legislation.
	Make the final decision on confirmation of Local Authority promoted Stopping-Up or Redetermination Orders; and confirm such Orders promoted by themselves	Roads (Scotland) Act 1984; Stopping Up of Roads and Private Accesses and the Redetermination of Public Rights of Passage (Procedure) (Scotland) Regulations 1986	May, on the basis of the recommendations and after consideration of any objections, decide to confirm the proposed Order, abandon it, or modify it	There is a right of appeal against a confirmation by the Scottish Ministers to the Court of Session, on the grounds that Regulations haven't been followed, or the Order is out-with the scope of the legislation.

Other Transport Works

11.22 The construction of other transport works - such as a new railway, tramway, guided transport system or canal – is subject to a separate legal regime. These works are governed by the Transport and Works (Scotland) Act 2007 (the TAWS Act).

11.23 Under the TAWS Act, the relevant applicant must apply for a “TAWS” Order from the Scottish Ministers in order to carry out the works. In practice, this is to the Directorate for Planning and Environmental Appeals (DPEA). No restrictions are placed on who can apply, meaning that an applicant could be a Public Authority, private company or private individual.

11.24 The TAWS order can provide the powers not only authorising the construction of the new transport works, but can also provide for the compulsory purchase of land, the closure or

alteration of other roads or public rights of way, and the right to access other land to carry out the works. There is also the option to apply for the relevant planning permission (and other planning consents) directly to the Scottish Ministers, rather than the relevant Planning Authority, in concurrence with the order.³⁸⁰ In this sense, the order forms a “one-stop-shop” for the authorisation and construction of the transport works covered.

11.25 When an application is submitted to the Scottish Ministers, it must then go through a period of advertisement and there must be an objection period of a minimum of six weeks, allowing members of the public to object to the order, directly to the Scottish Ministers.³⁸¹ After this period, if there are no objections, the Scottish Ministers will proceed to decide whether or not to grant the order. If there are objections, then the Scottish Ministers may decide to hold a Hearing or Public Inquiry. If there are relatively few objections, it is open to the Scottish Ministers to consider the application subject to written representations, which in practice is a paper hearing.

11.26 A hearing is a less formal manner of allowing arguments for and against the order to be heard, in the form of a structured discussion.³⁸² This will be led by a reporter who will then make written recommendations to the Scottish Ministers. If the development proposals are contentious, then a hearing is inappropriate and a more formal Public Inquiry will be held.³⁸³ This allows for witnesses to be called, and the cross-examination of evidence. Again, a reporter will lead this before providing written recommendations to the Scottish Ministers.

11.27 The Scottish Ministers will then decide whether or not to confirm the order. There is a right of appeal against the Scottish Ministers’ decision to approve the order. This is to the Court of Session, but only on the grounds that the decision falls out-with the powers of the TAWS legislation, or that the requirements under that legislation have not been complied with.³⁸⁴ A challenge against a planning direction made, or against the decision to reject the order, involves raising Judicial Review proceedings.³⁸⁵

Other Transport Works – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Hearing or Public Inquiry – facilitated by the Directorate for Planning and Environmental Appeals (DPEA)	Hears cases where objections have been lodged in regard to proposed TAWS Orders	Transport and Works (Scotland) Act 2007	A reporter will make recommendations based on the hearing or inquiry to the Scottish Ministers. These may recommend approval, rejection or approval subject to conditions or changes	The Scottish Ministers will then decide whether or not to approve the order.

³⁸⁰ Transport and Works (Scotland) Act 2007, s.15

³⁸¹ *Ibid*, s.8

³⁸² *Ibid*, s.9

³⁸³ *Ibid*

³⁸⁴ *Ibid*, s.16

³⁸⁵ For further information, see: *Chapter 3 – Judicial Review*

Other Transport Works – Redress Processes Continued				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers – by way of the Directorate of Planning and Environmental Appeals (DPEA)	Make the final decision on proposed TAWS orders where there were outstanding objections and an independent report of recommendations has been made	Transport and Works (Scotland) Act 2007	May, on the basis of the objections, decide to reject the proposed order, may approve the order, or approve the order subject to conditions of changes	There is an onward right of appeal against the decision of the Scottish Ministers to approve the order, but only on the grounds that the regulations haven't been followed or that the order falls out-with the scope of the TAWS legislation. This is to the Court of Session.

Traffic Regulation and Local Parking and Bus Lane Enforcement

11.28 Local Authorities are responsible for the regulation of traffic, and the imposition of traffic calming measures, within their areas. Local Authorities can also be responsible for the operation of decriminalised parking and bus lane enforcement schemes, if they have obtained the relevant order giving them the power to do so.

Traffic Regulation and Traffic Calming Measures

11.29 Local Authorities, in their capacity as Traffic Authorities, have the power to make Traffic Regulation Orders, or to use certain Roads Orders, to regulate the flow of traffic within their areas. Road Orders – such as Stopping-Up Orders may be used when a particular road is considered unsafe, and the procedure for this is set out in sections 11.17-11.21, above.

11.30 It is also open to the Authority to construct road humps in order to slow traffic down.³⁸⁶ The Local Authority itself may authorise the construction of road humps, but there is a requirement to advertise the proposals and to allow for a period for objections.³⁸⁷ If there are a number of objections, and these remain unresolved, then the Local Authority will hold a Public Local Inquiry, facilitated by an independent reporter, to hear evidence from the objectors.³⁸⁸ It will then decide whether or not to authorise the order.

11.31 Most other traffic regulation measures are contained in the Road Traffic Regulation Act 1984. A Local Authority may impose restrictions on the movement of certain types of vehicles, implement parking or unloading restrictions, or temporarily pedestrianise areas for special events. In promoting such orders, the Local Authority must advertise the proposals and allow for a period of objections. If the objections remain unresolved, then the Local Authority will hold a public hearing, facilitated by an independent reporter, at which evidence will be heard from objectors.³⁸⁹

³⁸⁶ Roads (Scotland) Act 1984, s.36

³⁸⁷ Road Humps (Scotland) Regulations 1998, Regulation 3

³⁸⁸ *Ibid*

³⁸⁹ Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999

11.32 The reporter will then provide recommendations to the Local Authority. In the majority of cases, the Local Authority (in its capacity as Traffic Authority) then has the competence to decide itself whether or not to confirm the order. There are exceptions set out in legislation, however – in these cases, the Scottish Ministers are the confirming Authority.³⁹⁰

Traffic Regulation – Redress Process				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Public Hearing or Public Local Inquiry	Public Hearings hear formal challenges to Traffic Regulation Order; Public Local Inquiries are held for formal challenges to Roads Orders	Roads (Scotland) Act 1984; Road Traffic Regulation Act 1984	A reporter will make recommendations based on the hearing or inquiry to the Roads Authority. These may recommend approval, rejection or approval subject to conditions or changes. In cases of excepted Traffic Regulation Orders, the recommendations will be made to the Scottish Ministers	The Roads Authority, or in some cases the Scottish Ministers, will then make the final decision as to whether to approve the order or not.
Local Authorities (in their capacity as Traffic Authorities), or the Scottish Ministers	Make the final decision on proposed Traffic Regulation or Road Orders where there were outstanding objections and an independent report of recommendations has been made	Roads (Scotland) Act 1984; Road Traffic Regulation Act 1984	May, on the basis of the objections, decide to reject the proposed order, may approve the order, or approve the order subject to conditions of changes	None.

Decriminalised Parking and Bus Lane Enforcement

11.33 Local Authorities can, by virtue of the Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1998, apply for an order to allow decriminalised parking enforcement within their council area.³⁹¹ Local Authorities can also enforce local bus lane infringements.

11.34 If a person parks their car contrary to Council parking regulations or contravenes bus lane regulations, then the Council can issue a penalty charge notice. These notices will detail the penalty to be paid to the Council and the time allowed for payment. They also allow a discounted penalty to be paid if payment is made within a shorter timescale, normally 14 days.

11.35 Each notice will also detail how to challenge the penalty. In the first instance, this is to the Council itself. Once an appeal to the Council has been made, the time remaining for payment of the penalty will stop until the Council has decided upon the appeal.

11.36 If the Council accepts the appeal, it will cancel the penalty charge notice. If it refuses the appeal, it must send a notice of rejection to the appellant, along with a fresh penalty charge notice and details of how to make a further appeal to the Parking and Bus Lane Adjudicators.

³⁹⁰ Road Traffic Regulation Act 1984, Schedule 9

³⁹¹ There are currently 13 Local Authorities which operate decriminalised parking enforcement, and most of the others are in the process of obtaining the relevant order to do so

11.37 The adjudicators are supported by the Scottish Parking Appeals Service, and hear onward appeals where the initial appeal was rejected by the Local Authority.

11.38 The appellant can elect to have a personal hearing, although the vast majority of cases heard by the adjudicators are conducted by post. The adjudicators will inform both the Council and the appellant of the outcome of their investigation. If the appellant remains aggrieved by the outcome, they can request that the adjudicators review their decision. This requires the involvement of different adjudicators who will assess the same evidence. This outcome is final.

Decriminalised Parking – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Local Authority - Internal Review	Conducts internal reviews as requested into the issue of a fixed penalty notice for local parking rule contravention	Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1991	Can result in the notice being cancelled, or confirmed	There is a further right of appeal to the Parking and Bus Lane Adjudicators (at the Scottish Parking Appeals Service).
The Parking and Bus Lane Adjudicators (at the Scottish Parking Appeals Service)	Hears appeals against the issue of a fixed penalty notice for local parking rule contravention	Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1991	Can result in the notice being cancelled, or confirmed	There is a right to request the Parking and Bus Lane Adjudicators to review their decision.
The Parking and Bus Lane Adjudicators – Internal Review	Conducts internal reviews of its own decisions on request	Road Traffic Act 1991 (Amendment of Schedule 3) (Scotland) Order 1991	Can result in the notice being cancelled, or confirmed	None.

Driving Standards and Licensing

11.39 In order to drive a vehicle in the UK, an eligible applicant must pass the driving tests set by the Driving and Vehicle Standards Agency (DVSA). The Driving and Vehicle Licensing Agency (DVLA) is then responsible for issuing the driving licence, and for monitoring continuing fitness to drive.

The Driving Test

11.40 The DVSA sets the standards and regulates the UK driving test. The standard test is a two part examination – one theory based and one of practical driving.³⁹² The theory test must be passed before an applicant can go on to sit the practical driving test.

11.41 Both test results can be appealed. However, there is only one ground on which the test results can be appealed – that the test was not carried out according to the regulations. This cannot change the result of the test, but can result in a refund of fees and the lifting of the time restrictions on sitting the test again. The appeal is to the Sheriff Court.

³⁹² *Ibid*, s.89

The Register of Approved Driving Instructors

11.42 In order to provide driving lessons for money (or money's worth), it is a requirement to register with the DVSA as an Approved Driving Instructor (ADI). This will involve an assessment of whether the applicant is a "fit and proper person" to be a driving instructor. The DVSA requires applicants to become trainee ADIs and to undergo testing to become a full ADI.³⁹³

11.43 The route of appeal lies to the UK First-tier Tribunal, General Regulatory Chamber (Transport). The following decisions of the DVSA can be appealed: refusal to enter a name on the register; removal of a name from the register; refusal to grant a trainee licence; removal of a trainee licence; refusal to extend a trainee licence; and refusal of compensation if suspended as an ADI.³⁹⁴

11.44 There is an onward route of appeal to the UK Upper Tribunal, but this is on a point of law only and requires the permission of the First-tier Tribunal.

Revocation of Driving Licence

11.45 The DVLA is responsible for monitoring "fitness to drive". The DVLA adheres to medical standards to ensure that all drivers are fit to drive and do not pose a risk to other road users. This standard applies to both Group 1 and Group 2 driving licence holders. The DVLA has its own group of medical advisers who will assess individual licence holders if it becomes apparent that certain health issues may affect that person's fitness to drive. The DVLA will become aware of such issues if it is contacted by a health professional, the police or the licence holder.³⁹⁵ The DVLA may then decide to revoke a licence if it believes this to be in the interests of public safety.

11.46 There is, effectively, a two-step process for appeals against a medical revocation of a driving licence. Firstly, the notice which informs the licence holder of the revocation will inform them of the option to submit further independent medical reports. The licence holder is responsible for obtaining further medical reports which support that person's ability to continue to drive and can submit these to the DVLA for further consideration. This is an informal appeal, and the DVLA is not obliged to follow the independent medical advice.

11.47 The second stage of appeal involves court action. This appeal is to the Sheriff Court, where the Sheriff will decide whether the licence holder is fit to drive.

Driving Standards and Licensing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals regarding the driving tests and complaints that they did not adhere to regulations	Road Traffic Act 1988	Can decide that the test did not adhere to regulations, and ordering that the fee is repayable and that the applicant does not have to wait the statutory period to re-sit the test	None.

³⁹³ Road Traffic Act 1988, Part V

³⁹⁴ Road Traffic Act 1988, s.131

³⁹⁵ Road Traffic Act 1988, Part III

Driving Standards and Licensing – Redress Processes (Continued)

Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of the DVLA in relation to medical fitness to drive and licence revocation	Road Traffic Act 1988	Can decide that the original decision was correct, or can direct that the licence be re-instated	None.
UK First-tier Tribunal, General Regulatory Chamber (Transport)	Hears appeals against DVSA registrars in relation to decisions about the register of Approved Driving Instructors	Road Traffic Act 1988	Can decide that the original decision was correct, or can decide that the individual should be included on the register, or granted a trainee licence	There is an onward appeal to the UK Upper Tribunal, but this requires the permission of the UK First-tier Tribunal, General Regulatory Chamber.

Vehicle Standards and Licensing

11.48 The Driving and Vehicle Standards Agency (DVSA) sets out the minimum standards of vehicle road-worthiness. Vehicles are tested to ensure that these standards are met, and this is achieved through the Motor Ordinance Test, or MOT.

11.49 Additional licensing requirements apply to certain types of vehicles - the Traffic Commissioners for Great Britain are responsible for the regulation and licensing of the operators of heavy goods vehicles, buses and coaches.

The Motor Ordinance Test (MOT)

11.50 The MOT ensures that vehicles meet road safety and environmental standards. The majority of vehicles require a valid MOT certificate, and this must be renewed as determined by the regulations.³⁹⁶ Vehicle service and repair garages can register with the DVSA as official MOT test centres. Should a vehicle fail the MOT test, then usually the owner will require to have specific repairs or services carried out in order to make the vehicle road-worthy. However, there is a right of appeal against a failed MOT, if it is thought that the result is wrong.

11.51 The appeal is directly to the DVSA. The DVSA will then carry out its own check of the vehicle. If it is found that the MOT result was incorrect, then the owner may receive a refund of the test fee in part or in full.

Operators of Heavy Goods Vehicles, Buses or Coaches

11.52 In order to operate a heavy goods vehicle, bus or coach, a licence from the Traffic Commissioners for Great Britain is required. This can be obtained by application to the regional

³⁹⁶ Motor Vehicles (Tests) Regulations 1981, as amended

Traffic Commissioner, in this case the Traffic Commissioner for Scotland. This is a public application and is open to objections from members of the public and public bodies. In particular, Police Scotland and Local Authorities can object to the granting of a licence to an operator on the grounds of, amongst other, fitness and repute, financial standing, competence, and environmental reasons.

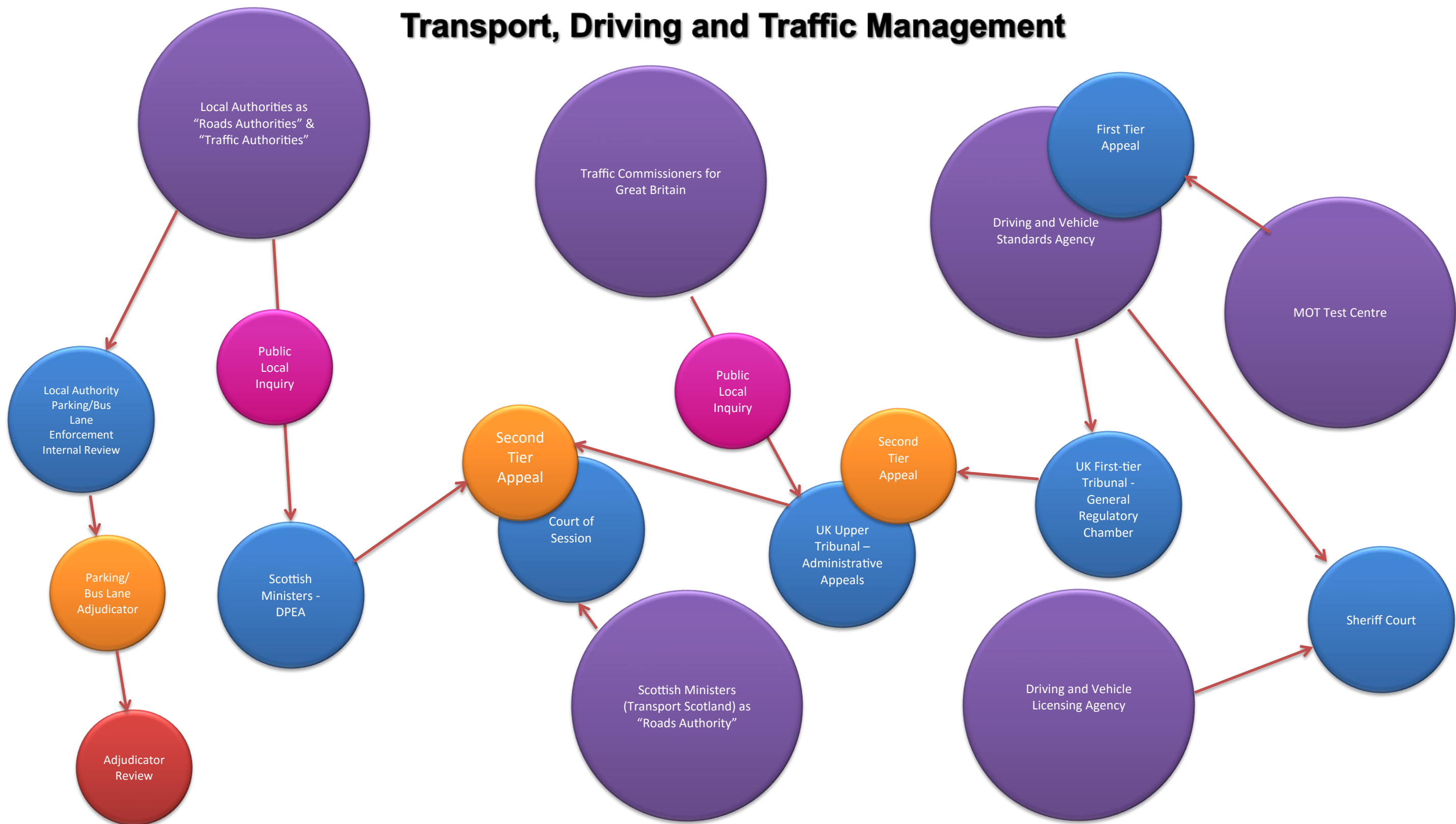
11.53 The Traffic Commissioners may call a Public Local Inquiry to help them decide whether to grant, revoke or vary a licence, particularly if objections have been raised. This will be facilitated by an independent reporter.

11.54 The licence can be granted, or granted with conditions. This is open to being varied or revoked by the Commissioners. In terms of enforcement action, the Commissioners can revoke a licence and can disqualify individuals or companies from holding licences.

11.55 There is a right of appeal against licensing decisions and enforcement actions of the Traffic Commissioners. This is to the UK Upper Tribunal, Administrative Appeals Chamber. There is a limited onward right of appeal from the Upper Tribunal to the Court of Session. This requires the permission of the Upper Tribunal.

Vehicle Standards and Licensing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Driving and Vehicle Standards Agency	Hears appeals against MOT results	Motor Vehicles (Tests) Regulations 1981	The DVSA will carry out their own MOT which can conclude that the initial test result was incorrect	None.
Public Local Inquiry	Inquiries can be held to help the Traffic Commissioners decide whether to grant, revoke or vary a licence for heavy goods vehicles, buses or coaches, if there has been an objection to the proposed changes	Goods Vehicles (Licensing of Operators) Act 1995; Public Passenger Vehicles Act 1981; Road Traffic Act 1988	Will allow the parties to put across their arguments, and helps the Commissioners in coming to their decision	There is a formal legal appeal process – to the UK Upper Tribunal, Administrative Appeals Chamber.
UK Upper Tribunal, Administrative Appeals Chamber	Hears appeals against decisions of the Traffic Commissioners in relation to licensing	Goods Vehicles (Licensing of Operators) Act 1995; Public Passenger Vehicles Act 1981; Road Traffic Act 1988 Part IV	Can decide that the original decision was correct, or can substitute a different decision, including to vary a licence as it sees fit	There is a limited onward right of appeal to the Court of Session, on a point of law.

Transport, Driving and Traffic Management



- Initial Decision Making Body
- First Tier Complaint/Review/Appeal Body
- Second Tier Complaint/Review/Appeal Body
- Third Tier Complaint/Review/Appeal Body

- Public Local Inquiry
- Regulatory/Oversight Body
- Alternative Methods of Dispute Resolution (ADR)

- Route of Complaint/Review/Appeal
- Body can take independent action
- Route of ADR

Freedom of Information, Data Protection & Investigatory Powers

Chapter 12

12.1 There are two separate freedom of information regimes in operation in Scotland. One, by virtue of the Freedom of Information Act 2000, covers all UK-wide Public Authorities which have a role in relation to Scotland. The second, operating in terms of the Freedom of Information (Scotland) Act 2002, covers Public Authorities in Scotland which are listed in Schedule 1 of that Act.

12.2 Data protection across the UK is enforced by the UK Information Commissioner.

12.3 The UK-wide Regulation of Investigatory Powers Act 2000 (RIPA), and the Scottish Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), aim to protect citizens from intrusive and unwarranted interference in citizens' lives. The Acts enshrine some of the protections of the European Convention on Human Rights into UK law. The UK Act set up a tribunal – the Investigatory Powers Tribunal – to investigate whether Public Authorities, Government Departments, the Intelligence Agencies, the Military or Law Enforcement Agencies have breached a citizen's rights in terms of the RIPA or RIPSA.

First Instance Decision Makers	Remit
Freedom of Information	
Public Authorities, covered by the Freedom of Information Act 2000 and/or the Freedom of Information (Scotland) Act 2002	Under a duty to comply with Freedom of Information law in relation to the release, on request by a citizen, of information held by the body
Data Protection	
Public Authorities, private business and other organisations, covered by the Data Protection Act 1998	Under a duty to comply with Data Protection law regulating the gathering, storage, use and release of information regarding individual citizens
Data Protection	
Public Authorities, Government Departments, Intelligence Agencies, Military and Law Enforcement Agencies covered by the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000	Under a duty to comply with the law regulating the use of covert investigatory techniques to gather information about, and from, individual citizens

Freedom of Information

12.4 This section covers the two Freedom of Information regimes that exist in Scotland. The law provides individuals with a right to access information held by Public Authorities, subject to statutory exceptions.³⁹⁷ European regulations also provide for a right to environmental information and spatial data held by Public Authorities.³⁹⁸

12.5 The Public Authorities must, on request, provide the information within a set timescale unless that information is covered by one of the statutory exemptions. The two regimes are largely similar, but there are differences in the timescales, exemptions and redress processes.

The Scottish Freedom of Information Regime

12.6 The Freedom of Information (Scotland) Act 2002 is the main piece of legislation governing public access to information held by Public Authorities in Scotland. Schedule 1 to the Act lists the Public Authorities to which it applies.³⁹⁹

12.7 The initial request for information will be made directly to the Public Authority, and must be in writing or in some other form such that it can be kept for future reference.⁴⁰⁰ The Authority must help the individual make a request if this is necessary.⁴⁰¹ The Authority is under a duty to respond to the request “promptly” and in any case within 20 working days.⁴⁰² The Authority will assess whether or not the information is subject to an exemption and can (on that basis) refuse to release the information, or refuse to release part of the information requested.⁴⁰³ Other reasons why Public Authorities refuse to release the information requested include that it would cause the Authority an excessive cost in providing the information; that the request constitutes a repeated or vexatious request; that the Authority does not hold the information.⁴⁰⁴

12.8 Should the Authority decline to provide the information, it must provide the reasons for this and details of how to request the Authority to review its decision.⁴⁰⁵

12.9 The individual has a total of 40 working days within which to request that the Authority reviews its decision to refuse to provide the information. The Authority is then again under a duty to respond “promptly” and in any case within 20 working days, or 40 working days for environmental information. The Authority will review the decision, and this could result in a different decision being made on release, or partial release, of the information requested.

12.10 Should the Authority decline to release the information after review, it must provide the reasons for this and must also provide details of how to appeal the decision.⁴⁰⁶ An appeal at this stage is to the Scottish Information Commissioner (SIC).⁴⁰⁷

³⁹⁷ Freedom of Information (Scotland) Act 2002, s.1

³⁹⁸ Environmental Information (Scotland) Regulations 2004; INSPIRE (Scotland) Regulations 2009

³⁹⁹ Freedom of Information (Scotland) Act 2002, Schedule 1

⁴⁰⁰ *Ibid*, s.8

⁴⁰¹ *Ibid*, s.15

⁴⁰² *Ibid*, s.10

⁴⁰³ *Ibid*, ss25-41

⁴⁰⁴ *Ibid*, ss.12, 14, 16-18

⁴⁰⁵ *Ibid*, ss16-19

⁴⁰⁶ Freedom of Information (Scotland) Act 2002, ss.20-21

12.11 The SIC is empowered to investigate the handling of the information by the Authority. It will decide if the Authority has acted contrary to the freedom of information laws, including the European regulations. The SIC can attempt to resolve matters between the Authority and the individual on a less formal basis, and will in any case invite the Authority to provide comments before reaching a decision.

12.12 If, after investigation, the SIC finds that the Authority has acted contrary to the freedom of information laws, it is empowered to issue enforcement notices to ensure the information is provided or published. The SIC can pursue the Authority through court action if necessary.⁴⁰⁸

12.13 There is a limited onward right of appeal against the decision of the SIC. This is to the Court of Session, on a point of law only.⁴⁰⁹

The Scottish Freedom of Information Regime – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Public Authority – Internal Review	Can reconsider, on request, a decision made in relation to the release of information where that request was rejected in whole or in part	Freedom of Information (Scotland) Act 2002; Environmental Information (Scotland) Regulations 2004; INSPIRE (Scotland) Regulations 2009	Can result in a different decision being made, or in confirmation of the original decision	There is an onward right of appeal to the Scottish Information Commissioner.
Scottish Information Commissioner (SIC)	Handles complaints relating to a Scottish Public Authority's handling of a freedom of information request, after review	Freedom of Information (Scotland) Act 2002; Environmental Information (Scotland) Regulations 2004; INSPIRE (Scotland) Regulations 2009	Can decide that a Public Authority has not complied with the Act and can require the body to publish or release the information, or can decide that the initial decision was correct	There is a limited onward right of appeal against the Scottish Commissioner's decision – to the Court of Session, on a point of law only.

The UK Freedom of Information Regime in Scotland

12.14 The Freedom of Information Act 2000 is the governing piece of legislation for the right to access information held by UK-wide Public Authorities operating in Scotland. The Information Commissioner's Office (ICO) is the UK-wide regulatory and complaint handling body for UK-wide freedom of information law.

⁴⁰⁷ *Ibid*, s.47

⁴⁰⁸ *Ibid*, Part 4

⁴⁰⁹ *Ibid*, s.56

12.15 The law places a duty on the UK-wide Public Authorities to provide information on request, unless it is subject to an exemption.⁴¹⁰ The exemptions largely mirror those under the Scottish legislation.⁴¹¹ Similarly, the Authority must respond to the request “promptly” or in any case within 20 working days.⁴¹² Reasons for refusal or part refusal where it declines to provide the information must also be given.⁴¹³

12.16 Public Authorities which are regulated by the 2000 Act do not have to provide an internal review mechanism, however. It is simply recommended by the ICO as good practice.⁴¹⁴ Where this is offered, individuals should be notified. In any case, the notification of refusal to release information must inform individuals of their right to complain to the ICO.⁴¹⁵

12.17 If a breach of the law is found by the ICO, the Commissioner will at first attempt to resolve matters informally by allowing the Public Authority in question an opportunity to reconsider their actions. However, if this fails, then the Commissioner is empowered to take enforcement action which would require the Authority to publish or provide the information requested if it is covered by the Act.⁴¹⁶

12.18 There is a right of appeal against the decision of the ICO. This is to the UK First-tier Tribunal (General Regulatory Chamber).⁴¹⁷ For particularly complex cases, however, the appeal may be transferred directly to the UK Upper Tribunal (Administrative Appeals Chamber).

12.19 For appeals which in the first instance go to the UK First-tier Tribunal, there is a further onward right of appeal to the UK Upper Tribunal, on a point of law only.⁴¹⁸

The UK-wide Freedom of Information Regime – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Information Commissioner's Office (ICO)	Handles complaints relating to a reserved Public Authority's handling of a freedom of information request (after internal review by the Authority if available)	Freedom of Information Act 2000	Can decide that a Public Authority has not complied with the Act and can require the body to publish or release the information, or can decide that the initial decision was correct	There is a right of appeal against decisions of the Commissioner, to the UK First-tier Tribunal (General Regulatory Chamber); or for complex cases to the UK Upper Tribunal (Administrative Appeals Chamber).

⁴¹⁰ Freedom of Information Act 2000, s.1

⁴¹¹ *Ibid*, ss.12, 14, 17 and Part II

⁴¹² *Ibid*, s.10

⁴¹³ *Ibid*, s.17

⁴¹⁴ The Code of Practice on the discharge of Public Authorities' functions under Part 1 of the Freedom of Information Act 2000, section 45, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

⁴¹⁵ Freedom of Information Act 2000, s.17

⁴¹⁶ *Ibid*, Part IV

⁴¹⁷ *Ibid*, Part V

⁴¹⁸ *Ibid*

The UK-wide Freedom of Information Regime – Redress Processes (Continued)

Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
UK First-tier Tribunal (General Regulatory Chamber)	Hears appeals against decisions of the Information Commissioner in relation to freedom of information complaints	Freedom of Information Act 2000	Can decide that the Commissioner made the wrong decision and can make a different decision	There is a right of appeal against the decision of the First-tier Tribunal, to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.
UK Upper Tribunal (Administrative Appeals Chamber)	Handles complex cases direct from the ICO, or appeals against the decisions of the UK First-tier Tribunal (General Regulatory Chamber) on points of law only	Freedom of Information Act 2000	Can decide that the Commissioner made the wrong decision and can make a different decision	There is a right of appeal against the decision of the First-tier Tribunal, to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

Data Protection

12.20 Data Protection is a reserved matter, and is regulated across the UK by the Information Commissioner's Office (ICO). The substantive law is governed by the Data Protection Act 1998, which regulates how personal information is stored and used by Public Authorities, organisations and businesses. The Act also provides individuals with the right to request the Authority or organisation to disclose the information that it holds about them.⁴¹⁹ The information must be provided, unless it falls within one of the exemptions. The exemptions include that the information is for the prevention or detection of crime, or for the assessment and collection of tax.⁴²⁰

12.21 An individual can complain to the ICO regarding a body's use or storage of personal information, or refusal to provide information as requested.⁴²¹ The Act empowers the ICO to issue Enforcement Notices against bodies which it deems to be in breach of the Act, and the ICO can pursue these through court action if necessary.⁴²² The ICO can also issue fines where it determines a serious breach to have occurred.⁴²³

⁴¹⁹ Data Protection Act 1998, s.7

⁴²⁰ *Ibid*, s.7(4) and Part IV

⁴²¹ *Ibid*, s.42

⁴²² *Ibid*, Part V

⁴²³ *Ibid*

12.22 There are no review or appeal rights for individuals against a Data Protection decision of the ICO. The organisation or Authority concerned, however, may appeal against an ICO decision.⁴²⁴ This is to the UK Upper Tribunal (Administrative Appeals Chamber).

Data Protection – Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Information Commissioner's Office (ICO)	Hears complaints from individuals regarding a Public Authority or organisation's use or storage of personal data, or handling of a request under UK-wide Data Protection legislation	Data Protection Act 1998	Can decide that the Public Authority or organisation has not complied with the legislation and can direct them to release it, and can follow this through with enforcement action	None for individuals, but Authorities and organisations dissatisfied with the decision of the Commissioner can appeal to the UK Upper Tribunal (Administrative Appeals Chamber).

Investigatory Powers

12.23 A number of Authorities may use covert investigatory techniques against individuals or their property throughout the UK. This can include the use of covert surveillance and investigation and the interception of private communications. These powers are used, for example, by defence and intelligence agencies and the police services in order to detect and prevent crime, or to protect national security. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the use of such powers across the UK, and the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) regulates the use of such powers throughout Scotland by devolved Public Authorities and organisations.

12.24 The UK Act established the Investigatory Powers Tribunal.⁴²⁵ RIPSA provides the Tribunal with concurrent jurisdiction to hear cases against Scottish Authorities covered by that Act.⁴²⁶ The Tribunal provides a means of redress for individuals who believe that a Public Authority has acted unlawfully in its use of covert investigatory techniques against them or their property. The Tribunal also assesses whether the Authority's use of such techniques has been a breach of the Human Rights Act 1998. Individuals can opt to take their case through the ordinary court procedure rather than to the Tribunal, but the Tribunal is the only forum which can decide upon breaches of Human Rights law in relation to the use of covert intelligence techniques.⁴²⁷

12.25 On application by an individual, the Tribunal will assess the interference and decide whether or not there has been a breach of RIPA or RIPSA and, if relevant to the case, of the

⁴²⁴ *Ibid*, s.48

⁴²⁵ Regulation of Investigatory Powers Act 2000, s.65

⁴²⁶ Regulation of Investigatory Powers (Scotland) Act 2000, s23

⁴²⁷ Regulation of Investigatory Powers Act 2000, s.65(2)(a)

Human Rights Act 1998. The Tribunal can find in favour of the complainant or not, and can also find that the complaint was vexatious, invalid or time barred.⁴²⁸ The Tribunal is empowered to make orders of compensation to individuals if it finds in their favour, and there is no limit placed on the amount that can be awarded.⁴²⁹

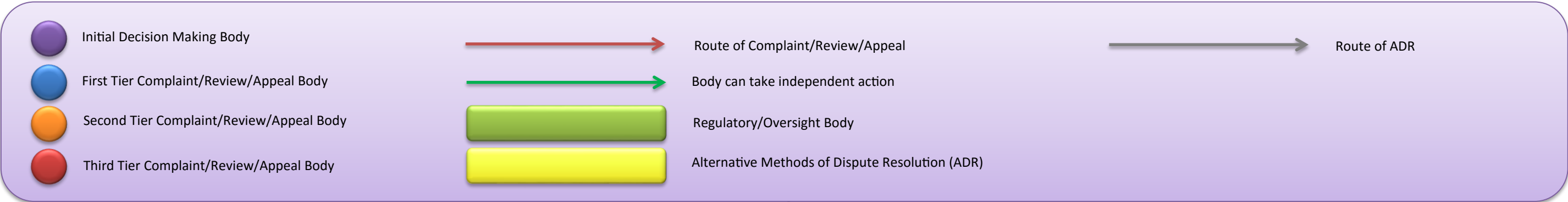
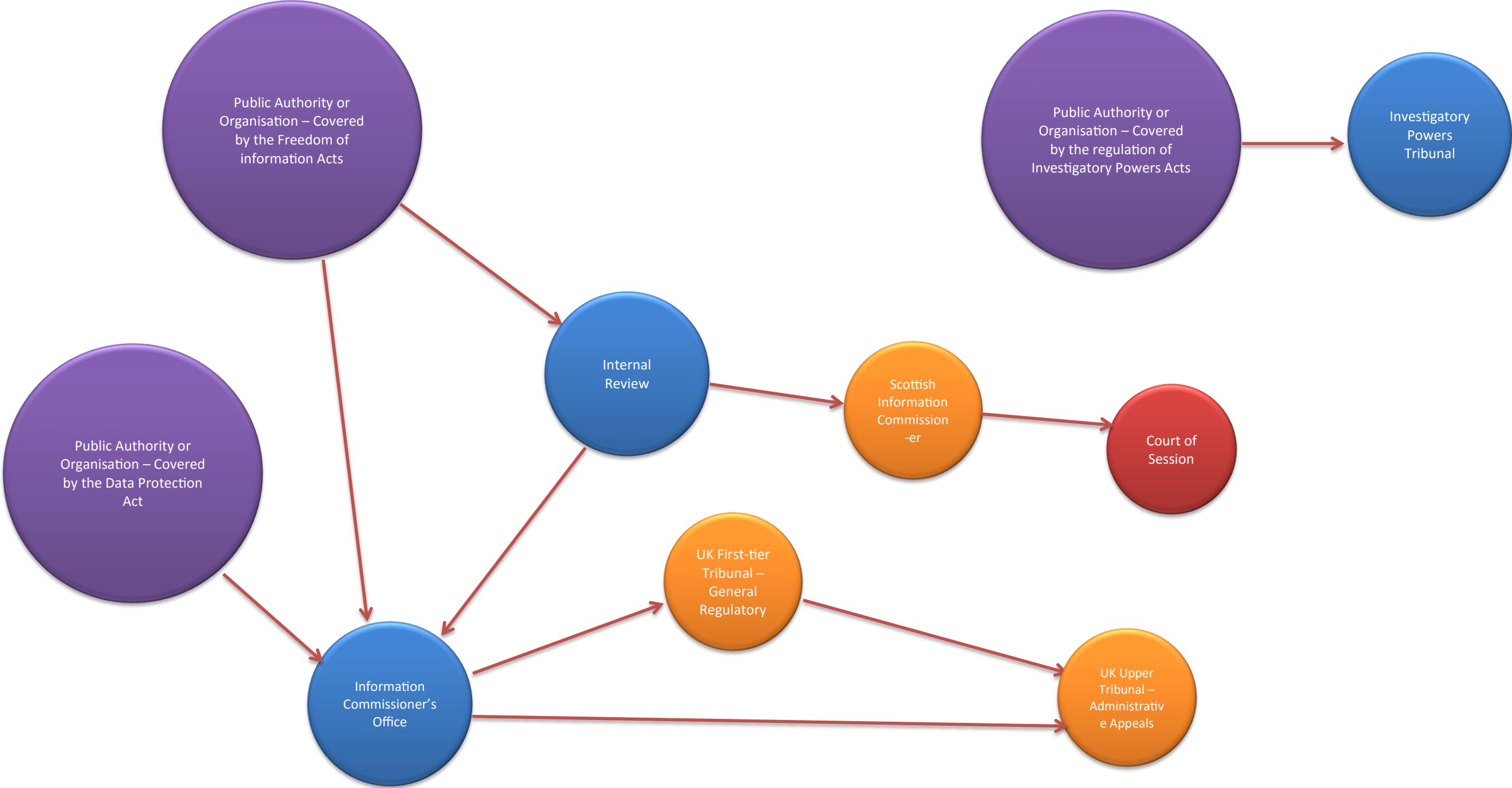
12.26 There is no right of appeal against the Tribunal's decision, which is final. The only other possible avenue to take a complaint further relates to complaints regarding Human Rights – which would involve taking a separate case to the European Court of Human Rights in Strasbourg.

Investigatory Powers – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
The Investigatory Powers Tribunal	Hears complaints by individuals regarding the use of covert intelligence techniques which they believe has breached investigatory powers legislation or their Human Rights	Regulation of Investigatory Powers Act 2000; The Regulation of Investigatory Powers (Scotland) Act 2000; Human Rights Act 1998	The Tribunal can find that the Public Authority acted unlawfully and can award an individual with compensation	None, although the individual could raise a separate action with the European Court of Human Rights if the case involved an allegation of a breach of Human Rights.

⁴²⁸ *Ibid*, s.67

⁴²⁹ *Ibid*, Part IV

Freedom of Information, Data Protection and Investigatory Powers



Immigration, Nationality & Asylum

Chapter 13

13.1 Immigration, Nationality and Asylum are reserved matters and are strictly controlled by the Home Office of the UK Government. A vast number of decisions relating to immigration in general are taken every year by immigration officers in the UK. The UK is also a party to the UN Refugee Convention⁴³⁰, the European Convention on Human Rights⁴³¹, and the European Union Treaties and associated Directives.⁴³² As such, the UK has a duty to allow entry of persons who require asylum, temporary protection, humanitarian protection or on human rights grounds. Similarly, the UK cannot deport or remove persons if it would present a risk to their human rights.⁴³³

13.2 By virtue of its EU membership, the UK is further obliged to allow the free movement of persons from other EU member states, according to the principles of free movement enshrined in the EU Treaties.⁴³⁴ However, there are decisions in relation to membership of the European Economic Area (EEA) - such as those relating to family permits or deportation – in respect of which there is a right of appeal.

13.3 The Home Office is also responsible for the control of British citizenship. Refusal to grant or deprivation of British citizenship gives rise to a right of appeal.

13.4 Certain immigration and nationality decisions are taken in relation to national security, and these also attract a right of appeal but are heard by a specialist tribunal. These areas are dealt with in *Chapter 15 – National Security and Defence*.

13.5 Decisions under the areas included in this chapter can give rise to either a right of appeal or a right to administrative review, for certain decisions where appeal is not allowed. As such, this chapter is divided into those areas where there is a right of appeal, and those with a right to administrative review. Where a decision attracts neither a right of appeal nor a right to administrative review, the route to challenge that decision lies with an action for Judicial Review.⁴³⁵

⁴³⁰ The Convention and Protocol Relating to the Status of Refugees 1951

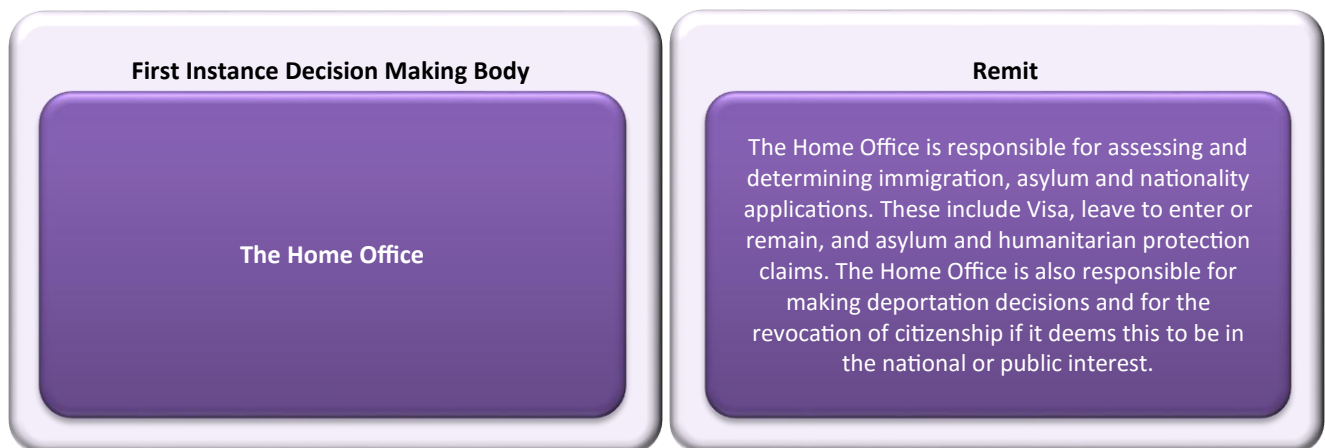
⁴³¹ The Convention for the Protection of Human Rights and Fundamental Freedoms 1950; Human Rights Act 1998

⁴³² Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); the UK has the power to opt-in or out of European Union law regarding immigration and asylum. In particular, the UK has *opted-in* to the following Directives: The Dublin Convention and EC Regulation 2013/604 (Dublin III); The Refugee and Subsidiary Protection Directive 2004/83 (Qualification Directive); EC Directive 2005/85 (Procedures Directive); EC Directive 2001/55 (Temporary Protection Directive)

⁴³³ Human Rights Act 1998, s.6

⁴³⁴ Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU)

⁴³⁵ For further information, see: *Chapter 3 – Judicial Review*



Decisions giving rise to a Right of Appeal

13.6 The Immigration Act 2014 significantly altered the appeals process for immigration, asylum and nationality decisions. The decisions of the Home Office which give rise to a right of appeal are:-

- a) Refusal of a human rights or protection claim and revocation of “protection status”;
- b) Refusal to enter the UK or to vary conditions upon leave to remain within the UK where the application was made before the Immigration Act 2014 came into force (6th April 2015);
- c) European Economic Area decisions, including refusal to issue an EEA Family Residence Permit; and
- d) Revocation of British citizenship.

a) Refusal of a human rights or protection claim and revocation of “protection status”

13.7 A “protection claim” is a claim that to remove the individual from the UK would breach the UK’s obligations in terms of the UN Refugee Convention and to provide humanitarian protection to eligible claimants in accordance with the European Directives.⁴³⁶ These decisions include asylum claims, and also include claims for protection by those who fall out-with the Refugee Convention but who could be at serious risk of harm if removed from the UK (subsidiary protection claims).⁴³⁷ A person is deemed to have “protection status” if they have previously been recognised as a refugee or a person eligible for humanitarian protection within the UK

⁴³⁶ The Refugee and Subsidiary Protection Directive 2004/83 (Qualification Directive); EC Directive 2005/85 (Procedures Directive); EC Directive 2001/55 (Temporary Protection Directive); Immigration, Nationality and Asylum Act 2002, Part 5; The Refugee or Person in Need of International (Qualification) Protection Regulations 2006; The Home Office, *Immigration Rules*, paragraph 339C

⁴³⁷ The Refugee and Subsidiary Protection Directive 2004/83 (Qualification Directive); The Home Office, *Immigration Rules*, paragraph 339C. These define “serious harm” as consisting of: the death penalty or execution; unlawful killing; torture or inhuman or degrading treatment or punishment of a person in the country of return; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict

13.8 Any application for leave to enter or remain in the UK can explicitly cite that refusal of the claim would breach the applicant's human rights. However, the Home Office also implicitly treats certain applications under the *Family Members Immigration Rules* and *Long Residence Immigration Rules* as human rights claims – without the need for the applicant to explicitly claim human rights grounds.⁴³⁸ Family Members claims in this category include applications to join a family member in the UK who is a British citizen, or has leave to remain in the UK, or who has been granted a protection claim.⁴³⁹ These decisions, and those explicitly citing human rights⁴⁴⁰, therefore attract a right of appeal.⁴⁴¹

b) Refusal to enter the UK or to vary conditions upon leave to remain within the UK where the application was made before the Immigration Act 2014 came into force (6th April 2015)

13.9 These claims are termed “transitional claims” as new claims brought under existing channels for visas, entry and leave to remain, no longer attract a right of appeal if made after the 6th April 2015. However, there are provisions in place for decisions made prior to that commencement date. These are complex, but an appeal may be possible.⁴⁴²

c) European Economic Area decisions, including refusal to issue an EEA Family Residence Permit

13.10 A European Economic Area decision concerns decisions regarding an EEA citizen's entitlement to enter or remain in the UK or their removal from the UK.⁴⁴³ This includes a person's entitlement to be issued with a residence permit or certificate and the cancellation of such an entitlement.

d) Revocation of British citizenship

13.11 The Home Office may decide to revoke a person's British citizenship if it is satisfied that to do so would be in the public good, or if it is satisfied that the person obtained citizenship by means of fraud or concealment of a material fact.⁴⁴⁴ The Home Office is prevented from depriving a person of citizenship where to do so would render that person stateless, unless three conditions are met:

- the British citizenship results from the person's naturalisation

⁴³⁸ The Home Office, *Immigration Rules*, Part 6 and Appendix FM

⁴³⁹ There are exceptions – Bereavement and Domestic Violence Claims under the *Family Members Rules* are not automatically treated as human rights claims. In terms of Long Residence claims, the Home Office only automatically treats claims as a human rights claim where the right to remain in the UK on the grounds of private or family life under Article 8 of the European Convention on Human Rights is claimed, by virtue of the Human Rights Act 1998, s.6

⁴⁴⁰ The Home Office usually requires human rights claims to be “particularised” – so general statements about raising a human rights claim are not enough to give rise to a right of appeal, unless from the circumstances of the case the Home Office can classify it as such; Immigration, Nationality and Asylum Act 2002, Part 5

⁴⁴¹ Immigration, Nationality and Asylum Act 2002, Part 5

⁴⁴² *Ibid*; For further guidance, see: Immigration Act 2014 (Transitional and Saving Provisions) Order 2014; Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions and Amendment) Order 2014; and Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015; and The Home Office, *Rights of Appeal*, Version 3.0, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458403/Rights_of_appeal_guidance_v3_0.pdf

⁴⁴³ Regulation 26 of the Immigration (European Economic Area) Regulations 2006

⁴⁴⁴ British Nationality Act 1981, s.40-40A

- deprivation of citizenship is, in the opinion of the Secretary of State, conducive to the public good, because that person has conducted him or herself in a manner prejudicial to the vital interests of the UK
- the Secretary of State has reasonable grounds to believe that the person is able, under the laws of a country or territory out-with the UK, to become a national of that country or territory⁴⁴⁵

The Appeals Process

13.12 In general, appeals against the above decisions go to the UK First-tier Tribunal (Immigration and Asylum Chamber). However, should an issue of national security arise, then the matter will be dealt with by the Special Immigration Appeals Commission, which is described in detail in *Chapter 15 - National Security and Defence*. Appeals would also be routed to the Special Immigration Appeals Commission for cases of British Citizenship where the Home Office consider the evidence to be presented should not be made public knowledge.⁴⁴⁶

13.13 Typically, there are 14 days to appeal a Home Office decision if the person is within the UK at the time of the decision and 28 days if the person is in another country. It should be noted that there is in place a specific strict time limit of two working days to appeal in regard to asylum or protection claims if the person to whom the decision applied had been detained whilst awaiting a decision – termed the “detained fast-track procedure”. However, this procedure is currently suspended, following a court ruling against the procedure, which is currently being appealed by the Home Office.⁴⁴⁷ A person can also write to the Tribunal to request an urgent hearing if there are compelling reasons as to why the appeal should be heard urgently – such as compassionate grounds.

13.14 The UK First-tier Tribunal (Immigration and Asylum Chamber) can allow or dismiss the appeal. Allowing an appeal has the effect of requiring the Home Office to reconsider the decision based on the findings of fact of the Tribunal. Dismissal will confirm the Home Office decision. Where a dispute arises as to how the Home Office has handled the reconsideration of the decision and its subsequent implementation, the appellant can challenge the Home Office by way of Judicial Review.⁴⁴⁸

13.15 The decision of the Tribunal can be appealed further. The appellant and the Home Office both have this right. This is to the UK Upper Tribunal (Immigration and Asylum Chamber).⁴⁴⁹ An appeal can only be made on a point of law. However, permission to make this appeal is normally required from the First-tier Tribunal. The First-tier Tribunal can refuse permission, grant permission or grant permission but only on limited grounds. This decision on permission of the First-tier Tribunal is not final – if permission is refused or only granted on conditions, the appellant can then request the Upper Tribunal to make a permission decision and can decide to allow the further appeal or not. The Upper Tribunal will decide if the First-tier Tribunal has erred in law in

⁴⁴⁵ *Ibid*, s.40(4A)

⁴⁴⁶ Special Immigration Appeals Commission Act 1997, s.2B

⁴⁴⁷ *Detention Action v First-Tier Tribunal* (Immigration and Asylum Chamber) & Others [2015] EWHC 1689 (Admin)

⁴⁴⁸ For further information, see: *Chapter 3 – Judicial Review*

⁴⁴⁹ Immigration, Nationality and Asylum Act 2002, Part 5

making its decision. It has the power to make any decision that the First-tier Tribunal could have made, with the additional power to require the First-tier Tribunal to re-make its decision.

13.16 There is a further right of appeal against the Upper Tribunal's decision – to the Court of Session.⁴⁵⁰ This operates in the same way as an appeal from the First-tier to the Upper Tribunal – including the permission process and powers available. In exceptional cases, which raise matters of national importance in relation to the interpretation of the law, a further appeal can be made to the UK Supreme Court.

Immigration, Nationality and Asylum – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
The UK First-Tier Tribunal (Immigration and Asylum Chamber)	Hears appeals against Home Office decisions relating to human rights and protection claims; EEA decisions; British citizenship; and transitional claims made before April 6th 2015	Immigration, Nationality and Asylum Act 2002; Immigration (EEA) Regulations 2006; British Nationality Act 1981	Can allow the appeal, which requires the Home Office to make a fresh decision	There is a limited onward right of appeal, on a point of law only, to the UK Upper Tribunal.
The UK Upper Tribunal (Immigration and Asylum Chamber)	Hears onward appeals from the UK First-tier Tribunal (Immigration and Asylum Chamber) on a point of law only	Immigration, Nationality and Asylum Act 2002, Part 5	Can allow the appeal, which requires the Home Office to make a fresh decision, or can direct the First-tier Tribunal to reconsider the case	There is a limited onward right of appeal, on a point of law only, to the Court of Session.
Special Immigration Appeals Commission	Hears appeals relating to revocation of British citizenship, in place of the UK First-tier Tribunal, where the Home Office considers the evidence should not be made public and other cases where an issue of national security arises	British Nationality Act 1981; Special Immigration Appeals Commission Act 1997	Can direct that the Home Office reconsiders its decision	There is a limited onward right of appeal, on a point of law only, to the Court of Session.

⁴⁵⁰ Tribunals, Courts and Enforcement Act 2007, Chapter 2

Decisions giving rise to a right to Administrative Review

13.17 Administrative review entails the review of certain “eligible decisions” of the Home Office to decide if there was a “case working error” in coming to the original decision.⁴⁵¹ The “eligible decisions” which can be subject to an administrative review are:

- a. Decisions relating to applications for leave to remain, or conditions or time limits for leave to remain, in respect of migrants, their partners and children, entering or remaining in the UK under the Points Based Visa System, or the Immigration Rules;
- b. Decisions relating to applications for leave to remain, or conditions or time limits for leave to remain, in respect of Turkish nationals or their family members;
- c. Decisions to cancel leave to enter or remain in the UK, if the reason for cancellation is that new circumstances have come to light such that the Home Office believes the leave should be cancelled, including that false information was given by the applicant; and
- d. Decisions resulting in refusal of entry clearance made under the Immigration Rules, but not for short-term students and visitors.

13.18 Should any of the decisions above relate to human rights or protection claims, then there will be a right of appeal to the UK First-tier Tribunal as described above at sections 13.7-13.8. When an administrative review action is raised by an applicant from within the UK, the appellant will not be deported or required to leave the UK until the review has been carried out.

13.19 The above decisions include decisions relating to all tiers of visa. The right to administrative review for Turkish nationals applying for leave to remain flows from the Additional Protocol to the European Community Association Agreement with Turkey.⁴⁵²

13.20 Administrative review aims to establish whether there has been a “case working error” resulting in the wrong decision in making the eligible decision. A “case working error” can occur where the immigration officer made an incorrect decision, interpreted the immigration rules incorrectly, failed to implement the Secretary of State’s (Home Secretary) policy guidance correctly, or incorrectly calculated the period/s or condition/s of the immigration leave.

13.21 Typically, an applicant must submit a request for administrative review within 14 days of receiving the decision, or within seven days if the applicant has been detained. If the decision was made at UK Border Control out-with the UK (for example, at Calais), then the time limit for requesting the review is 28 days from the date of the decision.

13.22 The administrative review will be carried out by officials uninvolved in making the original decision. The Immigration Rules prohibit the review from considering any new information – the

⁴⁵¹ The Home Office, *Immigration Rules*, Appendix AR. It should be noted, that as detailed in section 13.9, there are still “transitional” provisions in place for decisions made before certain dates, and the introduction of administrative review by the Immigration Act 2014. These may still give rise to a right of appeal, rather than administrative review. For further guidance, see: Immigration Act 2014 (Transitional and Saving Provisions) Order 2014; Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions and Amendment) Order 2014; and Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015; and The Home Office, *Rights of Appeal*, Version 3.0, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458403/Rights_of_appeal_guidance_v3_0.pdf

⁴⁵² Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey following the enlargement of the European Union, 2005

review decision must be based on the same information as the original decision. However, the applicant can submit new evidence if the purpose of the evidence is to demonstrate that a case working error has occurred.

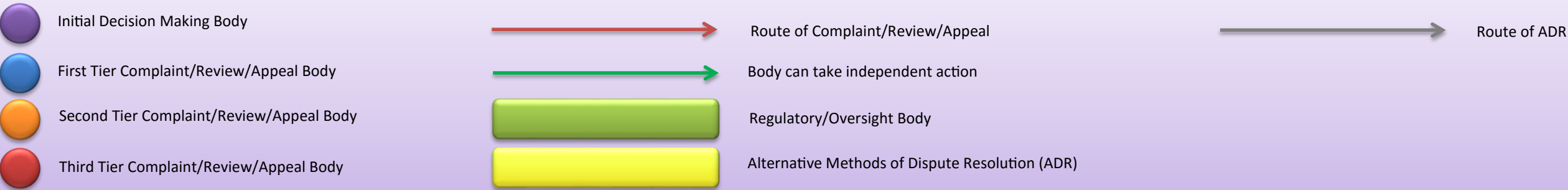
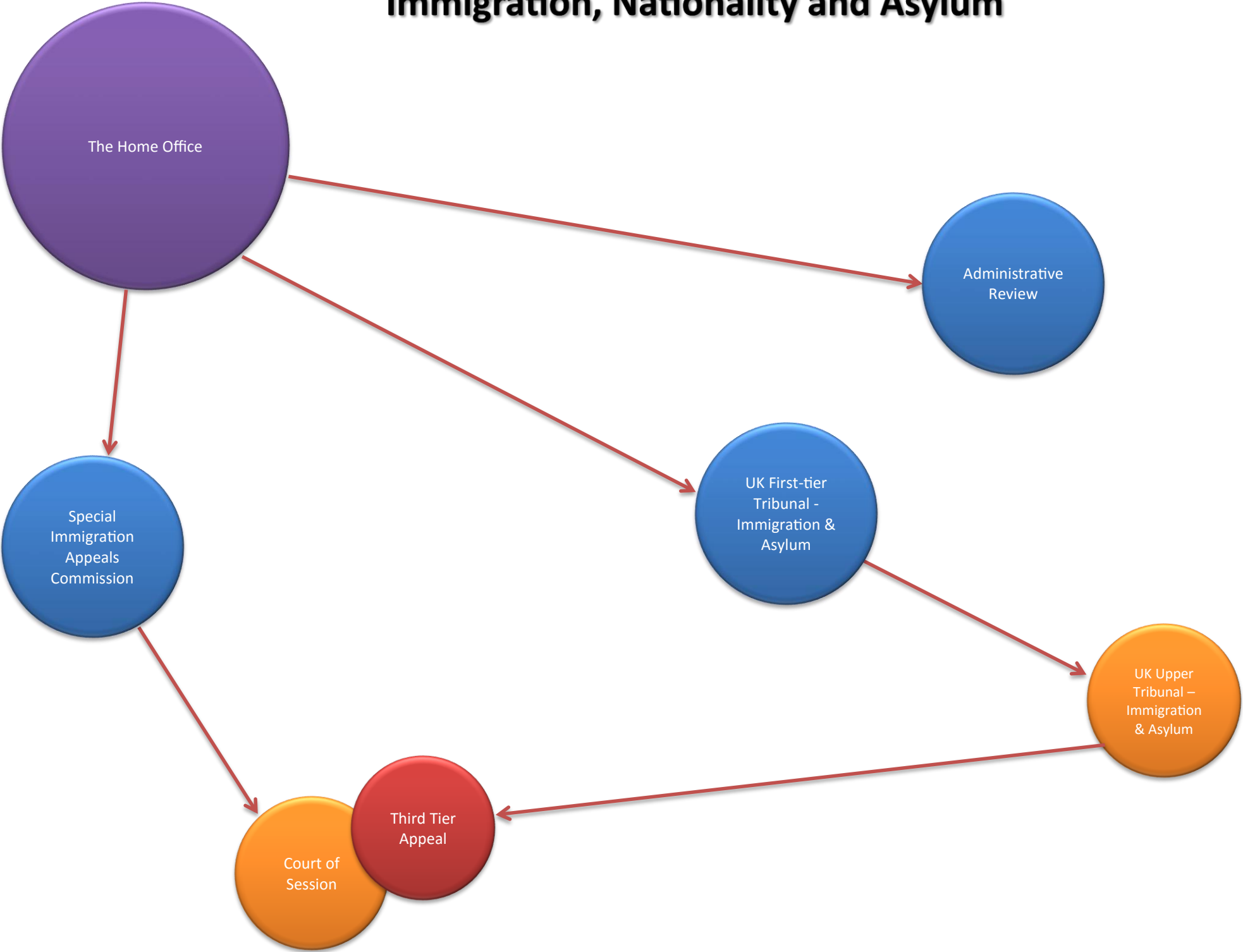
13.23 Administrative review can result in the initial decision being withdrawn; the initial decision being confirmed; or the initial decision being confirmed but with less or additional reasons for refusal.

13.24 There is no onward right of appeal or review from the decision after administrative review, although an applicant could raise Judicial Review proceedings.⁴⁵³

Immigration, Nationality and Asylum – The Administrative Review Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
The Home Office – Administrative Review Team	Conducts reviews of eligible decisions to determine whether there has been a case working error; including decisions regarding leave to remain and entry clearance	Immigration Act 1971; Immigration, Nationality and Asylum Act 2002	Can result in the decision being withdrawn and a fresh decision being made, or certain restrictions lifted	None.

⁴⁵³ For further information, see: *Chapter 3 – Judicial Review*

Immigration, Nationality and Asylum

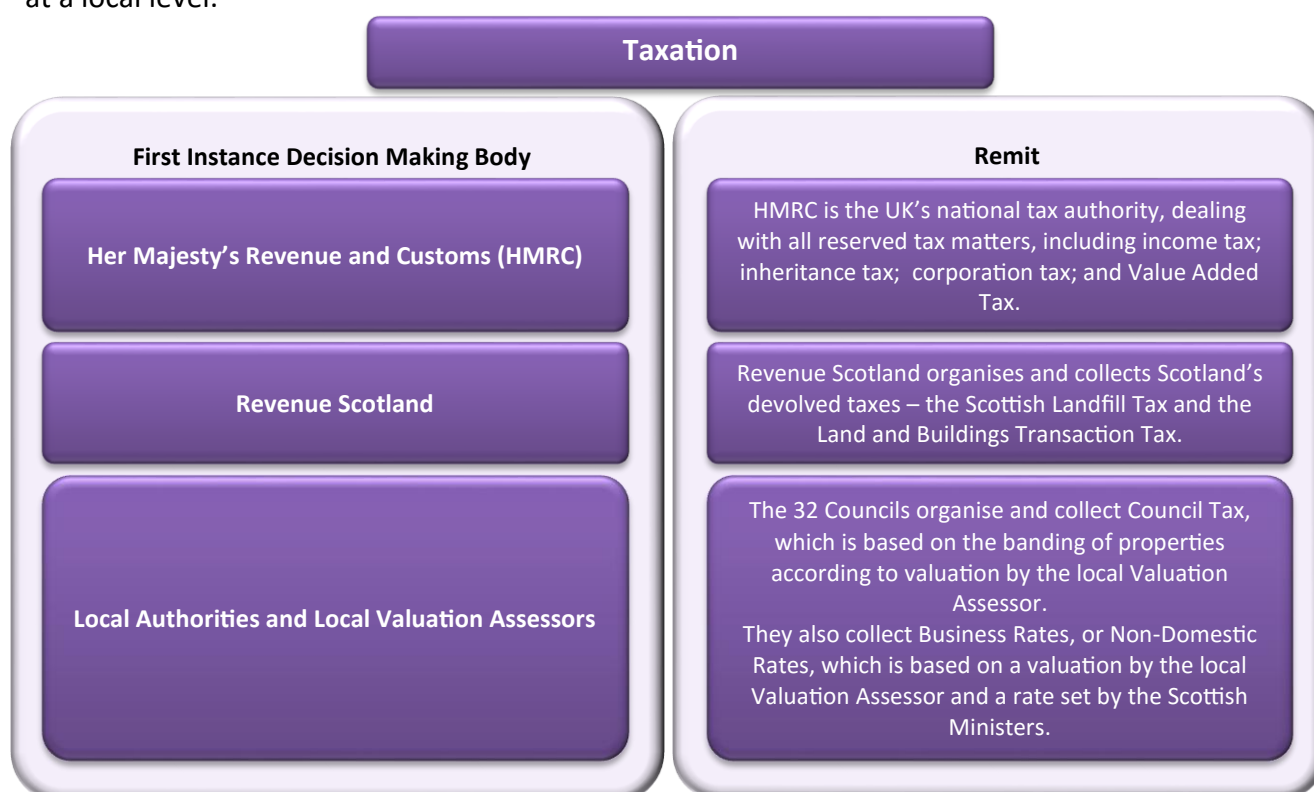


Taxation, Revenue & Social Security

Chapter 14

14.1 Taxation is largely a reserved matter and is, in the main, organised and collected by the UK Government agency, Her Majesty's Revenue and Customs (HMRC). However, recent devolution to the Scottish Parliament has resulted in the creation of Revenue Scotland to organise and collect two distinctly Scottish taxes – the Scottish Landfill Tax and the Land and Buildings Transaction Tax.⁴⁵⁴

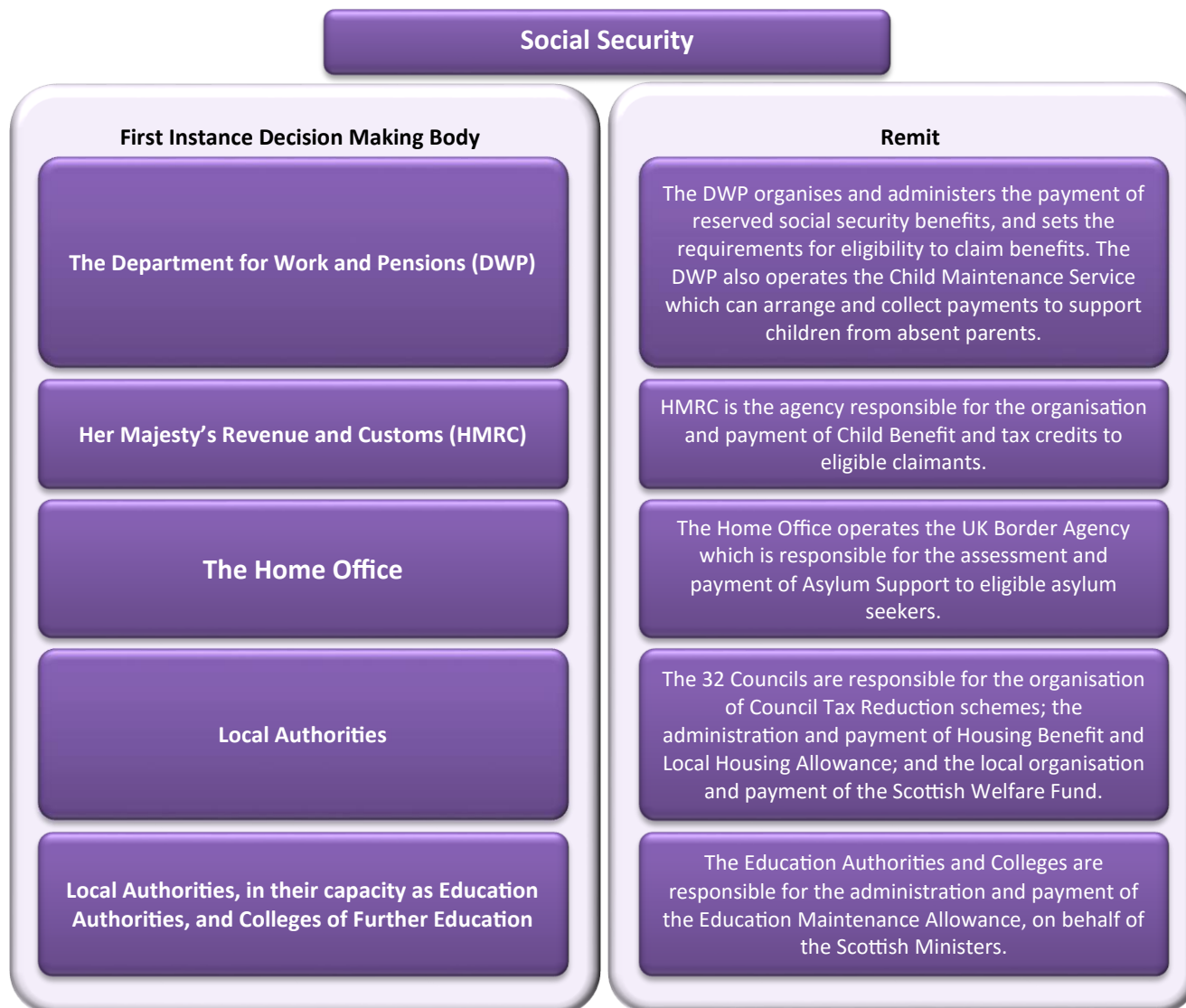
14.2 Council Tax is a local tax and is set and collected directly by Local Authorities. Business Rates, or Non-Domestic Rates is the equivalent tax on business property and is also collected by Local Authorities, but at a rate set by the Scottish Ministers. The amounts chargeable for both are based on property or rental value and are set by local Valuation Assessors. Processes for challenge of Council Tax or Business Rates valuation, and reductions in the amount payable, are also organised at a local level.



14.3 To a large extent welfare and benefits are also reserved matters and are organised and regulated by the Department for Work and Pensions of the UK Government. However, the Scottish

⁴⁵⁴ The Land and Buildings Transaction Tax (Scotland) Act 2013; Landfill Tax (Scotland) Act 2014

Government has established a Council Tax Reduction scheme⁴⁵⁵ and a Scottish Welfare Fund⁴⁵⁶. The Education Maintenance Allowance has also been maintained in Scotland.⁴⁵⁷



Reserved Taxation

14.4 For general UK taxation, including self-assessment, VAT and corporation tax, there is a right of appeal against decisions of the UK tax authority, Her Majesty's Revenue and Customs (HMRC).⁴⁵⁸ Decisions relating to the following can be appealed:

- The tax bill received
- A claim for tax relief or reduction
- Requests for information

⁴⁵⁵ The Council Tax Reduction (Scotland) Regulations 2012

⁴⁵⁶ See: <http://www.gov.scot/Topics/People/fairerscotland/scottishwelfarefund/scottishwelfarefundguidance>

⁴⁵⁷ Education Maintenance Allowances (Scotland) Regulations 2007

⁴⁵⁸ Appeal routes have been rationalised to fall broadly in line with DWP appeals (described below at 9.3.1) – the appeal route is included in the various tax statutes and follows the procedure in the “HMRC Appeals, Reviews and Tribunals Guidance: ARTG1000-15000” available at: <http://www.hmrc.gov.uk/manuals/artgmanual/index.htm>
See also: Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

- Penalties – including fines for late tax returns

14.5 During the appeal process, it may be possible to delay paying an amount of tax until a decision is reached on appeal. This involves an application to HMRC for permission to delay payment. If a person disagrees with the HMRC's decision on delay of payment, there is a right to request HMRC to review that decision.

14.6 The first stage of the actual appeal involves appealing directly to HMRC. There are 30 days from the date of the decision to do so. HMRC may at that point reconsider its initial decision or confirm it.

14.7 A person aggrieved by the response from HMRC may request a review of that decision. This is an optional stage, but can result in HMRC reconsidering their position. Should a person remain aggrieved after the review or not wish to go through the review process, there is a right of appeal at this stage to the UK First-tier Tribunal (Tax Chamber).

14.8 The decision of the UK First-tier Tribunal can be appealed further, but only on a point of law. This is to the UK Upper Tribunal (Tax and Chancery Chamber).

Reserved Taxation – The HMRC Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
HMRC – Internal Review Team	An optional stage where HMRC can reconsider any tax decision or penalty applied to a tax bill on request	The vast array of Tax statutes, covering both direct tax, such as Income Tax, and Indirect tax, such as VAT	Can change the initial decision, or confirm it	There is an onward right of appeal to the UK First-tier Tribunal (Tax Chamber).
UK First-tier Tribunal (Tax Chamber)	Can consider appeals against decisions of HMRC	The vast array of Tax statutes, covering both direct Tax, such as Income Tax, and Indirect Tax, such as VAT	Can change the initial decision, direct HMRC to make another decision or to reconsider the case, or can dismiss the appeal	There is a limited onward right of appeal to the UK Upper Tribunal (Tax and Chancery Chamber), on a point of law only.

Devolved Taxation

Revenue Scotland

14.9 Revenue Scotland is responsible for the organisation and collection of the Scottish Landfill Tax and the Land and Buildings Transaction Tax.⁴⁵⁹ Most decisions of Revenue Scotland in relation to these two taxes give rise to a right of appeal. Revenue Scotland also operates a mediation scheme for dispute resolution which is available at any point as long as both parties agree to it.

⁴⁵⁹ Revenue Scotland and Tax Powers Act 2014

14.10 A person aggrieved by a decision of Revenue Scotland can, in the first instance, ask Revenue Scotland to review its decision.⁴⁶⁰ This review will be carried out by an official who was uninvolved in making the initial decision. This can result in a different decision being made, or the original decision being confirmed. This is an optional step, however, and does not affect the right to go straight to appeal.

14.11 Should a person remain aggrieved after the review or not wish to go through the review process, there is a right of appeal to the First-tier Tax Tribunal for Scotland.⁴⁶¹ The aggrieved person must submit a Notice of Review to the First-tier Tax Tribunal for Scotland within 30 days of the decision in dispute, or within 30 days of the decision of the internal review.

14.12 There is a limited onward right of appeal from the First-tier Tax Tribunal for Scotland – this is to the Upper Tax Tribunal for Scotland – and can be made on a point of law only.⁴⁶²

Devolved Taxation –Revenue Scotland Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Revenue Scotland – Internal Review Team	An optional stage where Revenue Scotland can reconsider a tax decision on request	Revenue Scotland and Tax Powers Act 2014	Can result in a different decision being made	There is an onward right of appeal to the Scottish First-tier Tax Tribunal
First-tier Tax Tribunal for Scotland	Considers appeals against tax decisions of Revenue Scotland	Revenue Scotland and Tax Powers Act 2014	Can change the initial decision, direct Revenue Scotland to make another decision or to reconsider the case, or can dismiss the appeal	There is a limited onward right of appeal to the Upper Tax Tribunal for Scotland, on a point of law only

Council Tax and Non-Domestic Rates

a) Council Tax

14.13 Council Tax is a tax based on property valuation which is administered and collected locally by the 32 Local Authorities. The Local Authorities set the rates for Council Tax in “bands” but do not carry out a valuation of the property which determines the band and rate payable. This is done by a Valuation Assessor, who will add the valuation to the Council Tax Valuation List. There is a right to appeal against the valuation and banding of relevant properties, and also against the bill received from the Local Authority. Council Tax Reduction – a benefit in relation to Council Tax – and associated appeals, are dealt with below at sections 14.56-14.60.

⁴⁶⁰ *Ibid*, Chapter 5

⁴⁶¹ *Ibid*

⁴⁶² *Ibid*

Valuation Appeals

14.14 The person liable to pay Council Tax in respect of a property may challenge the decision of the Valuation Assessor as to the property's valuation.⁴⁶³ There are specific time limits as to when this appeal can be made. The Assessors will periodically revalue properties within a Council area.⁴⁶⁴ If a property is sold it is also liable to be revalued by the Assessors.⁴⁶⁵ When this is done, the liable person may challenge this decision within 6 months of the revaluation. This is termed a "proposal" but is in practice an appeal.

14.15 Alternatively, a person may appeal against a valuation within 6 months of acquiring an interest in a property which makes them liable to pay the tax for that property. Appeals against valuations are also available at any time to the person liable to pay on the grounds of error or material change in circumstances. In the first instance, these disputes should be brought up with the local Assessors directly, but these appeals can then be brought to the relevant Valuation Appeal Committee (VAC). The Committees are independent of both the local Assessor and Local Authority. The Committee will decide if the valuation is incorrect or not, and this can result in the property being re-banded. For appeals which raise more complex issues, the appeal can in the first instance be raised at the Lands Tribunal for Scotland, which will be transferred there by the VAC, or on application to the VAC.⁴⁶⁶

14.16 There is an onward right of appeal against decisions of a VAC, or the Lands Tribunal. This is to the Lands Valuation Appeal Court, within the Court of Session, but can only be made on a point of law.⁴⁶⁷

Other Council Tax Appeals

14.17 A person liable to pay Council Tax may appeal against the bill received if they believe it has been calculated incorrectly, if they disagree with a penalty applied, or against a determination of liability itself.⁴⁶⁸ This appeal is, in the first instance, to the Local Authority internally, and can be on the following grounds:

- The person believes that a discount (such as student exemption, or the single person's discount) has not been applied, when that person is entitled to it
- A penalty (such as a fine for providing misinformation or late information) has been added to the bill, and the person disagrees with it
- The person believes that the bill has been miscalculated

14.18 The Local Authority will have two months to consider the appeal. During this period, the appellant must continue to pay the bill as issued, except for any penalties disputed. Reconsideration can result in the Council changing the bill; cancelling any penalties; adding any deductions in eligible cases; and refunding any overpayments made.

⁴⁶³ Local Government etc (Scotland) Act 1994, s.29

⁴⁶⁴ This has been done for non-domestic properties, but has never been done for domestic properties since Council Tax was introduced in 1993

⁴⁶⁵ This is done for domestic properties

⁴⁶⁶ Lands Tribunal Act 1949, s.1(3A); Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, regulations 4-5

⁴⁶⁷ Local Government Finance Act 1992, s.82(4)

⁴⁶⁸ *Ibid*, s.81(1)

14.19 If the person remains aggrieved by the decision of the Local Authority, or the Local Authority fails to respond or decide the matter within two months, then there is a right to appeal this decision to the VAC.⁴⁶⁹ This can be done in writing to the Local Authority itself, requesting an appeal to the VAC. This must be done within four months of initially requesting the Council to look at the bill again, or within two months for disputes regarding penalties. The VAC can decide that the bill was incorrect or that a penalty should be cancelled. The Local Authority will, in those cases, then arrange for any repayments due and alter future bills.

14.20 There is an onward right of appeal against decisions of the VAC in this regard. This is to the Court of Session, but can only be made on a point of law.⁴⁷⁰

b) Non-Domestic Rates

14.21 Non-domestic rates, or business rates, is a tax on business properties based on business property valuation, similar to Council Tax for domestic properties.⁴⁷¹ The valuation is largely based on an analysis of annual rental values, and is set by the local Valuation Assessors, where it is then added to the Valuation Rolls. The amount payable is calculated by multiplying the rateable value of the property by the national “poundage”, which is an amount set by the Scottish Ministers.

14.22 Various “Rate Relief” schemes are in operation – including Charities Relief and Renewable Energy Relief – which can result in a discount being applied to the final bill.⁴⁷² These are administered by the Local Authorities. Any disputes regarding eligibility for relief schemes should be brought up with the Local Authorities.

Valuation Appeals

14.23 The Assessors will periodically revalue business properties within a Council area.⁴⁷³ When this is done, the liable person may challenge this decision within 6 months of the revaluation. This is termed a “proposal” but is in practice an appeal.

14.24 Alternatively, a person may appeal against a valuation within 6 months of acquiring an interest in a property which makes them liable to pay the tax for that property. Appeals against valuations are also available at any time to the person liable to pay on the grounds of error or material change in circumstances. In the first instance, these disputes should be brought up with the local Assessors directly, an appeal can then be brought to the relevant VAC.⁴⁷⁴ The Committees are independent of the Local Assessor, and of central and local Government. For appeals which

⁴⁶⁹ *Ibid*

⁴⁷⁰ Local Government Finance Act 1992, s.81(4); Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995

⁴⁷¹ Local Government (Scotland) Act 1975, ss.7-7B; Local Government Finance Act 1992

⁴⁷² The schemes include: Rural Rate Relief, Renewable Energy Relief, Charities Relief, the Small Business Bonus Scheme, Empty Property Relief, and the Fresh Start and New Start Schemes. See also: Local Government etc. (Scotland) Act 1994; Local Government (Financial Provision etc.) (Scotland) Act 1962; and various other statutes and statutory instruments establishing rate relief schemes.

⁴⁷³ This was last done for non-domestic properties in 2010

⁴⁷⁴ Lands Valuation (Scotland) Act 1854, s.10; the Acts amending the 1854 Act and any other enactment relating to valuation; Local Government (Scotland) Act 1975; The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995

raise more complex issues, the appeal can in the first instance be raised at the Lands Tribunal for Scotland, which will be transferred there by the VAC, or on application to the VAC.⁴⁷⁵

14.25 There is a limited onward right of appeal, from the VAC or the Lands Tribunal, to the Lands Valuation Appeal Court, within the Court of Session.⁴⁷⁶ This is on a point of law only.

Council Tax and Non-Domestic Rates – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Local Authorities – Council tax; Internal Appeals	Can reconsider a Council Tax bill; and discounts decisions for Council Tax and Non-domestic Rates	Local Government (Scotland) Act 1975; Local Government Finance Act 1992	Can decide a bill was miscalculated; a penalty should be cancelled; or that a specific deduction or discount should apply	There is an onward right of appeal to the Valuation Appeal Committee.
Valuation Appeal Committee	Hears appeals against the valuation decisions of local Valuation Assessors in relation to Council Tax valuations	Local Government Finance Act 1992; Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995	Can decide that the valuation was incorrect and can alter the Council Tax Valuation List, but this can result in an increase or a decrease in valuation	There is a limited onward right of appeal to the Lands Valuation Appeal Court, on a point of law only.
	Hears appeals against Council Tax decisions of a Local Authority after internal appeal	Local Government Finance Act 1992; Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995	Can decide that a bill was miscalculated, that a penalty should be cancelled, or that a specific deduction or discount should apply	There is a limited onward right of appeal to the Court of Session, on a point of law only.
	Hears appeals against the valuation decisions of local Valuation Assessors, in relation to Non-domestic ratings	Lands Valuation (Scotland) Act 1854; the Acts amending the 1854 Act & any other enactment relating to valuation; The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995	Can decide that a bill was miscalculated, that a penalty should be cancelled, or that a specific deduction or discount should apply	There is a limited onward right of appeal to the Lands Valuation Appeal Court, on a point of law only.

⁴⁷⁵ Lands Tribunal Act 1949, s.1(3A); Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, regulations 4 and 5(1)

⁴⁷⁶ Lands Valuation (Scotland) Act 1854, s.10; the Acts amending the 1854 Act and any other enactment relating to valuation; Local Government (Scotland) Act 1975; The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995

Council Tax and Non-Domestic Rates – Redress Processes (Continued)

Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
The Lands Tribunal for Scotland	Hears appeals against the valuation decisions of Local Valuation Assessors, in relation to Council Tax valuation, where the appeal is complex	Lands Tribunal Act 1949; Local Government Finance Act 1992; Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995	Can decide that the valuation was incorrect and can alter the Council Tax Valuation List, but this can result in an increase or a decrease in valuation	There is a limited onward right of appeal to the Lands Valuation Appeal Court, on a point of law only.
	Hears appeals against the valuation decisions of local Valuation Assessors, in relation to non-domestic valuation, where the appeal is complex	Lands Valuation (Scotland) Act 1854; the Acts amending the 1854 Act and any other enactment relating to valuation; Lands Tribunal Act 1949	Can decide that the valuation was incorrect and can alter the Valuation Rolls, but this can result in an increase or a decrease in valuation	There is a limited onward right of appeal to the Lands Valuation Appeal Court, on a point of law only.

Reserved Social Security System

Department for Work and Pensions administered benefits

14.26 The Department for Work and Pensions (DWP) of the UK Government is responsible for the administration and payment of the majority of reserved benefits throughout the UK.

14.27 There is a vast array of benefits which can be claimed if relevant eligibility criteria are met – this normally involves an assessment of the applicant’s financial income, family status and/or employment status. The DWP has recently overhauled the benefits system. This merged the payment of most benefits, which will now be paid through the Universal Credit scheme being rolled out across the UK.

14.28 The appeals process for benefits decisions of the DWP was reformed and rationalised in 2013.⁴⁷⁷ The process has two stages and now covers Universal Credit, Personal Independence Payment and all other benefits arranged by the DWP. This includes benefits such as Jobseeker’s Allowance and Employment Support Allowance in areas of the country where these have not yet been merged into the Universal Credit scheme. Decisions which give rise to the two stage appeals process include:

- Rejection of a benefit claim
- Determination that a claimant ineligible for a benefit or a higher amount of benefit (eg . if the DWP considers that they live with a partner or have an income or savings above a certain threshold.

⁴⁷⁷ Welfare Reform Act 2012

- Sanctions for failing to meet DWP requirements to continue receiving benefit payments
- Determination that an overpayment of benefit is recoverable based on evidence that there has been a misrepresentation or failure to disclose information.

14.29 Firstly, a claimant who is aggrieved by a DWP decision must allow the DWP to internally review its decision. This applies across the board and is called Mandatory Reconsideration.⁴⁷⁸ A claimant must request a Mandatory Reconsideration within one month of receiving the initial decision. The DWP will reconsider the decision and an official who was not involved in the original decision will carry out the review. The claimant will then be issued with a Mandatory Reconsideration Notice which will explain the reasons for the review decision. This can result in confirmation of the original decision or replacement with a new decision.

14.30 Should the claimant remain aggrieved by the outcome of the Mandatory Reconsideration, there is a right of appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber).⁴⁷⁹ The claimant must lodge this appeal directly with Her Majesty's Courts and Tribunals Service (HMCTS) and not with the DWP, and again there is a one month time limit to request an appeal from the date of the decision of the Mandatory Reconsideration. A copy of the Mandatory Reconsideration Notice is required before HMCTS can consider the appeal.

14.31 The UK First-tier Tribunal can confirm the original decision or can direct that a different decision is made. There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber) on a point of law only.⁴⁸⁰

Department for Work and Pensions – The Reserved Social Security Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
DWP – Mandatory Reconsideration	The DWP will, on request, reconsider any decision it has made in relation to benefits	Welfare Reform Act 2012, and associated social security legislation	Mandatory Reconsideration can result in a different decision being made, or confirmation of the original decision	There is an onward right of appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber).
UK First-tier Tribunal (Social Security and Child Support Chamber)	Hears appeals against decisions of the DWP, after Mandatory Reconsideration	Welfare Reform Act 2012, and associated social security legislation	Can direct the DWP to make a different decision or reconsider the case, or can confirm the original decision	There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

⁴⁷⁸ Social Security Act 1998, as amended

⁴⁷⁹ *Ibid*

⁴⁸⁰ *Ibid*

Housing Benefit and Local Housing Allowance

14.32 Housing Benefit is a reserved matter but is administered and funded at a local level by Local Authorities. The benefit aims to help those on a low income with the costs of renting their housing. Different rules to work out the amount of benefit apply to those who rent privately – the Local Housing Allowance scheme applies, and this is detailed below.

a) The Housing Benefit

14.33 Entitlement to Housing Benefit is calculated based on an individual's income and capital and/or entitlement and receipt of other state benefits. The decisions of the Local Authority in relation to Housing Benefit which can be challenged are:

- Entitlement to Housing Benefit
- The amount of benefit the applicant is entitled to
- The date from which the benefit will be paid

14.34 The first stage of the appeals process against appealable decisions of the Local Authority involves requesting a "revision".⁴⁸¹ This must be done within one month of the initial decision and should include the reasons why the applicant believes the decision to be incorrect. The Local Authority will look at the decision again and this will involve a senior officer who was not involved in the initial decision. This can result in a different decision being made.

14.35 Should the applicant remain aggrieved after the revision, there is a right to appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber).⁴⁸² The applicant can elect for a paper or oral hearing.

14.36 There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber) on a point of law only.⁴⁸³

14.37 Decisions regarding the length of time for which the benefit will be paid are ineligible for appeal. In this case, the process of challenging that decision would involve a Judicial Review of the Local Authority's decision.⁴⁸⁴

b) Local Housing Allowance

14.38 Local Housing Allowance (LHA) is used to work out Housing Benefit for This benefit is available to tenants of private rented accommodation who require assistance in paying their rent. The rules apply to those tenants who apply (or re-apply) for assistance under the Housing Benefit scheme after 7th April 2008. It is a different way of calculating entitlement under the existing Housing Benefit scheme, and it places limits on the maximum amount of benefit an applicant can receive. The amount payable will be determined by a Rent Officer from the Local Authority. There are no review or appeal processes available against the decision of the Rent Officer in Local Housing Allowance cases. However, their decisions are open to Judicial Review.⁴⁸⁵

⁴⁸¹ The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, as amended

⁴⁸² *Ibid*

⁴⁸³ *Ibid*

⁴⁸⁴ For further information, see: *Chapter 3 – Judicial Review*

⁴⁸⁵ *Ibid*

Housing Benefit – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Local Authorities – Revision	Can reconsider any decision made regarding eligibility, amount payable, or start date in relation to Housing Benefit	The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001	Can result in a different decision being made, or confirmation of original decision	There is an onward right of appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber).
UK First-tier Tribunal (Social Security and Child Support Chamber)	Hears appeals against Housing Benefit decisions of Local Authorities, after internal revision	The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001	Can direct that the Local Authority make a different decision, or reconsider the case, or can confirm the original decision	There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

Tax Credits, Child Benefit and Guardian's Allowance

14.39 Tax credits, Child Benefit and Guardian's Allowance are benefits administered by Her Majesty's Revenue and Customs (HMRC).

14.40 There are two types of tax credit – Child Tax Credit and Working Tax Credit. Child Tax Credit is payable for each child a person has, whether they work or not. The amount that a person will receive is calculated according to that person's income. Working Tax Credit is only available to those who work, but their income must be below a certain threshold, and is calculated according to income. A person is ineligible for both types of tax credits if they are Universal Credit claimants.

14.41 Child Benefit is payable to one parent responsible for the child, as long as the parent, or their partner, does not earn above a certain threshold. Guardian's Allowance is payable if a person is responsible for a child, where the parents of the child have died.

14.42 There is a standard appeal process for disputes arising over tax credits, Child Benefit and Guardian's Allowance.⁴⁸⁶ This could relate to a decision regarding eligibility, a decision regarding the amount payable, or a decision that the claimant has been overpaid where HMRC try to recoup the overpayment.

14.43 The claimant must first ask HMRC to review the decision under the Mandatory Reconsideration rules.⁴⁸⁷ This must be requested within one month of the decision being made. HMRC will reconsider the decision, which could result in a different decision being made. The decision will be issued with a Mandatory Reconsideration Notice.

⁴⁸⁶ The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014

⁴⁸⁷ If the initial decision was made before 6th April 2014, then the appeal is directly to HMRC. HMRC will reconsider its decision, and this could result in a different decision being made. If the decision was made after 6th April 2014

14.44 If the claimant remains aggrieved by the outcome of the Mandatory Reconsideration, then there is a right to appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber). This appeal must be lodged directly with Her Majesty's Courts and Tribunals Service, along with the Mandatory Reconsideration Notice, within one month of receiving the decision of the Mandatory Reconsideration.

14.45 There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), but only on a point of law.⁴⁸⁸

HMRC Benefits – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
HMRC – Mandatory Reconsideration	Can reconsider any decision made regarding HMRC benefits	The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014	Can result in a change of decision, or a confirmation of decision	There is an onward right of appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber)
UK First-tier Tribunal (Social Security and Child Support Chamber)	Hears appeals against HMRC decisions on HMRC benefits, after Mandatory Reconsideration	The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014	Can direct HMRC to make a different decision, reconsider the case, or can confirm the original decision	There is an onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

⁴⁸⁸ *Ibid*

Child Maintenance

14.46 The Child Maintenance Service (CMS), part of the Department for Work and Pensions (DWP), is the agency responsible for the arrangement and collection of payments from absent parents in support of their children. This is done where the parents cannot agree between themselves the support to be provided by the absent parent. The CMS can decide, based on a financial assessment of the absent parent, how much that parent should contribute towards the everyday living costs of their child.⁴⁸⁹ The CMS also has powers to collect the payments if the absent parent is uncooperative.

14.47 There is a right of appeal against an assessment of contributions to be made.⁴⁹⁰ In the first instance, the parent must request the CMS to reconsider their decision – this is called Mandatory Reconsideration. This must be requested within one month of receiving the initial decision. It can result in a different decision being made, but could also include a revision that increases or decreases the amount to be contributed. The decision will be issued with a Mandatory Reconsideration Notice.

14.48 There is a right of appeal after Mandatory Reconsideration – this is to the UK First-tier Tribunal (Social Security and Child Support Chamber). This appeal must be lodged directly with Her Majesty's Courts and Tribunals Service, must include the Mandatory Reconsideration Notice, and must be made within one month of receiving the reconsideration decision. This can result in the CMS being directed to make a different decision, including increasing or decreasing the amount to be contributed.

14.49 There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

Child Maintenance Service (CMS) – The Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Child Maintenance Service – Mandatory Reconsideration	Can reconsider any assessment of contributions to be made by the absent parent	The Child Support Maintenance Calculation Regulations 2012	This can result in a different decision on contributions being made	There is an onward right of appeal to the UK First-tier Tribunal (Social Security and Child Support Chamber).
UK First-tier Tribunal (Social Security and Child Support Chamber)	Hears appeals against decisions of the CMS, after Mandatory Reconsideration	The Child Support Maintenance Calculation Regulations 2012	Can direct the CMS to make a different decision, or to reconsider the case, or can confirm the original decision	There is an onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

⁴⁸⁹ The Child Support Maintenance Calculation Regulations 2012

⁴⁹⁰ *Ibid*

Asylum Support

14.50 The UK Border Agency of the Home Office can make a decision to support eligible asylum seekers financially and with housing whilst they await a decision on their asylum claim.⁴⁹¹ There are four conditions on making a claim. The applicant must:

- Be an asylum seeker, or be dependent on one
- Be destitute (i.e. they are homeless or it is unreasonable to expect them to continue living in their current accommodation)
- Have no access to other support in the UK
- Have made a claim for asylum as soon as possible after arrival in the UK

14.51 An asylum seeker who has had their claim for asylum rejected, but who has appealed or requested a review of that decision, will still be eligible for support until the outcome of the appeal (and subject to the four conditions).

14.52 There is a right of appeal against a decision of the UK Border Agency not to support a claimant with accommodation or money. This is to the UK First-tier Tribunal (Asylum Support Chamber).⁴⁹² The claimant can elect to have an oral hearing, and, if appropriate, this can be done by video-link. Otherwise, the claimant will have to travel to London for the hearing but the Home Office will pay for any associated travel and accommodation costs.

14.53 The Tribunal can decide to allow the appeal, which will mean the support will be granted; dismiss the appeal; or direct the UK Border Agency to make a fresh decision.

14.54 There is no further onward right of appeal.

Asylum Support – The Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
UK First-tier Tribunal (Asylum Support Chamber)	Hears appeals against unsuccessful claims for Asylum Support	Asylum Support Regulations 2000	Can decide that the original decision was incorrect and that support should be granted, or can decide that the appeal should be dismissed	None.

Devolved Social Security System

14.55 Whilst the majority of the welfare and benefits system remains reserved to the UK Parliament, the Scottish Government has introduced some measures to assist those on low incomes, where it has the competence to do so. These are set out below.

⁴⁹¹ Asylum Support Regulations 2000

⁴⁹² *Ibid*

Council Tax Reduction

14.56 The Scottish Government Council Tax Reduction Scheme⁴⁹³ is administered by Local Authorities, which decide whether those on a low income are entitled to a reduction in their council tax bill according to eligibility criteria.

14.57 There is a two stage appeal process against a decision of a Local Authority in assessing eligibility for Council Tax Reduction. The first involves an internal review stage.⁴⁹⁴ The aggrieved person must request this review within two months of the original decision, and this request must state the reasons why the individual believes the decision to be incorrect. An officer who was uninvolved in the original decision will review the case. This can result in a different decision being made.

14.58 Should the individual remain dissatisfied with the outcome of the review, then there is a right to an independent ruling on the matter.⁴⁹⁵ This appeal is to the Council Tax Reduction Review Panel (CTRRP). There is a requirement to have gone through the internal review process before an appeal to the CTRRP can be made, unless after requesting a review, the council failed to respond to the individual within two months.

14.59 The CTRRP is independent of Local Authorities. It can decide that the original decision was incorrect and can direct that a different decision is made, or it can confirm the original decision.

14.60 There is a limited onward right of appeal to the Court of Session, on a point of law only.⁴⁹⁶

Council Tax Reduction – The Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Local Authority – Internal Review	Can reconsider a decision relating to Council Tax Reduction eligibility or amount payable	Council Tax Reduction (Scotland) Regulations 2012	Can result in a different decision being made, or confirmation of the original decision	There is an onward right of appeal to the Council Tax Reduction Review Panel
Council Tax Reduction Review Panel (CTRRP)	Hears appeals regarding Council Tax Reduction decisions, after internal review	Council Tax Reduction (Scotland) Regulations 2012	Can direct the Local Authority to make a different decision, or can confirm the original decision	There is a limited onward right of appeal to the Court of Session, on a point of law only

⁴⁹³ Council Tax Reduction (Scotland) Regulations 2012

⁴⁹⁴ *Ibid*, Part 11A

⁴⁹⁵ *Ibid*

⁴⁹⁶ *Ibid*

The Scottish Welfare Fund

14.61 The Scottish Government has established an interim Scottish Welfare Fund which is administered and maintained by the 32 Local Authorities.⁴⁹⁷ The two types of payments which can be made are Community Care Grants and Crisis Grants. The payments are discretionary and can be paid out in accordance with local priorities and needs. The Scottish Government has legislated to establish a permanent Scottish Welfare Fund and this will entail different review mechanisms when it comes into operation.⁴⁹⁸

14.62 There is a two stage appeals process for decisions regarding Scottish Welfare Fund grants. The first of these is the First Tier Review. An aggrieved person can request the Council to revise the original decision. This will involve someone who was not involved in the initial decision making process. This can result in a different decision being made.

14.63 Should the applicant remain aggrieved after the First Tier Review, there is a right to a Second Tier Review. This involves a panel of officers who are independent of the Council's welfare funds team. The decision of the panel can result in the decision being overturned and a fresh decision being issued, or the decision being set aside and referred back to the council for a fresh decision.

The Scottish Welfare Fund – The Redress Process				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Local Authority – First Tier Review	An officer, not involved in the original decision, can reconsider a decision regarding eligibility or amount to be paid	Non-statutory in nature, based on Scottish Government Scottish Welfare Fund Guidance and local policy	Can result in a different decision being made, or confirmation of original decision	There is an onward right to review by an independent Panel.
Local Authority – Second Tier Review	A panel can reconsider a decision on eligibility or amount to be paid	Non-statutory in nature, based on Scottish Government Scottish Welfare Fund Guidance and local policy	Can result in a different decision being made, or confirmation of original decision	None.

⁴⁹⁷ See: <http://www.gov.scot/Topics/People/fairerscotland/scottishwelfarefund/scottishwelfarefuindguidance>

⁴⁹⁸ Welfare Funds (Scotland) Act 2015 – expected to come into operation in April 2016

The Education Maintenance Allowance (EMA)

14.64 The EMA is a payment made on a weekly basis to students attending Scotland's secondary schools or colleges, who are between 16 and 19 years old, undertaking full-time study, and who are deemed vulnerable or from a low-income family.⁴⁹⁹ Local Authorities, in their capacity as Education Authorities, and Scotland's colleges administer and make payment of the allowance on behalf of the Scottish Ministers.

14.65 The payment of the allowance is subject to a financial assessment.⁵⁰⁰ Once the student is deemed eligible, the continued payment of the allowance is subject to adherence to a "Learning Agreement", whereby the Education Authority or college must be satisfied as to the student's attendance and progress records.⁵⁰¹ The Education Authority or college can stop payments if it is not satisfied that the Learning Agreement is being adhered to. In cases of overpayment, there is also a right to claim sums back from the student.⁵⁰²

14.66 There is a right of appeal in respect of 1) both eligibility, and 2) alleged breaches of the Learning Agreement and non-payments. These are internal appeals to the Education Authority or college.⁵⁰³ This can result in a different decision being made.

Education Maintenance Allowance – Redress Processes				
Body	Remit	Legislative Basis	Form of Redress	Onward Appeal or Review
Education Authority or College – Internal Education Maintenance Allowance Appeals	An officer, not involved in the original decision, can reconsider a decision regarding eligibility or amount to be paid	Education (Scotland) Act 1980; Education Maintenance Allowances (Scotland) Regulations 2007	The Education Authority or college can confirm the original decision, or can take a different decision	None.

⁴⁹⁹ Education (Scotland) Act 1980, s.73(f); Education Maintenance Allowances (Scotland) Regulations 2007. The payment is made to students who have surpassed school leaving age (but who have decided to continue studying) as defined in the Education (Scotland) Act 1980, s.33

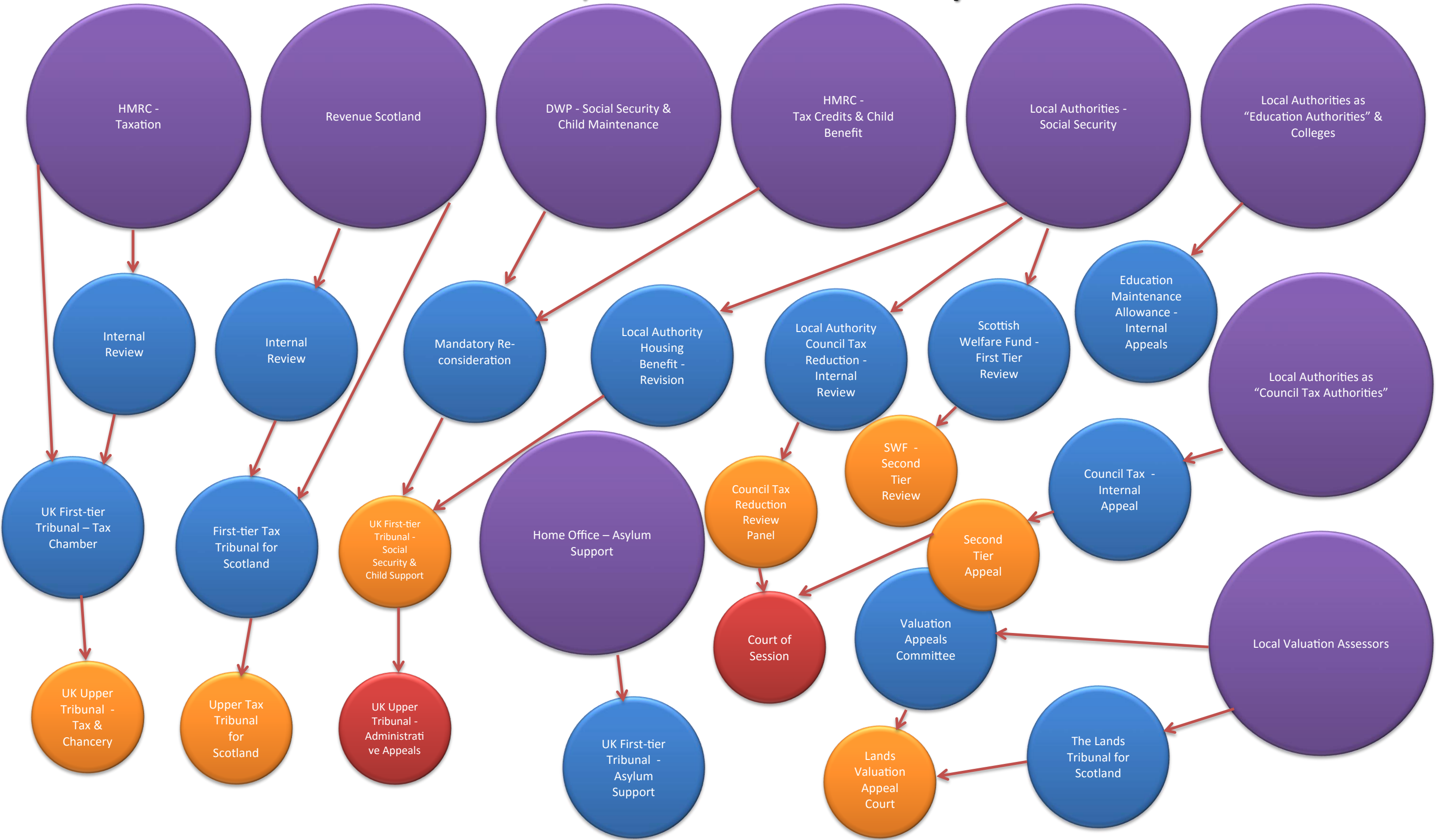
⁵⁰⁰ *Ibid*, s.4

⁵⁰¹ *Ibid*, s.5

⁵⁰² *Ibid*, s.5(4)

⁵⁰³ The Education Maintenance Allowance, *Business Model*, Version 14, paragraph 2.1.3

Taxation, Revenue and Social Security



Initial Decision Making Body

First Tier Complaint/Review/Appeal Body

Second Tier Complaint/Review/Appeal Body

Third Tier Complaint/Review/Appeal Body

Route of Complaint/Review/Appeal

Body can take independent action

Regulatory/Oversight Body

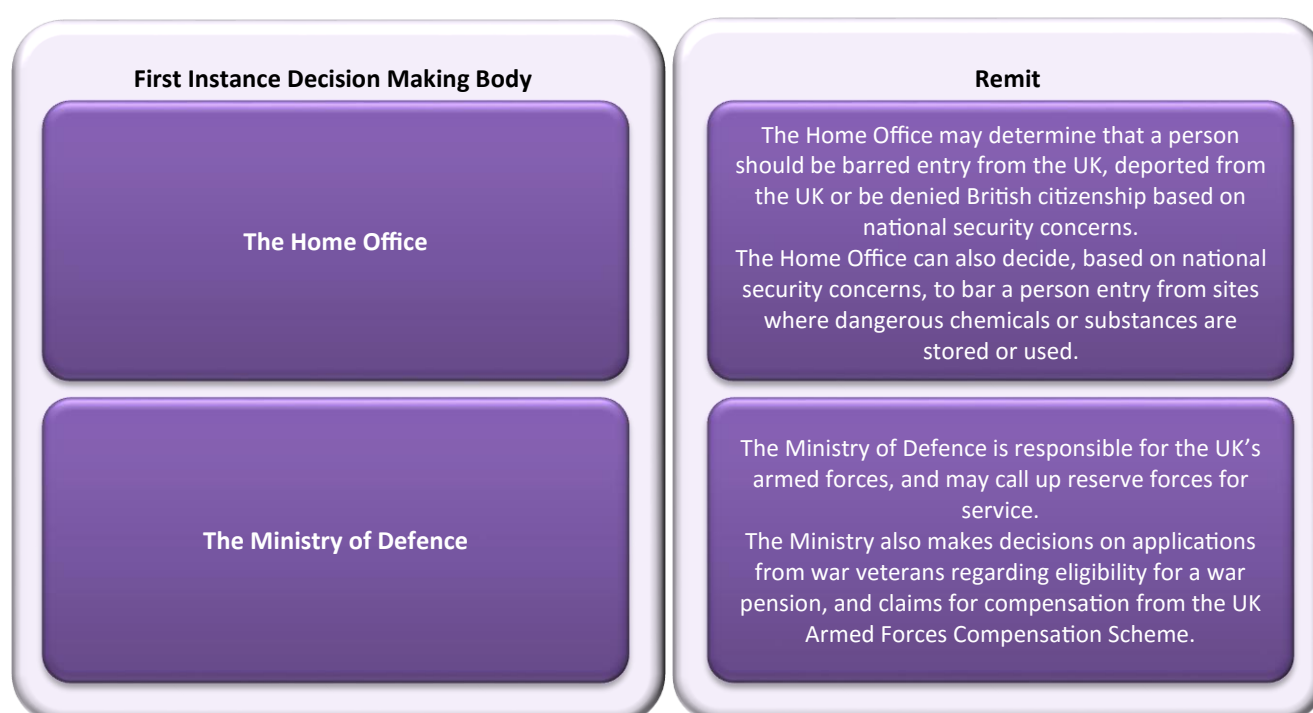
Alternative Methods of Dispute Resolution (ADR)

Route of ADR

National Security & Defence

Chapter 15

15.1 National security and defence are reserved matters and are dealt with by the UK Government. In this chapter, actions that the Home Office may take against individuals in relation to national security concerns are considered. The decisions of the Ministry of Defence in relation to the Reserve Forces and claims for compensation or war pensions are also described.



National Security

15.2 There are two UK-wide tribunals which deal with issues of terrorism and national security – the Special Immigration Appeals Commission and the Pathogens Access Appeals Commission. Both deal with appeals against decisions of the Home Office.

The Special Immigration Appeals Commission

15.3 The Home Office may determine, according to national security concerns, to deny a person entry into the UK, to deport a person from the UK or to deny or revoke British citizenship.⁵⁰⁴ Most commonly, these concerns relate to terrorism.

⁵⁰⁴ Nationality, Immigration and Asylum Act 2002; Special Immigration Appeals Commission Act 1997

15.4 These decisions can be appealed to the Special Immigration Appeals Commission. There are strict time limits for raising an appeal, given the nature of the decision. From within the UK, the appellant has five working days if they are in detention or ten days if not. The time limit is 28 working days if the appellant is out-with the UK.

15.5 The Commission can confirm the Home Office decision, or can direct that the Home Office makes a different decision. The decision of the Commission can be appealed further, but only on a point of law, to the Court of Session.

The Pathogens Access Appeals Commission

15.6 The Home Office may bar a person from access to sites where dangerous viruses, bacteria and toxic substances are stored or used on grounds of national security.⁵⁰⁵ Most commonly, these concerns relate to terrorism.

15.7 The decision of the Home Office can be appealed. The person has six months from the decision to appeal to the Pathogens Access Appeals Commission. The Commission can uphold the Home Office decision or can overturn the ban.

15.8 The decision of the Commission can be appealed further, on a point of law only, to the Court of Session.

National Security in Administrative Justice – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Special Immigration Appeals Commission	Considers appeals against decisions of the Home Office to bar entry or deport a person from the UK; or to deny or revoke British citizenship, on grounds of national security	Special Immigration Appeals Act 1997; Nationality, Immigration and Asylum Act 2002; Immigration Act 2014	Can substitute the Home Office decision with one of its own, or can direct that a fresh decision is made by the Home Office	A limited onward right of appeal exists - to the Court of Session, on a point of law only.
The Pathogens Access Appeals Commission	Considers appeals against decisions of the Home Office to bar a person from access to sites where dangerous or toxic substances are stored or used, on grounds of national security	Anti-Terrorism, Crime and Security Act 2001	Can overturn the ban, allowing the person access to the sites	A limited onward right of appeal exists – to the Court of Session, on a point of law only.

⁵⁰⁵ Anti-Terrorism, Crime and Security Act 2001

Defence

15.9 The Ministry of Defence also takes certain decisions of an administrative justice nature.

15.10 There is an independent appeal route against the decision of the Ministry to call up an individual for service with the reserve forces. This is to the Reserve Forces Appeal Tribunal.

15.11 Further, reservists returning from service can bring disputes concerning their usual employment to the Reinstatement Committee. The Committee can hear disputes in regard to the offer of a job from their employer, on return, that they are dissatisfied with, or where the employer has informed the reservist that they will not be re-employing them.

15.12 The Pensions Appeal Tribunal Scotland deals with appeals against the rejection of claims for a war pension, and decisions regarding eligibility and award of compensation from the UK Armed Forces Compensation Scheme, made by the Secretary of State for Defence.

The Reserve Forces Appeal Tribunal

15.13 A member of the UK Reserve Forces can request the Ministry of Defence to grant an exemption, deferral or revocation of a “call-up” or mobilisation, or to grant a payment of compensation for deployment.⁵⁰⁶ The employer of a reservist can also request an exemption from service for their employee. If the Ministry of Defence rejects these requests, then there is a right of appeal. This is to the Reserve Forces Appeal Tribunal. The appeal must be made within five days of receiving the rejection of exemption notice.

15.14 The Tribunal can uphold the rejection or can grant the request.

15.15 There is no onward appeal. However, in exceptional circumstances, a request for review can be made to the Tribunal directly if new evidence or information becomes available.

The Reinstatement Committee

15.16 The Reinstatement Committee hears disputes between reservists, on return from service, and their employers. The Committee can hear disputes concerning: the offer of a job by the employer which the reservist is dissatisfied with; and termination of continuing employment of the reservist.⁵⁰⁷

15.17 The Committee can, if it finds it appropriate, order the employer to re-employ the reservist under the terms of the Reserve Forces (Safeguard of Employment) Act 1985. If the employer cannot or will not do this, the Committee can order the employer to pay compensation to the reservist.

15.18 There is an onward right of appeal to the Umpire or Deputy Umpire of the Committee. This can be brought by the employer, an employer representative organisation, or the reservist. The decision of the Committee to make or not to make an order can be appealed. The Umpire or Deputy Umpire can make any decision which the Committee could have made, or it can dismiss the appeal. This decision is final.

⁵⁰⁶ Reserve Forces Act 1996, Part IX

⁵⁰⁷ Reserve Forces (Safeguard of Employment) Act 1985

The Pensions Appeal Tribunal Scotland

15.19 The Pensions Appeal Tribunal hears appeals from ex-servicemen or women who have had their claims for a war pension or entitlement under the Armed Forces Compensation Scheme rejected by the Ministry of Defence.⁵⁰⁸

15.20 Appeals require to be initiated on a standard form which is only obtainable from Veterans UK, which is part of the Ministry of Defence. Veterans UK will process the completed form and appeals papers on the appellant's behalf.

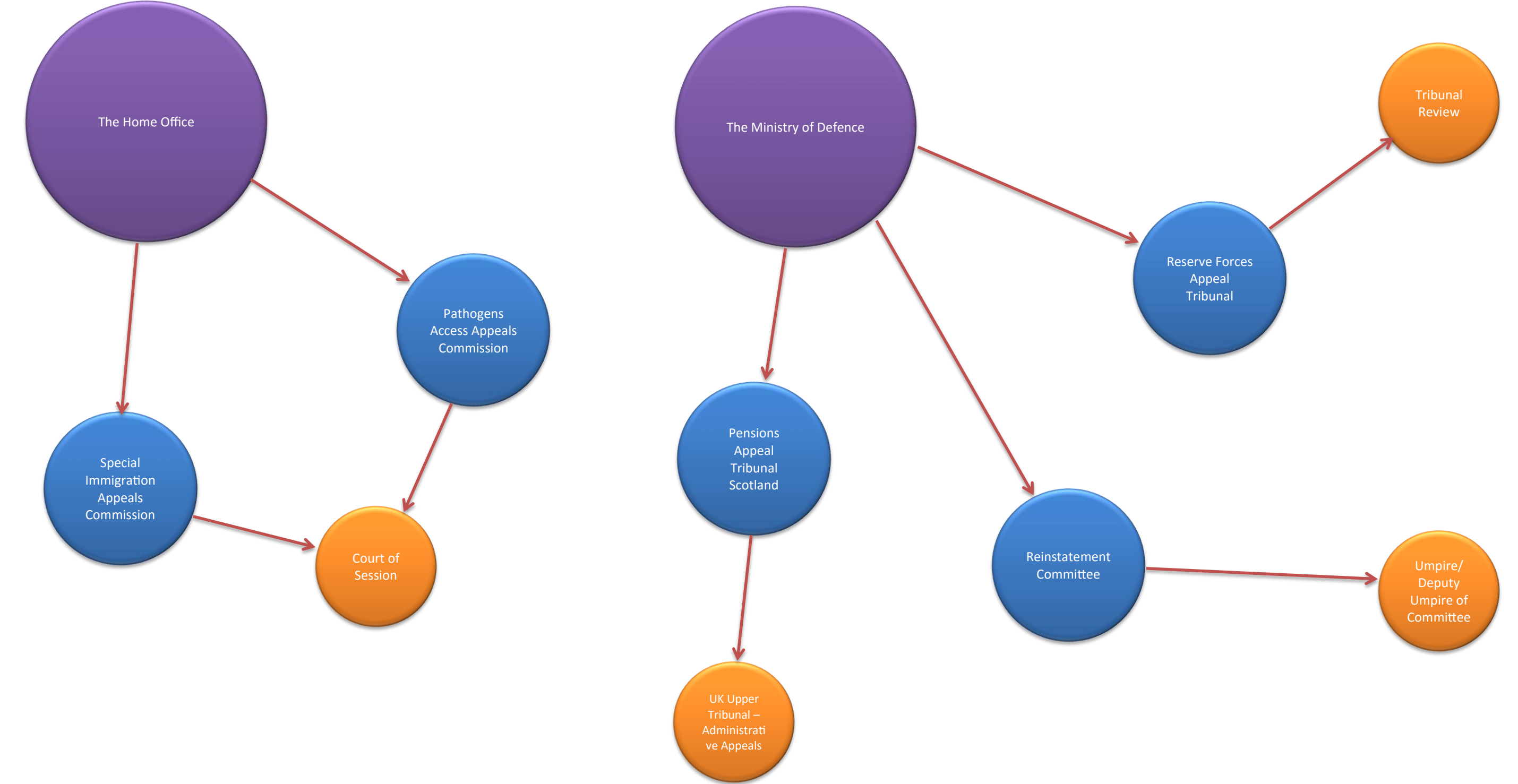
15.21 The Tribunal will decide upon the appellant's entitlement or not for the war pension or compensation.

15.22 There is a right of onward appeal to the UK Upper Tribunal (Administrative Appeals Chamber). This can only be on a point of law.

Defence and Administrative Justice – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Reserve Forces Appeal Tribunal	Considers appeals against the rejection of an exemption request by the Ministry of Defence to being "called up" for service in the reserve forces	Reserve Forces Act 1996	Can grant the exemption	The Tribunal can be requested to review its own decision in exceptional circumstances.
The Reinstatement Committee	Hears disputes between reservists, on return from service, and employers	Reserve Forces (Safeguard of Employment) Act 1985	The Committee can secure re-employment with the reservist's employer by making an order for re-employment, or can order the payment of compensation	There is an onward right of appeal to the Umpire or Deputy Umpire of the Reinstatement Committee, and this decision is final.
The Pensions Appeal Tribunal Scotland	Considers appeals against the rejection of a claim for a war pension, or compensation from the Armed Forces Compensation Scheme	Pension Appeal Tribunals Act 1943; Armed Forces and Reserve Forces Compensation Scheme Order 2005	Can decide that the appellant is entitled to the pension or compensation	There is a limited onward right of appeal, to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

⁵⁰⁸ Pension Appeal Tribunals Act 1943; Armed Forces and Reserve Forces Compensation Scheme Order 2005

National Security and Defence



Food & Agriculture

Chapter 16

16.1 For the most part, the law relating to both food and agriculture is harmonised at European level.

16.2 European regulations provide a framework for achieving assurance on the safety of food sold within the EU and mandate specific rules on food hygiene for food business operators. They also outline the requirements for the registration and approval of food businesses by the “competent authorities” in Member States. In Scotland, these responsibilities mainly fall to Local Authorities, but Food Standards Scotland and the Scottish Government Rural Payments and Inspections Directorate also play a role in relation to certain establishments, principally those involved in the slaughter and cutting of fresh meat and at the point of primary production on farm.

16.3 The law relating to agriculture is mainly devolved to the Scottish Parliament. Similarly, many regulations relating to agriculture are harmonised at European level, including the law relating to certain agricultural practices and the use of animal by-products. In addition, Scottish planning and environmental law applies in relation to the development of agricultural land, the disposal of waste (including agricultural waste and by-products) and the use of chemicals such as pesticides. These issues are dealt with generically in *Chapter 8 - Development Management, Planning and Building Standards* and *Chapter 10 - Environment, Heritage, Water and Waste Management*, with the exception of specific agri-environmental issues which are dealt with here.

16.4 The regulation of agricultural holdings and crofting falls to the responsibility of the Crofting Commission and, in certain aspects, the Scottish Land Court. Finally, the development and use of new varieties of plants and seeds is regulated by the UK Government.

First Instance Decision Making Body

Local Authorities, as a “competent authority”
in the context of European Food Safety and
Food Hygiene regulation

Remit

Responsible for the registration of food retail, manufacturing and catering businesses and the approval of producers of products of animal origin manufacturers (except those where official veterinary supervision is required such as slaughter houses and cutting plants). They are also responsible for auditing and inspecting these premises to ensure compliance with food hygiene and safety regulations; and can take enforcement action where necessary.

Also responsible for the registration and approval of animal feed and pet food manufacturing establishments.

First Instance Decision Making Body (Cont)	Remit
Food Standards Scotland, as a “competent authority” in the context of European Food Safety and Food Hygiene regulation	Responsible for the classification of live bi-valve mollusc production areas, and for the audit and inspection of meat and game establishments, such as slaughterhouses; and can take enforcement action against these premises where necessary. Also responsible for the audit of other “competent authorities” to ensure compliance with the legal obligations placed on Member States of the EU to have consistent and effective official controls in place, and a national control plan for these activities.
The Scottish Government – Rural Payments and Inspections Directorate, as a “competent authority” in the context of European Food Safety and Food Hygiene Regulation; and European Animal By-Product Control Regulation	Responsible for the audit and inspection of primary production farming establishments where there is also a Common Agricultural Policy audit; also responsible for the audit and inspection of primary production egg establishments; and can take enforcement action where necessary.
UK Department for Environment, Food and Rural Affairs – Veterinary Medicines Directorate, as a “competent authority” in the context of European Food Safety and Hygiene Regulation	Responsible for the approval of establishments which produce animal feed and pet food containing animal medicines.
The Scottish Government - Rural Payments and Inspections Directorate	Responsible for the administration and payment of rural payments, grants and subsidies, in the European and Scottish context.
The Crofting Commission	Responsible for the regulation of crofting in Scotland.
The Scottish Land Court	Responsible for determinations relating to crofting.
The Scottish Environment Protection Agency	Responsible for the regulation of the use and storage of silage, slurry and certain agricultural fuel oils; and is empowered to take enforcement action should pollution, or a risk of pollution, occur from such use or storage.
UK Department for Environment, Food and Rural Affairs – Animal and Plant Health Agency	Responsible for assessing applications for grants of Plant Breeders’ Rights.

Premises Registration and Approval

16.5 Local Authorities are responsible for the *registration* of food retail and catering services.⁵⁰⁹ The business must be registered within 28 days of trading as a food business. The Local Authority’s

⁵⁰⁹ EC Regulation 852/2004; Food Hygiene (Scotland) Regulations 2006

environmental health services team will then be responsible for ensuring that the business complies with food safety and hygiene laws and is empowered to take enforcement action. These actions are detailed below at sections 16.10 -16.18

16.6 Certain businesses require to apply for prior approval to operate.⁵¹⁰ These include premises where meat is processed, manufactured or prepared; where dairy, egg or fish products are manufactured; and some wholesalers and cold stores.

16.7 In these cases, an application for approval as a Food Business Establishment must be obtained from the Local Authority or Food Standards Scotland. The approval must be obtained from Food Standards Scotland for slaughterhouses, cutting plants and game handling establishments, as a veterinarian official must also inspect these premises. Where an establishment falls under Food Standards Scotland's remit and there are other ancillary premises attached, then these will usually also be approved by Food Standards Scotland.

16.8 The Local Authority or Food Standards Scotland may refuse to issue approval if they believe that food and hygiene standards are not, or will not be, met. There is a right of appeal against refusal – this is to the Sheriff Court, within one month of receiving notice of the decision of the competent authority.⁵¹¹ This may result in a different decision being issued, or a direction that the Local Authority or Food Standards Scotland reconsiders its decision.

16.9 There is an onward right of appeal to the Court of Session, should the Sheriff Court dismiss the appeal.⁵¹²

Approval of Food Business Establishments – Redress Process				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against refusal by the “competent authority” (Local Authority or Food Standards Scotland) to approve, or to withdraw or suspend approval of, a Food Business Establishment	The Official Feed and Food Control (Scotland) Regulations 2009 and EC Regulation 853/2004	Can result in the decision of the “competent authority” being considered incorrect and a determination that approval should be granted, or a direction that the competent authority reconsiders the application	There is a right of appeal to the Court of Session against dismissal of an appeal by the Sheriff Court.

Food Audit, Monitoring and Inspections

16.10 Most safety and hygiene inspections and audits of Food Business Establishments and food retail and catering businesses are carried out by Local Authorities. Inspectors from the Council's environmental health services teams will inspect the premises to ensure that food safety and

⁵¹⁰ EC Regulation 853/2004, article 4(2)

⁵¹¹ The Official Feed and Food Control (Scotland) Regulations 2009, regulation 12

⁵¹² *Ibid*, regulation 13

hygiene standards are being met. The Local Authorities are empowered to take enforcement action where a breach of the law, or a lapse in standards, has been found.⁵¹³

16.11 Certain establishments are inspected and audited by different authorities, however. Food Standards Scotland is the competent authority for the inspection of approved meat handling establishments, such as slaughterhouses and meat cutting plants.⁵¹⁴ The Scottish Government Rural Payments and Inspections Directorate is responsible for the inspection and audit of primary production farms, where Common Agricultural Policy compliance audits are also carried out.⁵¹⁵ The Scottish Government is also responsible for the inspection of egg hygiene at primary production establishments.⁵¹⁶

16.12 Where a breach of food safety and hygiene standards is found, the relevant competent authority is empowered to take enforcement action against the establishment in question.⁵¹⁷ In order to determine the action to take, the authority will have regard to its published enforcement policy and may take samples or photographs of food or equipment, take records from the business for inspection, or seize or detain food or equipment to obtain evidence to support its decision. There are three main types of Enforcement Notice that the authority can serve on the premises:

Hygiene Improvement Notice

16.13 This requires the business to take certain actions to comply with the law within a time (not less than 14 days) specified in the Notice.⁵¹⁸

Hygiene Emergency Prohibition Notice

16.14 This is issued in emergencies, prohibiting the use of the premises as a whole or certain processes, types of use, or pieces of equipment, where they present an imminent risk of injury to health.⁵¹⁹ Following service of such a Notice, the authority requires to apply to the Sheriff for a Hygiene Emergency Prohibition Order.⁵²⁰ This will allow the individuals affected to attend the court hearing.

16.15 If the Sheriff is satisfied that the imminent health risk condition is fulfilled they shall impose the appropriate prohibition by such an Order.⁵²¹ If an Emergency Prohibition Order is made there is a right of appeal to the Court of Session about that decision.⁵²²

Remedial Action Notice

16.16 This is similar to a Hygiene Emergency Prohibition Notice but can only be issued where specific requirements of the Community Hygiene legislation is being breached and it is limited to prohibition of specified equipment processes and areas rather than closure of the premises as a

⁵¹³ Food Hygiene (Scotland) Regulations 2006, regulation 5

⁵¹⁴ *Ibid*, regulation 4

⁵¹⁵ *Ibid*

⁵¹⁶ *Ibid*

⁵¹⁷ Food Hygiene (Scotland) Regulations 2006, regulation 5

⁵¹⁸ *Ibid*, regulation 6

⁵¹⁹ *Ibid*, regulation 8

⁵²⁰ *Ibid*, regulation 8(2) and 8(7)

⁵²¹ *Ibid*, regulation 8(2)

⁵²² *Ibid*, regulation 21

whole.⁵²³ These notices do not require the demonstration of an immediate risk of injury to health and the notice does not require to be confirmed by the Sheriff Court.

16.17 For notices other than Hygiene Emergency Prohibition Notices, there is a right of appeal to the Sheriff Court.⁵²⁴ This can result in the Notice being cancelled or the notice affirmed. There is an onward right of appeal should the initial appeal be dismissed, and this is to the Court of Session.⁵²⁵

16.18 Furthermore, should the operator of a Food Business Establishment be convicted of a relevant food hygiene offence, then the Sheriff Court before which the operator was convicted can impose a Hygiene Prohibition Order if it is satisfied there is a risk of injury to health.⁵²⁶ There is a right to appeal against this decision to the Court of Session.⁵²⁷

Food Safety and Hygiene Enforcement Notices – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears applications from competent authorities to impose a Hygiene Emergency Prohibition Order following service of a Hygiene Emergency Prohibition Notice.	Food Hygiene (Scotland) Regulations 2006; EC Regulation 178/2002; EC Regulation 852/2004, Regulation 853/2004	Can impose an Order or determine that the Notice shall cease to have effect. In the latter case the enforcement authority shall compensate the food business for any loss suffered through compliance with the Notice	There is a right of appeal against the decision of the Sheriff Court to make the Order, to the Court of Session.
The Sheriff Court	Hears appeals against the imposition of Hygiene Improvement Notices and Remedial Action Notices by competent authorities	Food Hygiene (Scotland) Regulations 2006; EC Regulation 178/2002, EC Regulation 852/2004, Regulation 853/2004	The Sheriff Court can confirm the Notice, or cancel the Notice	There is an onward right of appeal to the Court of Session for any dismissal of an appeal by the Sheriff Court.
The Court of Session	Hears appeals against the decision of the Sheriff Court to impose a Hygiene Prohibition Order, after conviction of an offence against the hygiene regulations	Food Hygiene (Scotland) Regulations 2006; EC Regulation 178/2002, EC Regulation 852/2004, Regulation 853/2004	The Court of Session may confirm or cancel the Order	None.

⁵²³ *Ibid*, regulation 9

⁵²⁴ *Ibid*, regulation 20 and 22

⁵²⁵ *Ibid*, regulation 21

⁵²⁶ *Ibid*, regulation 7

⁵²⁷ *Ibid*, regulation 21

Food Information

16.19 The requirements for Food Business Establishments in relation to food information is contained in the Food Information (Scotland) Regulations 2014. The Food (Scotland) Act 2015 introduced new requirements in relation to compliance with food information law. The Act introduces a duty on Food Business Establishment operators to report any suspected breach food information law to Food Standards Scotland.⁵²⁸ This applies, for example, to both food that is produced by the business and food that is handled to be sold on by the business. It is an offence not to report a suspected breach to Food Standards Scotland. The “competent authority” which inspects the business will also check for compliance with food information laws and can take enforcement action.⁵²⁹

16.20 The 2015 Act also empowers officers of the competent authority to serve Notice upon the Food Business Establishment operators and to seize or detain food where there has been a serious contravention of food information law.⁵³⁰ The matter must then be passed on to the Sheriff Court. The Sheriff Court can make any Order in relation to the food as it sees fit, including ordering its destruction, modification of the information, or return to the person in charge of it.⁵³¹ The Sheriff can also refuse to make an Order, in which case the owner is entitled to compensation for the loss suffered as a result of depreciation in the value of the food.⁵³² Legislation provides for arbitration to settle disputes regarding compensation.⁵³³

Food Information– Redress Process				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears applications from competent authorities to make an Order in relation to food alleged to contravene food information regulations, following service of a food information contravention notice	Food Safety Act 1990; Food (Scotland) Act 2015; Food Information (Scotland) Regulations 2014; EC Regulation 1169/2011 and 178/2002	Can impose an Order as it sees fit, or refuse to and cancel the Notice. In the latter case the competent authority shall compensate the food business for any loss suffered by depreciation in value of the food	None.

Animal Feed and Pet Food

16.21 The regulation on animal feed and pet food is also harmonised at European level.⁵³⁴ Establishments which produce animal feed or pet food require to be registered with the relevant Local Authority, as the “competent authority”.⁵³⁵ Note that establishments which produce animal

⁵²⁸ Food Safety Act 1990, s.15C

⁵²⁹ *Ibid*, s.9

⁵³⁰ *Ibid*, s.15B

⁵³¹ *Ibid*, s.15B(2)(b)

⁵³² *Ibid*, s.15B(16)

⁵³³ *Ibid*, s.15B(17)

⁵³⁴ EC Regulation 1831/2003; EC Regulation 178/2002; implemented in Scotland by the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

⁵³⁵ Feed (Hygiene and Enforcement) (Scotland) Regulations 2005, regulation 4

or pet feed with animal by-products are covered at sections 16.24 – 16.27 below. There is an additional requirement for establishments which produce animal feed containing additives or medicines. These establishments require approval from the Local Authority if the feed is to contain additives, or the Veterinary Medicines Directorate if the feed is to contain animal medicines (as the relevant competent authority, respectively).⁵³⁶ All of these establishments will be subject to inspection by Local Authority trading standards teams to ensure hygiene and animal feed safety standards are being met.

16.22 There is a right of appeal against refusal to grant approval to an establishment, or to suspend or revoke registration or approval and this is to the Sheriff Court.⁵³⁷

16.23 The Local Authority may also take enforcement action where this is deemed necessary.⁵³⁸ This can involve issuing a Notice in the form of: a Feed Business Improvement Notice; or a Feed Business Emergency Prohibition Notice, both of which are similar to the provisions listed for food hygiene in sections 16.13 – 16.15.⁵³⁹ Similar to the provisions for food hygiene, the authorised officer must then apply to the Sheriff for a Feed Business Emergency Prohibition Order to be issued.⁵⁴⁰ There is a right of appeal against a Feed Business Improvement Notice to the Sheriff Court, and onward to the Court of Session if the initial appeal is dismissed.⁵⁴¹ Appeals against both Prohibition Orders and Emergency Prohibition Orders are to the Court of Session.⁵⁴²

Animal Feed and Pet Food – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against refusal by the competent authority (Local Authorities or the Veterinary Medicines Directorate) to approve a Food Business Establishment producing animal feed	EC Regulation 183/2005; Feed (Hygiene and Enforcement) (Scotland) Regulations 2005; Veterinary Medicines Regulations 2013	Can result in the approval being granted, or a direction that the competent authority reconsiders the application	There is a right of appeal to the Court of Session against dismissal of an appeal by the Sheriff Court.
The Sheriff Court	Hears appeals against the imposition of Feed Business Improvement Notices by competent authorities	EC Regulation 183/2005; Feed (Hygiene and Enforcement) (Scotland) Regulations 2005	Can result in the being revoked	There is an onward right of appeal to the Court of Session.
The Sheriff Court	Hears applications from competent authorities to impose a Feed Emergency Prohibition order following service of a Feed Emergency Prohibition Notice	EC Regulation 183/2005; Feed (Hygiene and Enforcement) (Scotland) Regulations 2005	Can impose the Order or refuse to impose the Order	There is a right of appeal against the decision of the Sheriff Court to make the Order, to the Court of Session

⁵³⁶ The Veterinary Medicines Regulations 2013

⁵³⁷ Feed (Hygiene and Enforcement) (Scotland) Regulations 2005, regulations 9, 11 and 13

⁵³⁸ *Ibid*, regulation 16

⁵³⁹ *Ibid*, regulations 18-22

⁵⁴⁰ *Ibid*, regulation 22

⁵⁴¹ *Ibid*, regulation 18

⁵⁴² *Ibid*, regulation 19

Animal By-Products

16.24 The law regarding the use of animal by-products is harmonised at European level.⁵⁴³ Establishments which use or work with animal by-products are subject to a registration and approval process.⁵⁴⁴ The “competent authority” in terms of animal by-product control regulations is the Scottish Ministers, by way of the Scottish Government Rural Payments and Inspections Directorate (SGRPID).⁵⁴⁵ Animal by-products can be used to produce certain animal or pet feeds, hides and skins used for leather, wool, blood, and agricultural fertilisers or soil improvers based on animal waste.

16.25 Establishments which use or work with animal by-products must register with, and obtain approval to operate from, the SGRPID.⁵⁴⁶ This allows for inspections to be carried out to ensure that standards under the control regulations are being met. Operators which are already registered and approved by a competent authority by virtue of the food safety and hygiene regulations, but which also deal with animal by-products, do not require to register and obtain approval.⁵⁴⁷ Further, establishments which carry out activities which generate animal by-products (which will not be used further), such as establishments where animals are kept, bred or otherwise taken care of, are not subject to the registration and approval process.⁵⁴⁸

16.26 There is an appeal process, should the competent authority refuse to register an establishment, refuse to approve an establishment, or attach conditions on an approval.⁵⁴⁹ This is made to the SGRPID who will facilitate for an independent reporter to hear the appeal. The reporter will then make recommendations to the Scottish Ministers who make the final determination.

16.27 The competent authority may also take enforcement action if it deems that standards under the control regulations are not being met.⁵⁵⁰ In the main, breach of these standards constitutes a criminal offence. However, there is an appeal route against the issue of a Prohibition Notice which has the effect of preventing the establishment from carrying out its operations. The appeal procedure is the same as an appeal against refusal to register or approve an establishment, and is subject to a final determination by the Scottish Ministers.⁵⁵¹

⁵⁴³⁵⁴³ EC Regulation 1069/2009, termed the “Control Regulations”; implemented in Scotland by the Animal By-Products (Enforcement) (Scotland) Regulations 2013

⁵⁴⁴ EC Regulation 1069/2009, articles 23-24

⁵⁴⁵ Animal By-Products (Enforcement) (Scotland) Regulations 2013, regulation 3

⁵⁴⁶ *Ibid*, Part 4

⁵⁴⁷ EC Regulation 1069/2009, articles 23-24

⁵⁴⁸ *Ibid*

⁵⁴⁹ Animal By-Products (Enforcement) (Scotland) Regulations 2013, regulation 17

⁵⁵⁰ *Ibid*, Part 6

⁵⁵¹ *Ibid*, regulation 17

Animal By-Products – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers	Determine appeals, based on the recommendations of an independent reporter, regarding the registration and approval of establishments working with animal by-products, and enforcement action taken against them	EC Regulation 1069/2009; Animal By-Products (Enforcement) (Scotland) Regulations 2013	The Scottish Ministers can dismiss the appeal, or can direct that registration or approval is granted, that conditions are removed or modified, and can direct that a Prohibition Notice is withdrawn	None.

Livestock Movement and Slaughter

16.28 The movement of livestock is subject to regulatory requirements. EU law also mandates certain identification and records management for the keeping of livestock.

16.29 European regulations also apply to the welfare of animals at the time of killing, and mandates “competent authorities” to regulate and licence slaughterhouses and those who are employed in the industry.⁵⁵²

Movement

16.30 The Scottish Ministers, by way of the Scottish Government Rural Payments and Inspections Directorate (SGRPID), are responsible for issuing General and Specific Licences which authorise the movement of animals throughout Scotland.⁵⁵³ The General Licence is a territorial licence and authorises, throughout Scotland, the movement of livestock – cattle, sheep, goats, other ruminating animals (with the exception of camelids) and swine – by anyone wishing to do so, subject to certain movements which are exempted from the requirements. The movement of animals to slaughter or for veterinary treatment, for example, do not require a licence for movement.⁵⁵⁴

16.31 The General Licence has standard terms which, amongst others, mandate: sufficient identification of animals and record keeping; the inspection before movement for noticeable signs of disease; prior notification to and authorisation of movement from the SGRPID; and adherence with other regulatory requirements - for example, animal welfare law.⁵⁵⁵ The Scottish Ministers can also issue a Specific Licence in relation to named persons or on application by named persons,

⁵⁵² EC Regulation 1099/2009

⁵⁵³ Animal Health Act 1981; Disease Control (Interim Measures) (Scotland) Order 2002

⁵⁵⁴ Disease Control (Interim Measures) (Scotland) Order 2002, article 3

⁵⁵⁵ Note that there are other specific requirements in relation to certain classes of animals, mandated by EU law; and in relation to pigs kept as pets, there is also a requirement to obtain a “pig walking licence” to take the animal on a walk – The Pigs (Records, Identification and Movement) (Scotland) Order 2011

which authorises the movement of animals on specific terms.⁵⁵⁶ Failure to adhere to the terms of either type of licence can give rise to criminal liability.

16.32 The Scottish Ministers reserve the right to refuse to issue a Specific Licence, or to revoke or vary its terms.⁵⁵⁷ The Ministers can also vary or suspend the General Licence in relation to specific named persons; or can vary or suspend specific authorisations under either licence in relation to any named person or specific group of animals.⁵⁵⁸

16.33 A person aggrieved by a decision of the Scottish Ministers relating to the animal movement licences and authorisations under them, has the right to request the Scottish Ministers to review that decision.⁵⁵⁹ This must be requested within 21 days of receiving notice of the Ministers' decision. The review will involve an official from SGRPID who was not involved in the original decision, and the aggrieved person will be afforded the opportunity to make representations to that official. The decision on review is final.

Slaughter

16.34 Slaughterhouses must be approved as Food Business Establishments by Food Standards Scotland, and this process is detailed above at sections 16.5 – 16.9. Additional requirements apply to the “licensing” of slaughterers. Minimum standards of competence and training are mandated by European regulations, and domestic regulations give effect to (and strengthen) these requirements.⁵⁶⁰ Food Standards Scotland is the “competent authority” in this regard, and is responsible for issuing “Certificates of Competence” to applicants.⁵⁶¹ These are, in practice, licences which authorise slaughterers to practice. Applicants require to have undergone relevant training and to have a three year continuous clean record in regard to animal welfare law, amongst other requirements.⁵⁶²

16.35 Food Standards Scotland reserves the right to revoke or suspend a Certificate as it sees fit.⁵⁶³ Food Standards Scotland is also empowered to take enforcement action against a slaughterhouse or specific slaughterer if it deems a breach of the regulations to have occurred. An Enforcement Notice can be issued which can mandate a person or operator to take specific steps to cease the breach of regulations, or to cease from continuing a certain activity or operations altogether, until the breach is remedied.⁵⁶⁴

16.36 There is a right to appeal a decision of Food Standards Scotland in relation to Certificates of Competence for slaughterers, and against the issue of an Enforcement Notice in relation to slaughterers and/or slaughterhouses. These appeals are to the Sheriff Court, within 28 days of notice of the decision.⁵⁶⁵ The Sheriff Court can confirm the decision; quash it; modify it in any way;

⁵⁵⁶ *Ibid*

⁵⁵⁷ *Ibid*, article 8

⁵⁵⁸ *Ibid*

⁵⁵⁹ *Ibid*, article 8(4)

⁵⁶⁰ EC Regulation 1099/2009; The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012

⁵⁶¹ The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012, regulation 4

⁵⁶² *Ibid*, regulation 8

⁵⁶³ *Ibid*, regulation 13

⁵⁶⁴ *Ibid*, Part 5

⁵⁶⁵ *Ibid*, regulation 25

or remit the case to Food Standards Scotland for a fresh decision. This decision of the Sheriff is final.⁵⁶⁶

Animal Movement and Slaughter – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers - by way of the Scottish Government Rural Payments and Inspections Directorate	Can reconsider, on request, decisions taken in relation to General and Specific Animal Movement Licences	Animal Health Act 1981; Disease Control (Interim Measures) (Scotland) Order 2002	This can result in confirmation of the decision, or a different decision being taken; including to issue the licence, or to reinstate a licence or authorisation	None.
The Sheriff Court	Hears appeals against decisions of Food Standards Scotland in relation to Certificates of Competence for slaughterers	EC Regulation 1099/2009; The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012	The Sheriff Court can confirm the decision; quash it; modify it in any way; or remit the case to Food Standards Scotland for a fresh decision.	None.
	Hears appeals against decisions of Food Standards Scotland in relation to Enforcement Notices issued to slaughterhouses and/or slaughterers	EC Regulation 1099/2009; The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012	The Sheriff Court can confirm the decision; quash it; modify it in any way; or remit the case to Food Standards Scotland for a fresh decision.	None.

Agriculture Support and Rural Development

16.37 The Scottish Government's Rural Payments and Inspections Directorate (SGRPID) is responsible for the payment of grants and subsidies to farmers and rural communities, including the administration of payments and support under the European Union's Common Agricultural Policy (CAP). The SGRPID does this through its Scottish Rural Development programme and by working alongside other Scottish public authorities – such as Forestry Commission Scotland and Scottish Natural Heritage – to assess and administer grants and payments.

⁵⁶⁶ *Ibid*

Examples of Agricultural and Rural Grants and Support Schemes		
The Basic Payment Scheme	Less Favoured Area Support Scheme	Land Managers Options
Rural Priorities	Scottish Suckler Beef Support	Scottish Upland Sheep Support
New Entrants Scheme	Crofting Agricultural Grant Scheme	Agri-Environment Climate Scheme
Small Farms Grant Scheme		Forestry Grant Scheme

Cross Compliance

16.38 Recipients of most agricultural and rural grants and support must adhere to specific regulations in order to continue to receive that support. The majority of these regulations are harmonised at EU level, but in Scotland there are additional management standards – “Good Agricultural and Environmental Conditions” – that must be complied with in order to continue receiving support. This is termed “cross compliance”.⁵⁶⁷ The SGRPID arranges inspections of establishments to ensure that standards are being met.

16.39 The European regulations relate to animal welfare, plant health, good environmental practice and good agricultural condition of land. Additional Scottish requirements relate to a variety of good agricultural and rural management practices, as well as compliance with other regulatory and legislative requirements under, for example, planning and waste management law. If a breach of these conditions is found, penalties can be applied which reduce (or in serious cases, stop) the payments available under the relevant scheme.⁵⁶⁸ It should be noted that a breach of the European or Scottish legislation could also give rise to criminal liability – for example, if animal welfare standards are extremely poor.

Disputing a SGRPID Decision

16.40 There is a standard dispute process for decisions of the SGRPID regarding agricultural and rural payments and support. Decisions regarding refusal of an application, a reduction in support, penalties applied, and recovery of payments can all be reviewed and appealed.

16.41 In the first instance, the applicant must request a review of the decision.⁵⁶⁹ This can be done in writing to the local SGRPID Area Office within 60 days of the decision. This can result in confirmation or amendment of the original decision, or in a revocation and substitution with a new decision. The officer from the Area Office must provide a written report of the outcome within 60 days of the review.

16.42 Should the applicant remain aggrieved by the decision after review, then there is a right to appeal to the Scottish Land Court.⁵⁷⁰ The appeal must be lodged within 60 days of receiving the written report of the review outcome. This can result in confirmation or amendment of the decision, or revocation of the decision and direction that a new or different decision is made. This decision is final.

⁵⁶⁷ EC Regulation 1306/2013

⁵⁶⁸ Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014, schedule 1

⁵⁶⁹ Rural Payments (Appeals) (Scotland) Regulations 2015, regulation 5

⁵⁷⁰ *Ibid*, regulation 8

Agricultural Support and Rural Development – Redress Process				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Scottish Government Rural Payments and Inspections Directorate (SGRPID) – Internal Review	Conducts reviews, as requested, of decisions made regarding payments of agricultural and rural grants and support, and associated penalties in line with cross compliance requirements	Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015; Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014; Rural Payments (Appeals) (Scotland) Regulations 2009; and other Scottish Regulations; and EU Regulation 1306/2013 and others regarding the financing, management and monitoring of the common agricultural policy	This can result in confirmation of the original decision, amendment of the decision, or revocation and substitution with a new decision	There is an onward right of appeal to the Scottish Land Court.
The Scottish Land Court	Hears appeals against decisions, on review, of the SGRPID regarding payments of agricultural and rural grants and support, and penalties in line with cross compliance requirements	As above	This can result in confirmation of the original decision, amendment of the decision, or revocation and substitution with a new decision, or direction for a new decision to be made	None.

Agricultural Land

16.43 The use of agricultural land in Scotland is, for the most part, regulated in line with other Scottish legislation – the owners of such land must conform to planning and environmental law, for example, regarding waste management and development management. However, additional regulations cover the change of use of agricultural land, and in particular, the change of use of uncultivated land for farming purposes. This is mandated by European Directives. Further regulations apply to the Crofting regions, and the designation of land as crofting land.

Agricultural Land and Change of Use

16.44 The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 give effect to the European law in Scotland, and limit large scale restructuring projects, and activities which can be carried out on uncultivated and natural land, where these are likely to have a significant impact upon the environment.⁵⁷¹ Such activities would include, for example, the introduction of a

⁵⁷¹ EC Regulation 85/337; implemented in Scotland by the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006

grazing herd on natural, uncultivated land; the ploughing of unimproved land; or the drainage of wetlands.

16.45 The Scottish Government Rural Payments and Inspections Directorate (SGRPID) takes the lead on behalf of the Scottish Ministers, in assessing applications for such activities.⁵⁷² The onus is on the land owner to assess whether the land upon which the activity is planned would come within the remit of the legislation and to submit an application as required. SGRPID works closely with Scottish Natural Heritage, the Scottish Environment Protection Agency and Historic Environment Scotland, among other bodies, in deciding whether to grant consent for the activities. SGRPID may grant the consent to carry out the activity, or refuse consent, and reserves the right to attach any conditions as it sees necessary.⁵⁷³

16.46 There is a right of appeal for the aggrieved applicant against a decision of SGRPID to refuse consent, or to grant conditions to a consent it has granted.⁵⁷⁴ The Scottish Ministers can decide the form of appeal, depending on the circumstances of the case. Straightforward appeals can be made in writing within 3 months of the decision to the Scottish Ministers, or evidence can be heard at an informal hearing, and more complex cases can be subject to an inquiry.⁵⁷⁵ The hearing and inquiry processes will be facilitated by an independent reporter who will then submit a report with recommendations to the Scottish Ministers for a final decision.

16.47 There is a further right of appeal against the decision of the Scottish Ministers on appeal. Any interested party may appeal this decision. The appeal is to the Sheriff Court.⁵⁷⁶ The Sheriff Court may confirm the decision, set the decision aside, or direct that the Scottish Ministers make a fresh decision.

Agricultural Land (Environmental Impact Assessments) – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Ministers (or delegated person carrying out the appeal on their behalf)	Hear appeals from applicants regarding decisions taken by SGRPID on consent and any conditions attached for changes of activities on agricultural land	Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006; EC Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended	The Scottish Ministers can confirm the decision, or can revoke or vary any conditions and/or overturn the original decision	There is an onward right of appeal for applicants and any other interested parties, against the decision of the Scottish Ministers, to the Sheriff Court.

⁵⁷² Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006, regulation 8

⁵⁷³ *Ibid*, regulation 15

⁵⁷⁴ *Ibid*, regulation 17

⁵⁷⁵ *Ibid*, regulation 19

⁵⁷⁶ *Ibid*, regulation 20

Agricultural Land (Environmental Impact Assessments) – Redress Processes (continued)

Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals from applicants and any other interested parties against the decisions of the Scottish Ministers (or delegated person) after first stage appeal, regarding consents and conditions for changes in use of agricultural land	Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006; EC Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended	The Sheriff Court can dismiss the appeal, or set aside the decision and direct that the Scottish Ministers make a fresh decision	None.

Nitrate Vulnerable Zones

16.48 The Scottish Government is mandated by EU law to limit the amount of nitrate in drinking water. It does this by designating certain areas as Nitrate Vulnerable Zones, which are areas that drain into waters polluted by nitrates, or waters which are at risk of becoming polluted by nitrates.⁵⁷⁷ Designation requires all farmers whose land comes within a zone to abide by the Nitrates Action Programme. Compliance with the programme is necessary as part of the cross-compliance measures in order to receive subsidies and support, as described at sections 16.37 – 16.39, above.

16.49 The Scottish Government Rural Payments and Inspections Directorate (SGRPID) is responsible for ensuring compliance with the Nitrates Action Programme, and is empowered to take enforcement action if it finds a farm to be in breach.⁵⁷⁸ The SGRPID may serve a Notice upon the occupier of the land if it believes that a breach has occurred. The Notice can require the occupier to carry out certain works, to take certain precautions, or to take any other steps to remedy or prevent continued breach of the Action Programme. The Notice must also specify a period within which the action must be taken.

16.50 The occupier can appeal, within 28 days of receipt of the Notice, to the Scottish Land Court.⁵⁷⁹ This can be on the grounds that there has been no breach of the Action Programme, or that the requirements in the Notice are unnecessary, inappropriate or inadequately specified. The occupier can also appeal against the period allowed for action to be taken.⁵⁸⁰

16.51 The Scottish Land Court can dismiss the appeal, or can direct the SGRPID to withdraw the Notice, modify it in any way, or allow an extension to the period for action.

⁵⁷⁷ Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008

⁵⁷⁸ *Ibid*, regulation 28

⁵⁷⁹ *Ibid*, regulation 29

⁵⁸⁰ *Ibid*

Nitrates Action Programme – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Land Court	Hears appeals against Notices issued by the Scottish Government Rural Payments and Inspections Directorate (SGRPID), in relation to Nitrate Vulnerable Zones	Nitrate Vulnerable Zones (Scotland) Regulations 2008	The Scottish Land Court can dismiss the appeal; or can direct the SGRPID to withdraw the Notice, modify it, or extend the period allowed for compliance	None.

Crofting

16.52 Crofting is a form of land tenure and agricultural food production unique to Scotland’s crofting regions. It is regulated by the Crofting Commission which exercises executive and administrative functions on behalf of the Scottish Ministers.⁵⁸¹ In particular, the Commission takes decisions regarding:

- Registration of crofts or common grazings in the Crofting Register
- Apportionment of common grazings land
- Assignment of crofting tenancies
- “De-crofting” and the removal of land from a crofting tenure
- Division, enlargement and exchange of crofting land
- Letting, sub-letting and short-term lets of crofting land by crofting landlords
- The creation of new crofts and crofting land

12.63 The Crofting Commission is itself supervised by the Scottish Land Court which can also, on application, make decisions in relation to crofts and crofting land.⁵⁸² The Scottish Land Court has no jurisdiction, however, to deal with cases involving succession, apportionment of common grazings or “de-crofting”, which are exclusively within the jurisdiction of the Crofting Commission. The Scottish Land Court is also the appellate body for hearing appeals against decisions of the Crofting Commission, apart from cases involving the aforementioned exclusions.⁵⁸³

12.64 There are no appeal rights in respect of first instance decisions of the Scottish Land Court in relation to Crofting, and there are no further rights of appeal from the Scottish Land Court following an appeal from a Crofting Commission decision.

⁵⁸¹ Crofters (Scotland) Act 1993

⁵⁸² *Ibid*; for example, to determine the extent of a croft, to determine fair rent for a croft, to authorise a crofter to acquire a heritable title to his croft from his landlord, and to determine rights of access

⁵⁸³ *Ibid*, s.52A among other provisions

Crofting – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Land Court	Hears appeals against decisions of the Crofting Commission (but not about succession, apportionment of common grazings, or “de-crofting”)	Crofters (Scotland) Act 1993; Crofting Reform (Scotland) Act 2010	The Court may dismiss the appeal, or vary, annul or recall any decision of the Crofting Commission in part or in whole, and can make any other order as it sees fit	None.

Silage, Slurry and Agricultural Fuel Oil

12.65 The use and storage of silage, slurry and certain agricultural fuel oils is regulated by the Scottish Environment Protection Agency (SEPA), to ensure minimum risk of pollution to inland or coastal waters. SEPA is empowered to take enforcement action if it deems there is a risk of pollution by silage, slurry or fuel oils, or if pollution has occurred. It does this by issuing a Notice on the occupier of the land.⁵⁸⁴

12.66 The Notice can require the occupier to take any action, or to carry out works, that SEPA deems necessary to reduce the risk of pollution or to stop the pollution of inland or coastal waters by the substances covered by the regulations.⁵⁸⁵ The Notice can also require the occupier to implement a Farm Waste Management Plan, which is recommended as good practice in Codes of Practice issued by the Scottish Government.⁵⁸⁶ The Notice must specify a period in which the action is to be taken.

12.67 The regulations provide for a right of appeal against the issue of a Notice by SEPA.⁵⁸⁷ The requirements and the period allowed for compliance can both be appealed. This is to the Directorate for Planning and Environmental Appeals (DPEA), who will then make recommendations to the Scottish Ministers for a final determination. The appellant must notify SEPA of the appeal. The appellant has the right to request a public hearing before an independent reporter.⁵⁸⁸ The DPEA conducts an investigation before making recommendations to the Scottish Ministers. The Scottish Ministers can dismiss the appeal, or can direct that SEPA withdraw the Notice, modify it, or extend the period for compliance.

⁵⁸⁴ Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003, regulation 8

⁵⁸⁵ *Ibid*

⁵⁸⁶ Control of Pollution Act 1974, s.51(1)

⁵⁸⁷ Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003, regulation 9

⁵⁸⁸ *Ibid*

Silage, Slurry and Fuel Oils – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Scottish Land Court	Determines appeals, based on recommendations from the Directorate for Planning and Environmental Appeals (DPEA) or an independent reporter after a public hearing, regarding the use and storage of silage, slurry and agricultural fuel oil	Control of Pollution Act 1974; Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003	The Scottish Ministers can dismiss the appeal; or can direct the Scottish Environment Protection Agency to withdraw the Notice, modify it, or to extend the period for compliance	None.

Plant Varieties and Seeds

12.68 The Animal and Plant Health Agency, of the UK Department for Environment, Food and Rural Affairs, is responsible for assessing applications for grants of Plant Breeders' Rights (PBRs).⁵⁸⁹ PBRs are issued to breeders of plants who have developed new varieties for agricultural, horticultural or ornamental use. Holding PBRs grants the exclusive rights to use, breed, sell, import and export, stock and further develop the plant, as well as the right to grant permission to others to do so and to charge royalties in this respect. The Animal and Plant Health Agency decide whether or not to grant PBRs. There is a right of appeal against a decision to grant or not to grant PBRs, and this is to the Plant Varieties and Seeds Tribunal.⁵⁹⁰ There is an onward right of appeal to the Court of Session against the Tribunal's decision, but only on a point of law.⁵⁹¹

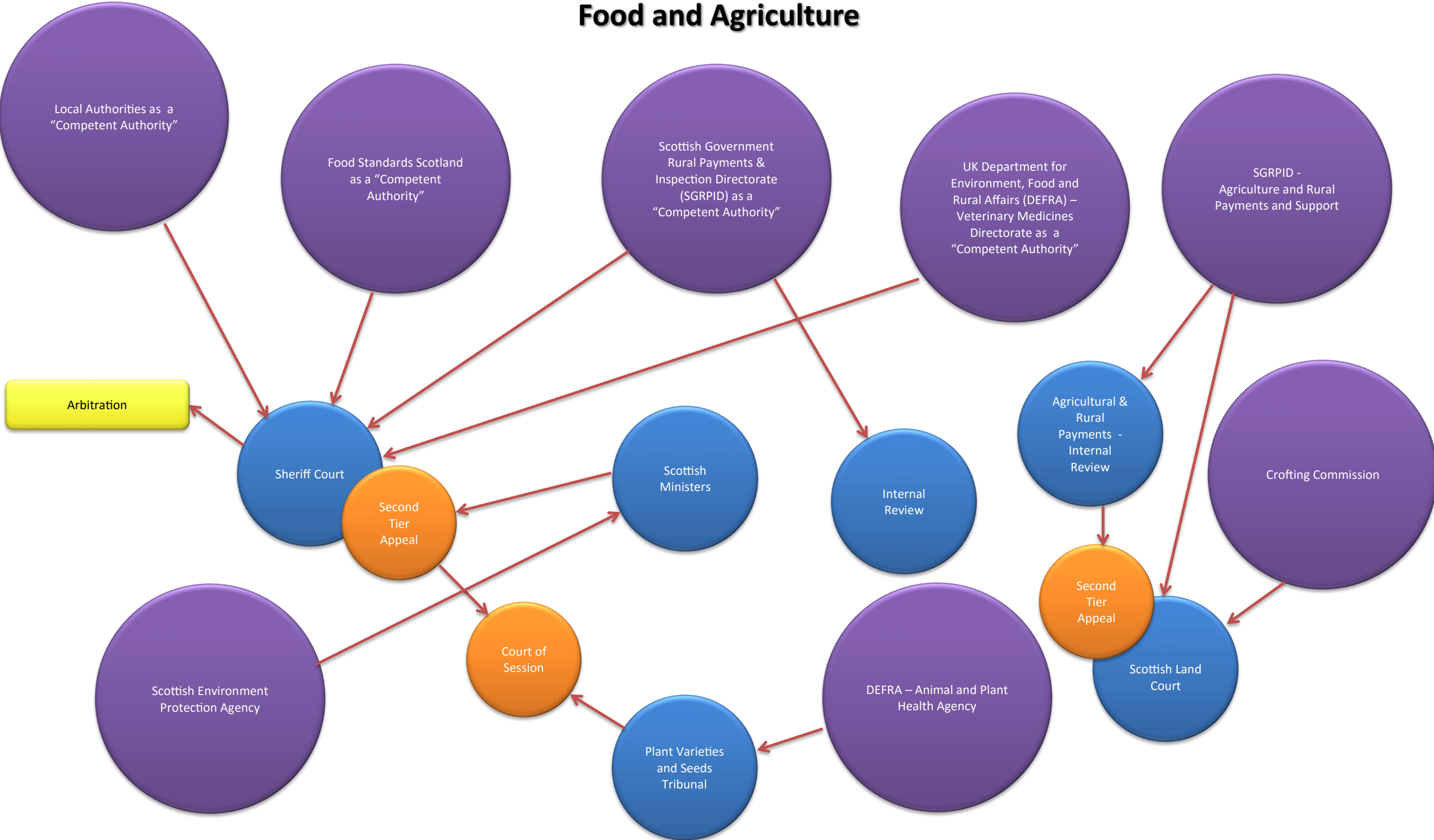
Plant Varieties and Seeds – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Plant Varieties and Seeds Tribunal	Hears appeals against decisions of the Animal and Plant Health Agency regarding Plant Breeders' Rights	Plant Varieties Act 1997	Can dismiss the appeal, or allow it, revoking the Plant Breeders' Rights or directing that they be granted	There is a limited onward right of appeal, to the Court of Session, on a point of law only.

⁵⁸⁹ Plant Varieties Act 1997, s.1

⁵⁹⁰ *Ibid*, s.26

⁵⁹¹ *Ibid*, s.45

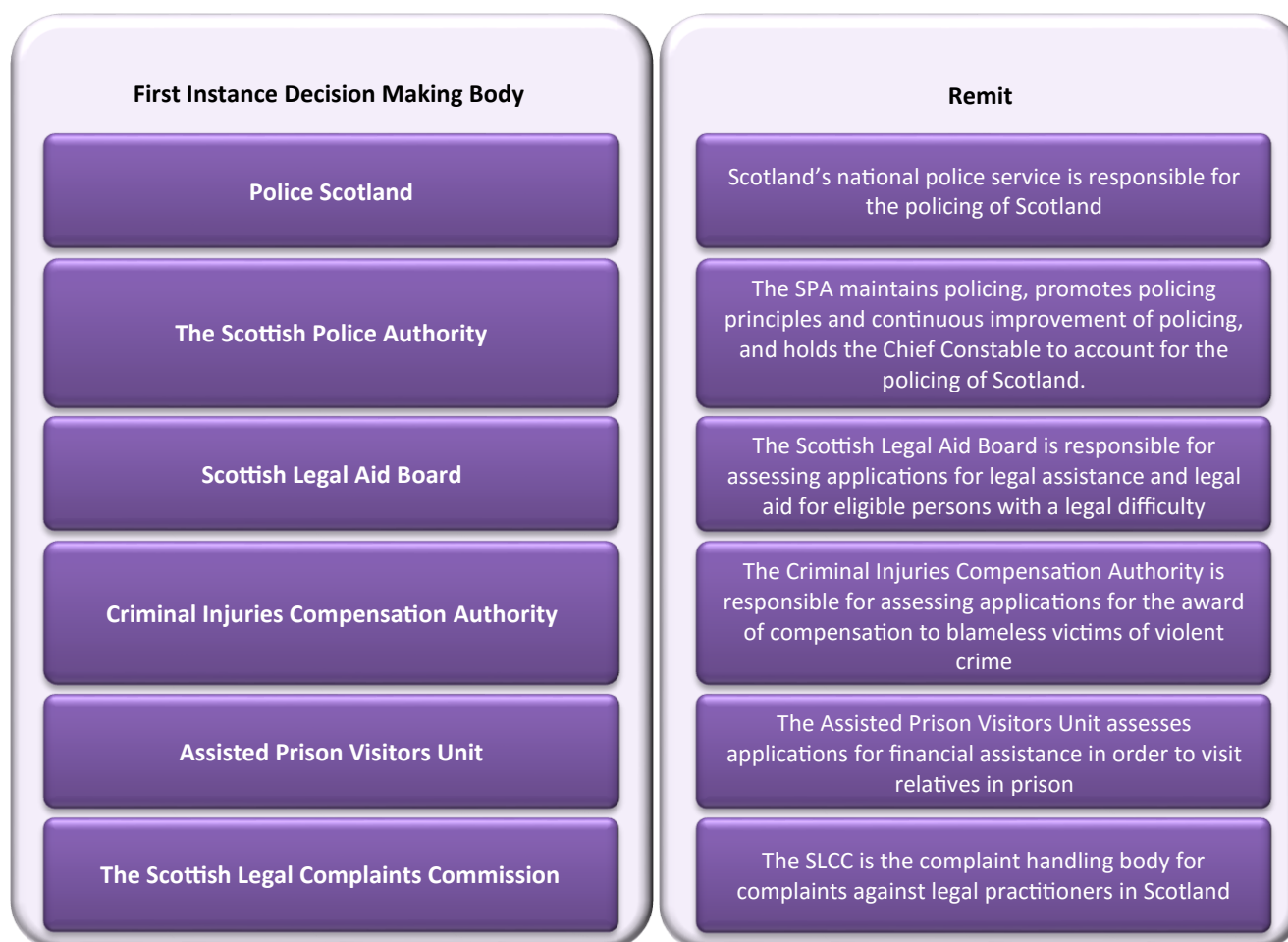
Food and Agriculture



The Police Service, Legal Services & Prisons

Chapter 17

17.1 This chapter focuses on the police, including complaints against the police; legal services; the criminal injuries compensation scheme; and prisons. In the main, this area relates to devolved matters – with the emergency services being a devolved matter, and Scotland having its own legal system and arrangements therein. There are exceptions, however: the Criminal Injuries Compensation Authority is a UK-wide organisation; a number of police services operate on a UK-wide basis; and the Assisted Prison Visitors Unit is a UK-wide service which operates on behalf of the Scottish Prison Service in Scotland. This chapter will also consider the regulation and oversight of the provision of legal services in Scotland.



Scotland's Policing

17.2 The Police Service of Scotland (Police Scotland) was established by the Police and Fire Reform (Scotland) Act 2012 and became operational on 1st April 2013. Police Scotland is an amalgamation of the eight former regional police forces, the Scottish Crime and Drug Enforcement Agency and the Scottish Police Services Authority. The Act also established the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner for Scotland (PIRC).

Complaints about the Police in Scotland

17.3 The definition of a police complaint is: “a statement expressing dissatisfaction about an act or omission by Police Scotland or by a person who, at the time of the act or omission, was a person serving with the police.”⁵⁹² Complaints can relate to maladministration, an organisation's policies and procedures, or allegations of misconduct by police officers and staff.⁵⁹³ A complaint should be made to the Chief Constable and if a complainer is dissatisfied with the response they can refer the complaint to the Police Investigations and Review Commissioner who can undertake a review of how the complaint was handled.⁵⁹⁴ The Commissioner can direct the police to reconsider the complaint and may make recommendations to the police.

Complaints about Police Scotland, its staff, and officers of Chief Superintendent rank or below

17.4 Police Scotland will at first attempt to resolve matters through local resolution but may need to investigate the matter further by taking formal statements from the complainer and any officers involved.

17.5 Where a complaint includes an inference of criminality by an officer, or that an officer has breached the standards of professional behaviour (misconduct), the complaint will be subject to a thorough investigation. For criminal matters, this investigation is undertaken by the Crown Office, and for misconduct by the designated Deputy Chief Constable through the Police Professional Standards Unit. Following investigation the complainer will be informed whether the officer(s) involved have been convicted of a criminal offence and/or been subject to a sanction through the police conduct regulations.

Complaints about the Scottish Police Authority, its staff, and officers of Assistant Chief Constable rank or above

17.6 The Scottish Police Authority (SPA) handles complaints about its own policies and procedures, its own staff and board members, and also senior officers of Police Scotland, from Assistant Chief Constable to Chief Constable.

17.7 Complaints about SPA staff or policies and procedures will be dealt with by the SPA complaints team. An informal resolution will be sought initially, but this can be escalated if the matter cannot be resolved informally. This can result in a review or change in procedure or policy, the referral of a member of staff to internal disciplinary procedures, or an apology being offered.

⁵⁹² The Police, Public Order and Criminal Justice (Scotland) Act 2006, s.34

⁵⁹³ *Ibid*, Part 1, Chapter 2

Note however, that allegations against police officers of a criminal nature should be reported to the Chief Constable and will be automatically referred to the Crown Office and Procurator Fiscal Service.

⁵⁹⁴ The Police, Public Order and Criminal Justice (Scotland) Act 2006, s.33

17.8 As with other ranks, where a complaint includes an inference of criminality by an senior officer, or alleges that a senior officer has breached the standards of professional behaviour (misconduct), the complaint will be subject to a thorough investigation. This investigation will be undertaken by the Crown Office for criminal matters, , and for misconduct by the SPA or the PIRC. Following investigation the complainer will be informed whether the officer(s) involved have been convicted of a criminal offence and/or been subject to a sanction through the police misconduct regulations.

Police Misconduct

17.9 Where an officer of the rank of Chief Superintendent or below has breached the standards of professional behaviour, including any criminal matters, the Designated Deputy Chief Constable will (through the Police Professional Standards Unit) investigate whether there is evidence of misconduct or gross misconduct.⁵⁹⁵ Gross misconduct can lead to the officer's dismissal from the service.

17.10 Should the investigation find evidence of misconduct or gross misconduct a Misconduct Hearing will hear the evidence and decide whether the officer should receive a sanction or be cleared. The sanctions include a warning; a written warning; demotion in rank; or dismissal. The officer can appeal to a high ranking officer and if the sanction was dismissal or demotion in rank the officer can also then appeal to the Police Appeals Tribunal.⁵⁹⁶

17.11 For officers of the rank of Assistant Chief Constable to Chief Constable the SPA will consider breaches of the standards of professional behaviour, including any criminal matters.⁵⁹⁷ They can refer the case to the PIRC for investigation and should there be evidence of misconduct or gross misconduct a Misconduct Hearing will hear the evidence and decide whether the officer should receive a sanction or be cleared. The sanctions include a warning; a written warning; or dismissal. The officer can appeal to the SPA and if the sanction was dismissal the officer can also then appeal to the Police Appeals Tribunal.⁵⁹⁸

The Police Appeals Tribunal

The Police Appeals Tribunal hears appeals from police officers aggrieved at the outcome of a Misconduct Hearing which has resulted in their demotion in rank, or dismissal.⁵⁹⁹ The Tribunal can confirm the decision of the Misconduct Hearing, or it can substitute it with a less severe decision.⁶⁰⁰ This can include reinstatement.

UK-wide Police Services

17.12 There are a number of UK-wide police organisations, which operate in Scotland. These include: the British Transport Police; Civil Nuclear Constabulary; and the Ministry of Defence Police. Complaints regarding these organisations and their staff and officers should be made directly to the organisations themselves. They are, however, subject to the same review procedures by the PIRC if the complaints relates to an incident in Scotland.

⁵⁹⁵ Police Service of Scotland (Conduct) Regulations 2014

⁵⁹⁶ The Police, Public Order and Criminal Justice (Scotland) Act 2006, s.56

⁵⁹⁷ Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

⁵⁹⁸ The Police, Public Order and Criminal Justice (Scotland) Act 2006, s.56

⁵⁹⁹ *Ibid*, s.56

⁶⁰⁰ *Ibid*, s.58

Unsatisfactory Complaint Handling by Police Scotland, the Scottish Police Authority or UK-wide Police Services

17.13 Complainers should be notified by the relevant police complaint handling body that there is a right to request a review of the way their complaint was handled if they are unsatisfied. Third parties who have been affected by the way a complaint was handled also have the right to request a review. This is to the PIRC. The PIRC can conduct a Complaint Handling Review in cases where it is alleged that the police service mishandled a complaint or did not resolve a complaint satisfactorily.

Police Services – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Police Scotland	Deals with initial complaints about Police Scotland, its officers and staff, and conduct of officers of Chief Superintendent rank or below.	Police, Public Order and Criminal Justice (Scotland) Act 2006; Police and Fire Reform (Scotland) Act 2012; Police Service of Scotland (Conduct) Regulations 2014	Can result in a change of policy or procedure, an apology or referral of allegations of misconduct or gross misconduct to a Misconduct Hearing	The public can refer a complaint they believe has been unsatisfactorily handled to the Police Investigations & Review Commissioner. Some allegations of misconduct may proceed to a Misconduct Hearing.
Scottish Police Authority (SPA)	Deals with initial complaints about the SPA & its staff, and conduct of officers of Assistant Chief Constable to Chief Constable. Hears referrals from the Complaints Team regarding certain level of alleged cases of misconduct by officers of Assistant Chief Constable rank and above. The SPA decides if there is a case to answer, and can then refer on to the Police Investigations and Review Commissioner. If the Commissioner refers an allegation back to the SPA then they must decide whether to investigate.	Police and Fire Reform (Scotland) Act 2012; Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 ; Police Service of Scotland (Conduct) Regulations 2014	Can result in a change of policy or procedure, an apology or referral of allegations of misconduct or gross misconduct to a Misconduct Hearing	Some allegations of misconduct may proceed to a Misconduct Hearing.

Police Services – Redress Processes (Continued)

Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Police Investigations and Review Commissioner (PIRC)	Can review how a complaint made against the police was handled if the complainer remains dissatisfied following the police response. Can receive referrals from the SPA about misconduct or gross misconduct of senior officers of Police Scotland and if it assesses that if proved this would amount to gross misconduct the PIRC must investigate. If the PIRC believes the conduct, if proved, would amount to misconduct then the PIRC may investigate or refer back to the SPA.	As above	Can result in a change of policy or procedure, an apology or referral of allegations of misconduct or gross misconduct to a Misconduct Hearing	Some allegations of misconduct may be referred back to the SPA and may proceed to a Misconduct Hearing.
Misconduct Hearing	Deals with referrals from the Deputy Chief Constable or SPA regarding alleged cases of misconduct or gross misconduct	As above	Can result in disciplinary action being taken against the officer, including dismissal	There is a right of appeal against the decision of the Hearing to a higher ranking officer or to the SPA, in the case of officers of the rank of ACC or above. Officers may appeal to the Police Appeals Tribunal if they are to be dismissed or reduced in rank.
Police Appeals Tribunal	Hears appeals by officers who are to be dismissed or reduced in rank, as a result of a misconduct hearing	As above; and The Police Appeals Tribunal (Scotland) Rules 2013	Can result in replacement of the disciplinary action with a less severe decision, including reinstatement	None.

The Scottish Legal Aid Board

17.14 The Scottish Legal Aid Board (SLAB) is the agency responsible for the assessment and payment of legal aid and costs of legal advice and assistance⁶⁰¹ to those eligible for financial assistance with a legal problem.⁶⁰² SLAB carries out financial assessments to determine whether legal aid or advice and assistance⁶⁰³ is available and will pay the costs of advice and assistance and, in some cases representation in court and certain tribunals⁶⁰⁴ (through legal aid), to those who would otherwise be unable to afford to do so.

17.15 Advice and assistance is granted by the solicitor but SLAB authorises increases in cost limits which otherwise apply. With legal aid, after its assessment, SLAB will inform the applicant via their solicitor whether they are eligible for legal aid. If this is refused, there is a right to request a review. This applies to both civil and criminal legal aid.⁶⁰⁵ The review is carried out internally by SLAB. This can result in a different decision being reached. If the applicant remains aggrieved, they can raise judicial review proceedings. With advice and assistance, although there is no statutory right of review of any refusal of an increase in authorised expenditure, SLAB has established a reconsideration procedure, and if the issue remains unresolved, a refusal decision can be subject to judicial review.

17.16 In civil legal aid cases, opponents may “make representations” with regard to the other party’s claim for legal aid, including that the award of legal aid is an unreasonable use of public funds. This may affect the party’s claim for legal aid.⁶⁰⁶

Scottish Legal Aid Board – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Scottish Legal Aid Board – Internal Reconsideration	Undertakes reviews of decisions regarding eligibility for civil and criminal legal aid. Also reconsiders the refusal of increases in advice and assistance authorised expenditure	Legal Aid (Scotland) Act 1986	Can result in confirmation of the original decision, or a different decision being reached	None.

⁶⁰¹ Known as advice and assistance

⁶⁰² Legal Aid (Scotland) Act 1986

⁶⁰³ Although with advice and assistance, it is the client’s solicitor who makes the initial assessment and the SLAB assessment is a back-check

⁶⁰⁴ In some cases civil legal aid is available for proceedings in the Lands Tribunal for Scotland, the Employment Appeal Tribunal and the Proscribed Organisations Appeal Commission. See: Legal Aid (Scotland) Act 1986, s.13 and Parts I and II of Schedule 2

⁶⁰⁵ Legal Aid (Scotland) Act 1986 ss.24(5) and 14(3); Civil Legal Aid (Scotland) Regulations 2002; Criminal Legal Aid (Scotland) Regulations 1996

⁶⁰⁶ Civil Legal Aid (Scotland) Regulations 2002, Regulation 8

The Criminal Injuries Compensation Authority

17.17 The Criminal Injuries Compensation Authority (CICA) is an agency of the UK Government, but is funded jointly by the UK and Scottish Governments. It administers and awards compensation to blameless victims of violent crime throughout Scotland, England and Wales.⁶⁰⁷ The authority operates a time limit for applications of two years since the date of the crime, but this can be extended in exceptional circumstances.

Appeals

17.18 The decision of the CICA on an application, and the amount of the award, are subject to a right of appeal. This is to the UK First-tier Tribunal (Criminal Injuries Compensation Chamber).⁶⁰⁸ The Tribunal can decide to uphold the CICA's decision; it can increase or reduce the award; or it can remit the case to the CICA for a fresh decision.

17.19 There is no onward appeal against the decision of the Tribunal, but an aggrieved party could raise Judicial Review proceedings.⁶⁰⁹

Criminal Injuries Compensation – Redress Process				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
UK First-tier Tribunal (Criminal Injuries Compensation Chamber)	Hears appeals against decisions of the Criminal Injuries Compensation Authority regarding eligibility and amount of award for criminal injuries compensation	Criminal Injuries Compensation Act 1995	Can result in the appeal being dismissed; an increase or decrease in the amount awarded; or the case being remitted to the Authority for a fresh decision	None.

Prisons

17.20 Complaints about prisons in Scotland come within the remit of the Scottish Public Services Ombudsman.⁶¹⁰ They must first go through the internal complaints process of the Scottish Prison Service before the SPSO can consider them. However, there exists a UK-wide scheme to help those on low incomes with the cost of visiting relatives who are in prison, and this scheme operates a distinct appeal process.

The Assisted Prison Visitors Unit (APVU)

17.21 The APVU operates across the UK to provide financial assistance to relatives of prisoners to enable them to visit them in prison.⁶¹¹ The scheme normally allows close relatives on a low income

⁶⁰⁷ Criminal Injuries Compensation Act 1995

⁶⁰⁸ *Ibid*

⁶⁰⁹ For further information, see: *Chapter 3 – Judicial Review*

⁶¹⁰ Scottish Public Services Ombudsman Act 2002

⁶¹¹ Prison Service Order 4405

to claim for a visit every 14 days, although in exceptional circumstances – such as the prisoner becoming seriously ill – this limit can be relaxed. The APVU makes an eligibility assessment, based on the applicant’s income. If the APVU rejects a claim for an assisted visit, there is a right of appeal. This is an internal appeal, which will involve the reconsideration of the application by an official who was uninvolved in the original decision.⁶¹²

Prisons – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Assisted Prison Visitors Unit – Internal Review	Undertakes reviews on request of initial decisions regarding eligibility for financial assistance to visit a relative in prison	Prison Service Order 4405	Can result in confirmation of the original decision, or a different decision being made	None.

Regulation and Oversight of Legal Services

17.22 The Scottish Legal Complaints Commission (SLCC) was established by the Legal Profession and Legal Aid (Scotland) Act 2007. The SLCC is the complaint handling body for complaints against legal practitioners in Scotland. Legal practitioners include: solicitors, advocates, commercial attorneys and conveyancers. The SLCC can only accept complaints within one year of the issue arising, unless it is deemed unreasonable for the complainer to have known of the issue within that time limit. Furthermore, the SLCC can only accept complaints if the issue has first been brought up with the professional or firm concerned and they have had a chance to remedy the issue.

Complaints about legal practitioners can relate to two issues: conduct; service; or a combination of both.

Conduct

17.23 Conduct complaints are those which relate to a legal practitioner’s “fitness to practice”, including the individual’s behaviour or actions outside work. These complaints are routed through the SLCC to the body responsible for the regulation of the legal practitioner. These are: the Law Society of Scotland, the Faculty of Advocates and the Association of Commercial Attorneys. These organisations will then conduct investigations into the legal practitioner’s fitness to practice.

Service

17.24 Service complaints relate to the quality of work provided by the legal practitioner. These complaints are investigated directly by the SLCC.

⁶¹² *Ibid*

Combined Complaints

17.25 Complaints relating to both conduct and service will be investigated by both the SLCC and the relevant professional body. These investigations will not be concurrent, and the SLCC will advise both parties which part of the investigation is to occur first.

The SLCC Complaints Process

17.26 In relation to service complaints, the SLCC follows a set complaints process. Initially, the SLCC will advise both parties of the availability of free mediation services to attempt to resolve the issue without the need for formal investigation. Mediation is not mandatory and both parties need to agree to the service for mediation to take place.

17.27 If this does not work, or is refused, the complaint moves to a formal investigation stage. A Case Investigator will examine the case and make recommendations to resolve the matter. If both parties accept the findings and recommendations of the Case Investigator then the matter will be resolved.

17.28 If the investigation fails to resolve the complaint, the matter will progress to a Determination Committee. This involves a formal meeting of members of the Commission. The members can decide to hold a formal oral hearing. The decision of the members can result in an award of compensation or a refund of fees. There is an onward route of appeal to the Court of Session against the committee's decision.

The Law Society of Scotland Complaints Process

17.29 This section details the process for complaints regarding the conduct of a legal practitioner regulated by the Law Society. Similar processes are in place for those regulated by the Faculty of Advocates and the Association of Commercial Attorneys.

17.30 Once the Law Society receives notice of a complaint against one of its members from the SLCC, it will allocate a Complaints Investigator to look into the matter and prepare a report. Both parties to the complaint are given an opportunity to respond to the report and make comments which will then be included in it. The Investigator will include recommendations to resolve the matter in the report.

17.31 The report is put before a Professional Conduct Committee.⁶¹³ The Committee can decide whether or not to accept the recommendations of the report. There are three possible outcomes from the meeting of the Committee: to take no further action; to decide that the conduct amounts to unsatisfactory professional conduct; or to decide that the conduct amounts to professional misconduct.

17.32 If the Committee decides there has been unsatisfactory professional conduct, it can impose a fine on the practitioner, order them to undergo training or award compensation to the complainer. There is a right of appeal against a finding of unsatisfactory professional conduct to the Scottish Solicitors' Discipline Tribunal.⁶¹⁴ This is described at section 17.34, below.

⁶¹³ Solicitors (Scotland) Act 1980; Legal Profession and Legal Aid (Scotland) Act 2007

⁶¹⁴ Solicitors (Scotland) Act 1980

17.33 If the finding is one of professional misconduct, then the matter must be referred to the Scottish Solicitors' Discipline Tribunal for a formal hearing.⁶¹⁵

The Scottish Solicitors' Discipline Tribunal (SSDT)

17.34 The Tribunal sits in both an appellate capacity in regard to a finding of unsatisfactory conduct by a legal practitioner, and also as a first-instance tribunal to decide whether there has been professional misconduct by a legal practitioner. The Law Society has the power to "prosecute" solicitors before the Tribunal if its Professional Conduct Committee has found that there has been professional misconduct.

a) Appellate Function

17.35 The SSDT can hear appeals from both the complainer and the legal practitioner concerned regarding a finding of unsatisfactory conduct by the Law Society's Professional Conduct Committee.⁶¹⁶ The Tribunal will hold a formal hearing to determine the appeal and this can result in a different decision to that of the Committee. There is a further right of appeal, against the decision of the Tribunal, to the Court of Session.

b) Professional Misconduct

17.36 The SSDT can hear applications from the Law Society of Scotland (on behalf of the original complainer) to hear a case against one of its members for alleged professional misconduct.⁶¹⁷ The Tribunal, if it finds there has been no professional misconduct, can find there has been unsatisfactory professional conduct and refer the matter back to the Society's Professional Conduct Committee, or the Tribunal can dismiss the case. On the other hand, the Tribunal can find that there has been professional misconduct. This can result in a fine, an award to the complainer of compensation, and/or the practitioner being struck from the roll of solicitors. The latter sanction would ban the practitioner from practising as a solicitor.

17.37 There is a right of appeal, against the findings of the Tribunal, to the Court of Session.⁶¹⁸

⁶¹⁵ *Ibid*

⁶¹⁶ *Ibid*, and: Scottish Solicitors' Discipline Tribunal Rules 2008

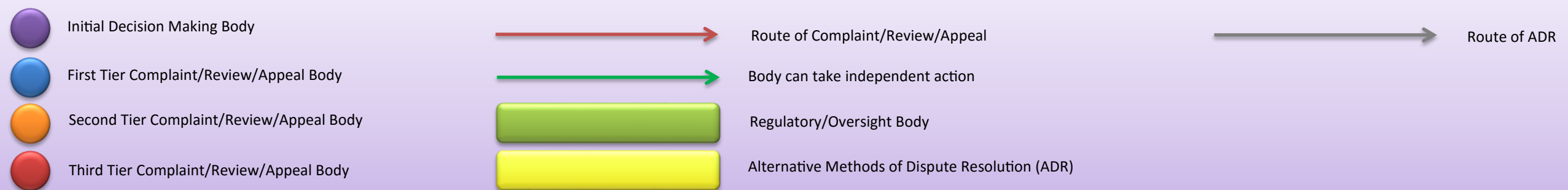
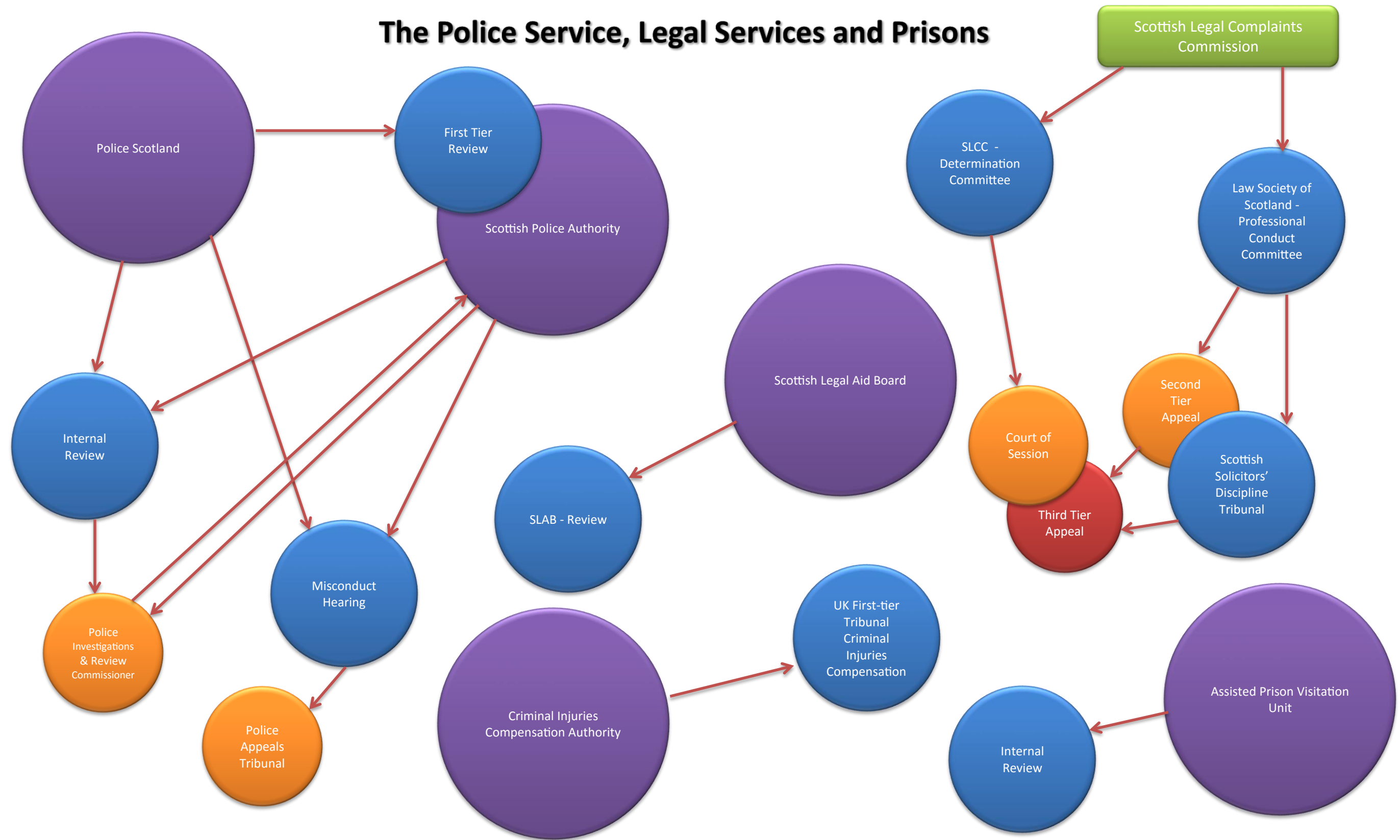
⁶¹⁷ *Ibid*

⁶¹⁸ *Ibid*

Professional Legal Services – Redress Processes

Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Scottish Legal Complaints Commission – Determination Committee	Conducts formal investigations into the quality of work provided by a legal practitioner	Legal Aid and Legal Profession (Scotland) Act 2007	Can result in an award of compensation or a return of fees to the complainer	There is an onward right of appeal against the Committee's decision to the Court of Session.
Professional Regulatory Body – Conduct Committee – e.g. The Law Society of Scotland, Professional Conduct Committee	Conducts formal investigations into the professional conduct of regulated members	Solicitors (Scotland) Act 1980; Legal Aid and Legal Profession (Scotland) Act 2007	Can decide to take no further action; decide that the conduct amounts to unsatisfactory professional conduct in which case a fine can be imposed or further training ordered, or award compensation to the complainer; or decide that the conduct amounts to professional misconduct and refer the matter on to the Scottish Solicitors' Discipline Tribunal	There is a right of appeal for the practitioner against a finding of unsatisfactory conduct to the Scottish Solicitors' Discipline Tribunal.
Scottish Solicitors' Discipline Tribunal	Hears cases of professional misconduct referred to it by the Law Society, and appeals by solicitors against findings of unsatisfactory misconduct	Solicitors (Scotland) Act 1980; Legal Aid and Legal Profession (Scotland) Act 2007	For professional misconduct cases: can dismiss the case, or impose a fine, award compensation to the complainer, or strike the solicitor from the roll of solicitors. For unsatisfactory conduct: can dismiss the case, or confirm a finding of unsatisfactory professional conduct	There is a right of appeal from the Tribunal to the Court of Session.

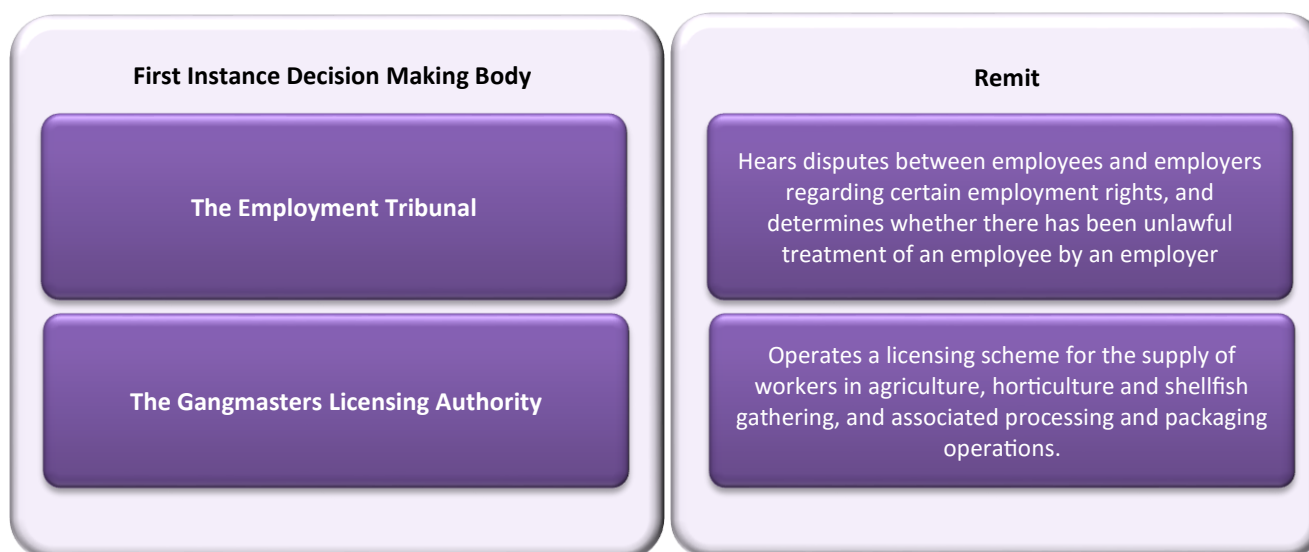
The Police Service, Legal Services and Prisons



Employment

Chapter 18

18.1 Employment law is a reserved matter. This chapter will detail the Employment Tribunal and the Gangmasters Licensing Authority. The Employment Tribunal hears disputes regarding employment rights between employees and employers in Great Britain. The Gangmasters Licensing Authority is responsible for the operation of a licensing scheme to regulate the supply of workers in the agriculture, horticulture, and shellfish gathering sectors, and their associated processing and packaging operations, throughout the UK.



Employment Disputes

18.2 Disputes regarding alleged unlawful treatment between employees and employers can be brought to the Employment Tribunal.⁶¹⁹ Unlawful treatment, for these purposes, constitutes one of the following:

Unfair dismissal

Discrimination

Unfair deductions from

18.3 Before the Tribunal will hear a case, the claimant must first notify the Advisory, Conciliation and Arbitration Service (Acas) of the intention to bring a claim.⁶²⁰ Acas will, at first, attempt to resolve the dispute using a free “Early Conciliation” service. This may not work, in which case Acas will then provide the claimant with a certificate which is necessary to lodge a claim at the tribunal. Lodging a claim without an Acas certificate requires the claimant to provide valid reasons for this.

18.4 The respondent (ie. the employer) will be given the opportunity to respond to the claim. The Tribunal may then decide, depending on the circumstances of the case, that the case can proceed

⁶¹⁹ Employment Tribunals Act 1996

⁶²⁰ *Ibid*, s.18A; The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014

without a hearing. In this case, the tribunal will make a judgment without the requirement for the parties to the dispute to attend a hearing. Otherwise, the case will proceed to a full hearing. This may involve preliminary stages, such as a preliminary hearing where procedural matters will be decided upon.

18.5 At the hearing, parties may call witnesses and present evidence in support of their claim, before the tribunal makes a determination on the case. The tribunal may dismiss a claim, in which case the claimant may be liable for the respondent's expenses.⁶²¹ Alternatively, the tribunal may find in favour of the claimant, which can result in payments of compensation, improved working conditions, reinstatement (if appropriate), and an award of expenses for fees involved in making the claim.⁶²²

18.6 Both parties have the right to request the tribunal to review its decision, and this must be requested within 14 days.⁶²³ This requires the appellant to provide good reasons for the review, such as the availability of new evidence, or that the tribunal made an error in fact. This can result in the tribunal reconsidering its judgment and making a different determination. There is also a right to appeal the tribunal's decision to the Employment Appeal Tribunal within 42 days of the decision, but this can only be made on the grounds that the tribunal made a mistake in law.⁶²⁴ There is a further right of appeal against the decision of the Employment Appeal Tribunal, to the Court of Session, but only on a point of law.⁶²⁵ Permission is required from the Employment Appeal Tribunal, or failing that the Court of Session itself, to bring this further appeal.⁶²⁶

Employment Tribunals – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Employment Tribunal – Review	Conducts reviews, on request, of determinations it has made	Employment Tribunals Act 1996	This can result in a different decision being made	There is a limited onward right of appeal, to the Employment Appeal Tribunal, but only on a point of law.
The Employment Appeal Tribunal	Hears appeals against determinations of the Employment Tribunal	Employment Tribunals Act 1996	The Employment Appeal Tribunal can make any decision that the Employment Tribunal could have made, or can remit the case back to the Employment Tribunal for a fresh decision	There is a limited onward right of appeal, to the Court of Session, but only on a point of law.

⁶²¹ Employment Tribunals Act 1996, s.13

⁶²² Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Regs.60-69

⁶²³ *Ibid*, Regs.70-73

⁶²⁴ Employment Tribunals Act 1996, s.20; Practice Direction (Employment Appeal Tribunal – Procedure) 2013

⁶²⁵ Employment Tribunals Act 1996, s.37

⁶²⁶ *Ibid*

The Gangmasters Licensing Authority

18.7 The Gangmasters Licensing Authority (GLA) is responsible for the regulation of the supply of workers to the agriculture, horticulture and shellfish gathering sectors, and their associated processing and packaging operations.⁶²⁷ It does this through the operation of a licensing scheme. All agencies or businesses who supply workers to these sectors must hold a valid licence.

18.8 The GLA licensing scheme ensures that minimum standards are met, and these relate to: health and safety, accommodation, pay, transport and training; as well as ensuring that the licence holder is a fit and proper person.⁶²⁸

18.9 The GLA assesses applications for licences and applications to transfer licences from a licensee to another person.⁶²⁹ The GLA may refuse or grant the licence or transfer, and is free to attach conditions upon a licence it has granted as it sees fit. The GLA reserves the right to modify or revoke any licence.⁶³⁰

18.10 There is a right to appeal a decision of the GLA.⁶³¹ This can relate to a decision to refuse a licence or transfer, any conditions attached to a licence, and a revocation of a licence. The appeal is to the Gangmasters Licensing Appeals Tribunal.

18.11 Parties to the case can request a public hearing, where they can call witnesses and present evidence. The tribunal can also conduct a paper-based hearing. The tribunal can dismiss the appeal, or can allow it and make any decision that could have been made by the GLA. This could result in a licence being granted, transferred or reinstated, or conditions removed or modified. The decision of the tribunal is final.⁶³²

Gangmasters Licensing – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Gangmasters Licensing Appeals Tribunal	Hears appeals against decisions of the Gangmasters Licensing Authority	Gangmasters (Licensing) Act 2004	The Tribunal can dismiss the appeal, or allow it and make any decision that the Authority could have made, which can result in a licence being granted, transferred or reinstated; and any conditions modified or revoked	None.

⁶²⁷ Gangmasters (Licensing) Act 2004, s.1 and s.3

⁶²⁸ *Ibid*, s.8

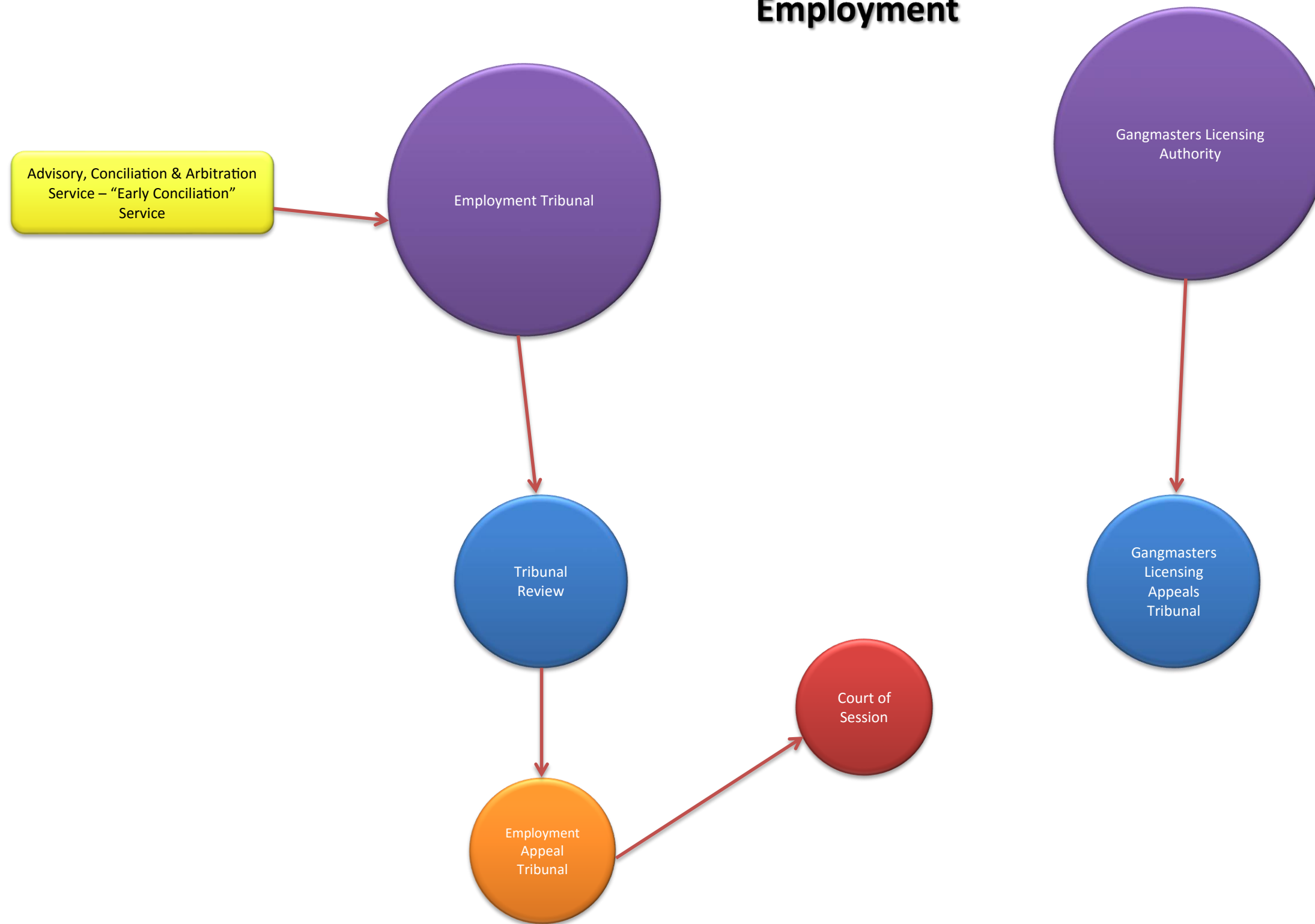
⁶²⁹ *Ibid*, s.9

⁶³⁰ *Ibid*

⁶³¹ *Ibid*, s.10; The Gangmasters (Appeals) Regulations 2006

⁶³² The Gangmasters (Appeals) Regulations 2006, Reg.21

Employment



Initial Decision Making Body



First Tier Complaint/Review/Appeal Body



Second Tier Complaint/Review/Appeal Body



Third Tier Complaint/Review/Appeal Body



Route of Complaint/Review/Appeal



Body can take independent action



Regulatory/Oversight Body



Alternative Methods of Dispute Resolution (ADR)

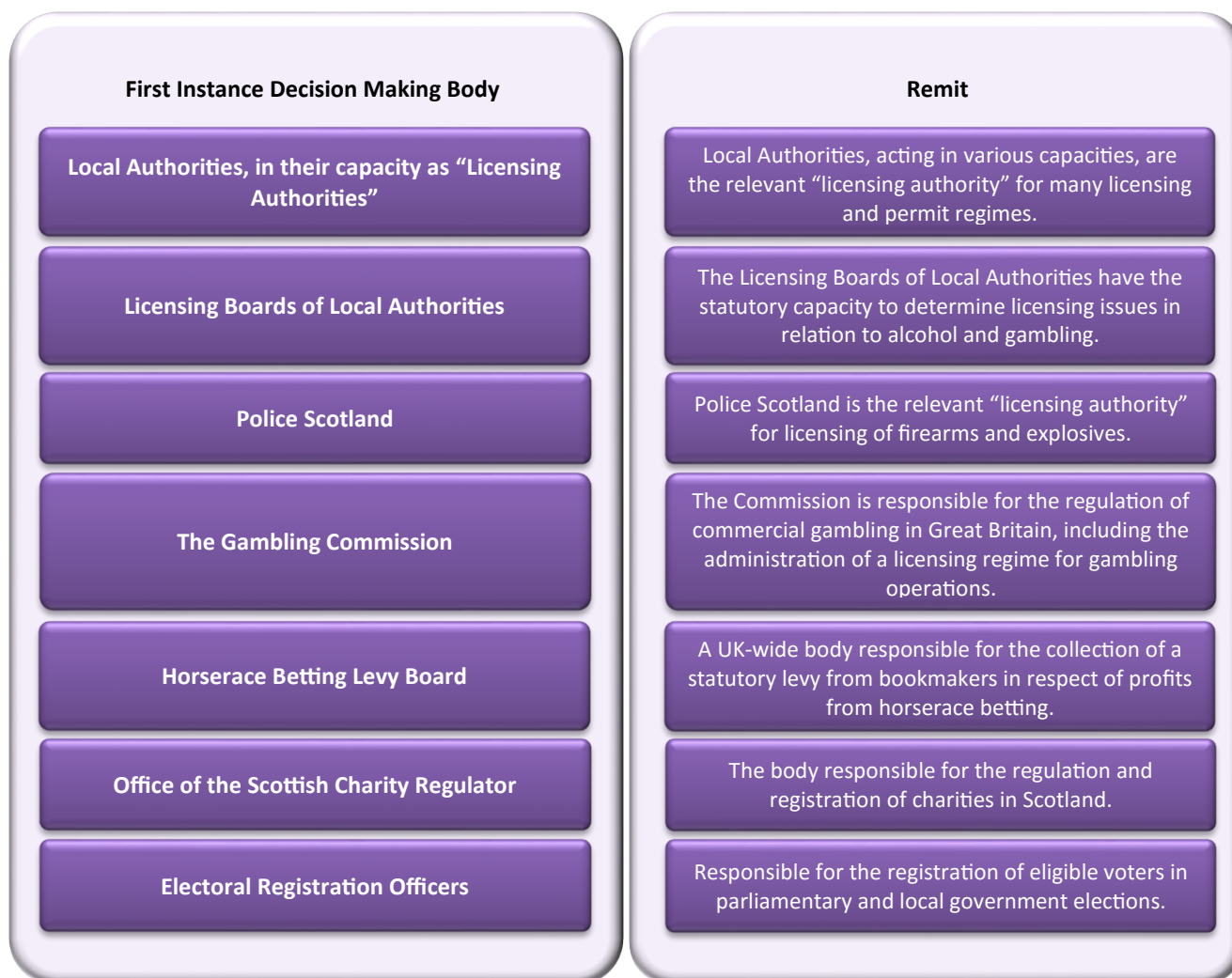


Route of ADR

Licensing, Gambling, Charities & Electoral Registration

Chapter 19

19.1 This chapter addresses: 1) civic licensing, and certain other licensing and permissions regimes, covering a mix of devolved and reserved matters; 2) the Gambling Commission and Horserace Betting Levy Board; 3) the role of the Office of the Scottish Charity Regulator; and 4) decisions in relation to electoral registration.



Licensing and Permissions

19.2 Licensing regimes operate in relation to many activities, in order that those activities can be regulated. This section details the civic licensing regimes operated by Local Authorities, and other licensing regimes which are the responsibility of Licensing Boards. Other miscellaneous licensing regimes and permissions required from Local Authorities and other public bodies are also detailed. Note that some specific licensing regimes – such as animal movement licensing, waste

management licensing and tree felling licensing – are dealt with in other chapters where they most appropriately fit the subject area.

19.3 This section will first outline the general process for licencing schemes operating under the terms of Schedule 1 of the Civic Government (Scotland) Act 1982, given that this relates to most of the schemes detailed in this chapter.

19.4 The following sections deal with licensing and permissions as follows:

- a) Overview of the Civic Government Licensing Process
- b) Animal Licensing
- c) Entertainment Licensing
- d) Alcohol and Gambling Licensing
- e) Taxi and Private Car Hire Licensing
- f) Trade and Business Licensing
- g) Hazardous Items, Firearms and Explosives Licensing
- h) Processions and Parades Permissions
- i) Roads and Footpaths Permissions

a) Overview of the Civic Government Licensing Process

19.5 A large number of the licensing schemes administered by Local Authorities operate under the terms of Schedule 1 of the Civic Government (Scotland) Act 1982. This section details the generic process under the terms of Schedule 1 of that Act, but it should be noted that certain other licences under the Act operate under separate schemes, such as Sex Shop Licensing and Knife Dealer Licensing. These specific licenses follow the same redress processes, but the initial process of obtaining such a licence can be more onerous.⁶³³

19.6 Local Authorities have the power to grant or renew licences, and also reserve the right to suspend or vary the terms of a licence it has granted. Under the Act, all applications for the grant or renewal of a licence must undergo a period of public notice.⁶³⁴ This generally lasts for 28 days, during which anyone can make representations, or lodge objections, in relation to the application.⁶³⁵ The Local Authority must take these into account in coming to its decision on the application.⁶³⁶

19.7 Where the Local Authority has refused to grant or renew a licence, or has exercised its powers to suspend or vary a licence, the applicant or licence holder has the right, within 21 days, to request the Local Authority to provide its reasons for the action it has taken.⁶³⁷

19.8 Once these reasons have been provided, the applicant or licence holder then has a period of 28 days in which he or she can appeal the decision of the Local Authority to the Sheriff Court.⁶³⁸

⁶³³ See, for example: Civic Government (Scotland) Act 1982, Schedule 2 relating to the control of sex shops

⁶³⁴ Civic Government (Scotland) Act 1982, Schedule 1, para.3

⁶³⁵ *Ibid*, para.3(1)(e)

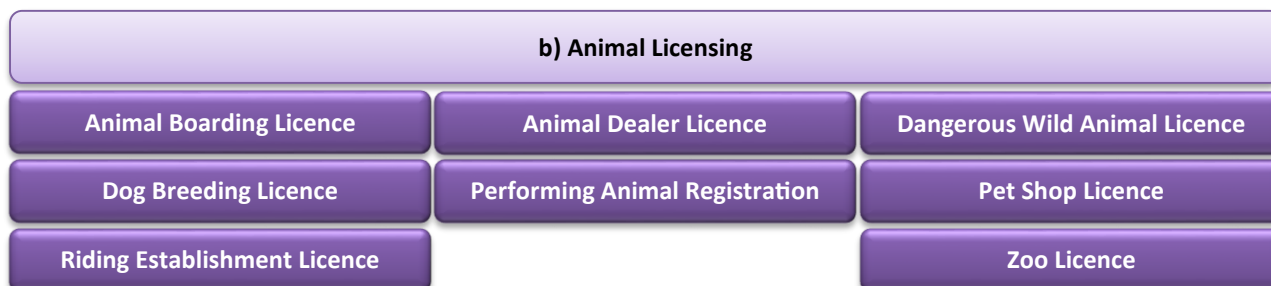
⁶³⁶ *Ibid*, para.3(1)

⁶³⁷ *Ibid*, para.17

⁶³⁸ *Ibid*, para.18(4)

The Sheriff can dismiss the appeal, can remit the case to the Local Authority for reconsideration, or can reverse or modify the original decision.⁶³⁹

19.9 There is a further, limited, right of appeal against the decision of the Sheriff Court.⁶⁴⁰ This is to the Court of Session, on a point of law only.



19.10 All of the above licences are approved by Local Authorities.⁶⁴¹ The Local Authority will assess the applicant to ensure that they are suitable for the licence – which will involve an assessment of animal welfare, relevant background checks, and relevant public safety measures. The Local Authority can add any conditions to a licence as it sees fit, and can suspend or revoke a licence if deemed necessary.

19.11 For an Animal Dealer Licence, which regulates the sale of young cats and dogs, there is a right to request a review of the Local Authority's decision.⁶⁴² This can result in a different decision being taken. If the applicant remains dissatisfied after review, there is then a right of appeal to the Sheriff Court, but this can only be on a point of law.⁶⁴³

19.12 In relation to Performing Animal Registration, an individual who wishes to exhibit and/or train an animal for those purposes must be registered with the Local Authority and added to its Performing Animal Register.⁶⁴⁴ An individual may be prohibited from registration by Court Order.⁶⁴⁵ Such an Order can be obtained on application to the Court by Police Scotland or the Local Authority. There is no right of appeal against the making of an Order.⁶⁴⁶

19.13 For all other licences above, there is a right of appeal for an aggrieved applicant, in relation to a refusal to grant a licence or conditions attached, and this is to the Sheriff Court.⁶⁴⁷ This decision is final.

⁶³⁹ *Ibid*, para.18(9)

⁶⁴⁰ *Ibid*, para.18(12)

⁶⁴¹ Animal Boarding Establishments Act 1963; Dangerous Wild Animals Act 1976; Breeding of Dogs Act 1973; Riding Establishment Act 1964; Performing Animals (Regulation) Act 1925; Pet Animals Act 1951; Zoo Licensing Act 1981; Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2009

⁶⁴² Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2009, regulation 13

⁶⁴³ *Ibid*, regulation 14

⁶⁴⁴ Performing Animals (Regulation) Act 1925, s.1

⁶⁴⁵ *Ibid*, ss.1-2

⁶⁴⁶ *Ibid*, s.6

⁶⁴⁷ Animal Boarding Establishments Act 1963, s.1(4); Dangerous Wild Animals Act 1976, s.2; Breeding of Dogs Act 1973, s.1(5); Riding Establishment Act 1964, s.1(5); Pet Animals Act 1951, s.1(4); Zoo Licensing Act 1981, s.18

c) Entertainment Licensing		
Child Entertainment Licence	Cinema Licence	Fireworks Displays Dispensation
Hypnotism Licence	Indoor Sports Licence	Late Hours Catering Licence
Public Entertainment Licence	Sexual Entertainment Licence	Theatre Licence

19.14 A Child Entertainment Licence is required for any public performance involving children under the age of 16, subject to certain exceptions (such as a routine school play).⁶⁴⁸ The licensing authority in respect of this licence is the Local Authority, in its capacity as Education Authority. The Education Authority is free to attach any conditions to a licence, and may vary or revoke a licence as it sees fit. There is a right of appeal to the Sheriff Court.⁶⁴⁹ This decision is final.

19.15 Anyone who wishes to hold a fireworks display during night hours (between 11pm and 7am) on a date not specified in regulations, must apply for a dispensation from the Local Authority.⁶⁵⁰ The Local Authority can decide whether or not to grant dispensation and/or to attach conditions to a dispensation. There is no right to request a review or appeal of the decision.

19.16 All other licences listed in this section are dealt with by the Local Authority as licensing authority.⁶⁵¹ The Local Authority can add any conditions to a licence as it sees fit, and can also vary or revoke a licence. There is a right of appeal to the Sheriff Court.⁶⁵² The Court can dismiss the appeal, take any action the Local Authority could have taken, vary or add to any condition, or remit the case back to the Local Authority for a fresh decision. For those licences based on the Civic Government (Scotland) Act 1982, there is a further right of appeal, on a point of law, to the Court of Session.⁶⁵³

d) Alcohol and Gambling Licensing	
Premises Licence (Alcohol & Gambling)	Personal Licence (Alcohol)
Extended Hours Application (Alcohol)	Occasional Licence (Alcohol)

19.17 Alcohol and gambling licensing falls to the responsibility of the Licensing Board of each Local Authority.

Gambling

19.18 The gambling licensing responsibilities of Licensing Boards operates alongside the licensing regime of the Gambling Commission, which is detailed below. Licensing Boards are responsible for

⁶⁴⁸ Children (Performances and Activities) (Scotland) Regulations 2014

⁶⁴⁹ Children and Young People Act 1963, s.39

⁶⁵⁰ Fireworks (Scotland) Regulations 2004

⁶⁵¹ Civic Government (Scotland) Act 1982; Hypnotism Act 1952; Theatres Act 1968

⁶⁵² Civic Government (Scotland) Act 1982, Schedule 1

⁶⁵³ *Ibid*

assessing applications for a premises licence in order to authorise the use of a premises for gambling purposes, or to make available gambling facilities in designated premises.⁶⁵⁴

19.19 The Licensing Board will assess the application for a gambling premises licence. A premises licence cannot be granted until an Operating Licence from the Gambling Commission has been granted.⁶⁵⁵ The Licensing Board must also allow for representations from members of the public to be taken into account in assessing an application.⁶⁵⁶ A hearing may be held to resolve objections that have not been withdrawn.⁶⁵⁷

19.20 The Licensing Board can also conduct its own reviews of licences it has granted, and these can also be requested by interested parties or responsible authorities such as Police Scotland.⁶⁵⁸ The Board can take action as a result of review, including varying, revoking or suspending a licence.

19.21 There is a right of appeal for both the applicant/licence holder and an interested party against the decisions of the Licensing Board in regard to gambling premises licences.⁶⁵⁹ Decisions to grant, refuse, to attach conditions or not, or to take action after review can all be appealed to the Sheriff Court. The Court can dismiss the appeal, take any action the Licensing Board could have taken, can amend or add to conditions, or remit the case back to the Licensing Board for a fresh decision.

19.22 There is a further, limited onward right of appeal against the decision of the Sheriff Court. This is to the Court of Session, on a point of law only.⁶⁶⁰

Alcohol

19.23 The unlicensed sale or supply of alcohol is, in general, prohibited in Scotland.⁶⁶¹ A license is required to sell or supply alcohol from a venue; and a licence is required to authorise the sale of alcohol, or manage or supervise in premises where alcohol is sold.⁶⁶² The granting of such licenses, as are detailed below, must be in accordance with the “licensing objectives”.⁶⁶³ These include securing public safety, and the prevention of crime and disorder.

19.24 The Premises Licence authorises the sale of alcohol within a particular venue in Scotland. A Personal Licence must be held by a “Designated Premises Manager” who can authorise and supervise the sale of alcohol in that premises. Multiple members of staff from a venue may obtain a Personal Licence. Details of those with a Personal Licence must be provided in the application for a Premises Licence.

⁶⁵⁴ Gambling Act 2005, Part 8

⁶⁵⁵ *Ibid*, s.159

⁶⁵⁶ *Ibid*, s.161

⁶⁵⁷ *Ibid*, s.162

⁶⁵⁸ *Ibid*, s.197 and s.200

⁶⁵⁹ *Ibid*, s.206

⁶⁶⁰ *Ibid*, s.209

⁶⁶¹ Licensing (Scotland) Act 2005, s.1

⁶⁶² *Ibid*, Parts 3 and 6

⁶⁶³ *Ibid*, s.4: the objectives are: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children from harm

19.25 Applications for both licences are made to the Licensing Board of the relevant Local Authority. The Board will decide whether or not to grant the license, and for Premises Licenses may attach conditions to it. The Board must take into account the licensing objectives and any relevant offences of the applicant - including, for example, any instances of antisocial behaviour in or around the venue or any relevant criminal convictions of a personal licence applicant.

19.26 Anyone may object or make representations to the Board.⁶⁶⁴ Police Scotland may also recommend that a licence is not granted on the grounds of crime prevention.

19.27 There is a right of appeal against the refusal to grant a licence, and this is to the Sheriff Court for Personal Licences, and to the Sheriff Principal for Premises Licences.⁶⁶⁵

19.28 It is also open to anyone to request that the Licensing Board review any Premises License it has granted.⁶⁶⁶ This can be requested based on the licensing objectives, or on the grounds that the conditions of the license have been breached.⁶⁶⁷ The Board can also undertake a review on its own initiative.⁶⁶⁸ This can result in the Premises License being revoked, varied or suspended, or with a written warning being issued to the licence holder. The licence holder can request that the Board review any conditions attached or a suspension issued as a result of a review, on the grounds that the measure is no longer necessary due to a change in circumstances.

19.29 The Licensing Board can, in relation to Personal Licences, on receiving relevant information – such as notification of a criminal conviction by the licence holder – “endorse” or revoke the licence.⁶⁶⁹ A licence must be revoked if there are three active endorsements.

19.30 There is a right of appeal against action that the Licensing Board takes after review, or to endorse a licence.⁶⁷⁰ Any conditions attached, a variation, a suspension or a written warning can be appealed. This is to the Sheriff Court for Personal Licences, and to the Sheriff Principal for Premises Licences.⁶⁷¹

19.31 There is a further, limited onward right of appeal against decisions of the Sheriff Court or Sheriff Principal. This is to the Court of Session, on a point of law only.⁶⁷²

Other Alcohol Licences

19.32 Permission can also be obtained from a Licensing Board in order to sell alcohol from a particular licensed premises beyond the usual hours prescribed in legislation. These are termed “Extended Hours” Applications.⁶⁷³ Further, a licence to sell alcohol only for a short period of time at a particular premises can be obtained by application to the Licensing Board. These are termed

⁶⁶⁴ *Ibid*, s.22

⁶⁶⁵ *Ibid*, s.131

⁶⁶⁶ *Ibid*, ss.36-40; Public Authorities, such as Police Scotland, can request a review based on information they have obtained

⁶⁶⁷ *Ibid*, s.36(3)

⁶⁶⁸ *Ibid*, s.37

⁶⁶⁹ *Ibid*, ss.85-86

⁶⁷⁰ *Ibid*, s.131; schedule 5

⁶⁷¹ *Ibid*

⁶⁷² *Ibid*, s.132(6)

⁶⁷³ *Ibid*, s.67

“Occasional” Licences, and can permit the sale of alcohol from a particular premises for up to 14 days.⁶⁷⁴

19.33 There is a right for the applicant to appeal against refusal for both an Extended Hours Application and an Occasional Licence.⁶⁷⁵ This is to the Sheriff Principal, on the same basis as appeals relating to a Premises Licence, and attracting the same onward rights of appeal to the Court of Session on a point of law.⁶⁷⁶

19.34 There is also a right of appeal for an objector to an Extended Hours Application, in the event that permission is granted.⁶⁷⁷ This is also to the Sheriff Principal, and can also be appealed further on a point of law to the Court of Session.⁶⁷⁸

e) Taxi and Private Car Hire Licensing		
Taxi Driver Licence	Taxi Vehicle Licence	Private Hire Car Driver Licence
Private Hire Car Vehicle Licence		Booking Office Licence

19.35 The licensing of taxis and private hire cars is the responsibility of Local Authorities.⁶⁷⁹ Local Authorities will assess applications for the above licenses based on a number of tests, including: suitability of the applicants and vehicles in line with national road traffic and vehicular regulations; and for taxi vehicles, an unmet demand test.⁶⁸⁰ The Local Authority may also require applicants for a Taxi Driver Licences to submit to medical examinations. The Local Authority reserves the right to suspend a licence if it sees fit.

19.36 There is a right of appeal against the refusal of a Local Authority to grant one of the above licences, or to suspend a licence, and this is to the Sheriff Court.⁶⁸¹ The Court may dismiss the appeal, take any decision that the Local Authority could have taken, reinstate any licence, or remit the case to the Local Authority for a fresh decision. There is a further onward right of appeal, on a point of law, to the Court of Session.⁶⁸²

f) Trade and Business Licensing		
Boat Hire Licence	Caravan Site Licence	Market Operator Licence
Metal Dealer Licence	Sex Shop Licence	Public Charitable Collection Licence
Second Hand Dealer Licence	Venison Dealer Licence	Skin Piercing and Tattoo Licence
Street Trader Licence		Window Cleaner Licence

⁶⁷⁴ *Ibid*, s.56

⁶⁷⁵ *Ibid*, s.131

⁶⁷⁶ *Ibid*, s.132

⁶⁷⁷ *Ibid*, Schedule 5, Part 1

⁶⁷⁸ *Ibid*, s.132

⁶⁷⁹ Civic Government (Scotland) Act 1982, ss.10-23

⁶⁸⁰ Note: the Air Weapons and Licensing (Scotland) Act 2015 will introduce a similar test for private hire vehicles

⁶⁸¹ *Ibid*, Schedule 1

⁶⁸² *Ibid*

19.37 With the exception of Caravan Site Licensing and Venison Dealer Licensing, all licences above are based on the Civic Government (Scotland) Act 1982.⁶⁸³ The Local Authority assesses applications for such licences, and can attach conditions to them as it sees fit. A person aggrieved with the decision of the Local Authority can appeal that decision to the Sheriff Court.⁶⁸⁴ The Court can dismiss the appeal, take any action that the Local Authority could have taken, can amend or vary any conditions, or can remit the case back to the Local Authority for a fresh decision. There is an onward right of appeal for these decisions, on a point of law, to the Court of Session.⁶⁸⁵

19.38 Local Authorities also assess applications for Caravan Site Licences and Venison Dealer Licences. The Local Authority can attach conditions to a licence as it sees fit. There is an appeal against the decisions of Local Authorities in relation to both licences, and this is to the Sheriff Court.⁶⁸⁶ This decision is final.



19.39 Police Scotland is the relevant licensing authority for most firearms and explosives.⁶⁸⁷ A certificate is required to own a firearm or shotgun, or explosives. Police Scotland will assess applications for certificates, and this will involve background checks and assessments of risks to public safety. Police Scotland can add conditions, and reserve the right to vary or revoke a licence. There is a right of appeal against the decisions of Police Scotland in this regard, and this is to the Sheriff Court.⁶⁸⁸ This decision will be final.

19.40 In order to sell fireworks, the premises must be registered with the Local Authority.⁶⁸⁹ A licence is also required to sell fireworks outwith times specified in regulations.⁶⁹⁰ The Local Authority is also responsible for issuing these licences. There is a right of appeal against the decisions of a Local Authority in this regard, to the Sheriff Court.⁶⁹¹ This decision is final.

19.41 Local Authorities are also the competent licensing authority for the licensing of knife dealers.⁶⁹² An assessment will be made of applications to sell or deal in knives, swords and other such items, and this will involve background checks and assessments of risks to public safety. The Local Authority is free to add conditions to a licence, and reserves the right to vary or revoke a licence if it sees fit. There is a right of appeal against decisions of the Local Authority in relation to Knife Dealer Licences, and this is to the Sheriff Court.⁶⁹³ The Court can dismiss the appeal, take any

⁶⁸³ Caravan Sites and Control of Development Act 1960; Deer (Scotland) Act 1996

⁶⁸⁴ Civic Government (Scotland) Act 1982, Schedule 1

⁶⁸⁵ *Ibid*

⁶⁸⁶ Caravan Sites and Control of Development Act 1960, s.7; Deer (Scotland) Act 1996, s.33; and Civic Government (Scotland) Act 1982, Schedule 1

⁶⁸⁷ Firearms Act 1968; Explosives Regulations 2014

⁶⁸⁸ Firearms Act 1968, s.44; Explosives Regulations 2014, regulation 22

⁶⁸⁹ Fireworks Regulations 2004, regulation 9

⁶⁹⁰ *Ibid*

⁶⁹¹ *Ibid*

⁶⁹² Civic Government (Scotland) Act 1982, s.27A – s.27S

⁶⁹³ *Ibid*, Schedule 1

action that the Local Authority could have taken, amend or vary any conditions, or remit the case back to the Local Authority for a fresh decision. There is an onward right of appeal for these decisions, on a point of law, to the Court of Session.⁶⁹⁴

19.42 In order to store and dispense petroleum spirit from a premises, a Petroleum Storage Certificate is required.⁶⁹⁵ Applications for Certificates are made to the Petroleum Enforcement Authority, which in practice are the Environmental Health and Trading Standards departments of Local Authorities. No conditions can be attached to such certificates, but assessment on application will involve checks regarding health and safety, and containment plans. A licence from the Local Authority is also required for storing larger amounts of petroleum spirit domestically.

19.43 There is a right of appeal against the refusal to issue a Storage Certificate or licence for domestic storage. This is to the Secretary of State for Work and Pensions.⁶⁹⁶ If a party requests it, then a hearing may be held which is facilitated by an independent reporter. The reporter will make recommendations to the Secretary of State who will make a final determination.

h) Processions and Parades Permissions

19.44 Permission is required from a Local Authority to stage a procession or parade.⁶⁹⁷ The definition of procession or parade is wide and includes, for example, marathons and street festivals as well as public protests. The Local Authority may refuse to grant permission, or may attach conditions to the holding of the parade or procession. There is a right of appeal against the decision of the Local Authority to refuse permission or to attach conditions, and this is to the Sheriff Court.⁶⁹⁸ The Court may dismiss the appeal, or take any decision the Local Authority could have taken, vary or revoke any conditions, or remit the case back to the Local Authority for a fresh decision.⁶⁹⁹ There is a further right of appeal against the decision of the Sheriff Court, on a point of law, to the Court of Session.⁷⁰⁰

i) Roads and Footpaths Permissions

Tables & Chairs/Street Café Licensing

Roads and Pavements Excavations

Mobile Crane Permit

Scaffolding Permit

Tower Crane Permit

Skip Permit

19.45 Local Authorities, in their capacity as Roads Authorities, are responsible for assessing applications for all of the above permits and licences. They are all based on the Roads (Scotland) Act 1984.⁷⁰¹ There are no statutory rights to request review or appeal in relation to refusal to permit the activities or to attach conditions on the grant of a permit.

⁶⁹⁴ *Ibid*

⁶⁹⁵ Petroleum (Consolidation) Regulations 2014

⁶⁹⁶ *Ibid*, regulation 11

⁶⁹⁷ Civic Government (Scotland) Act 1982, ss.62-66

⁶⁹⁸ *Ibid*, s.64

⁶⁹⁹ *Ibid*, s.64(6)

⁷⁰⁰ *Ibid*, s.64(9)

⁷⁰¹ Roads (Scotland) Act 1984, Part V

Licensing and Permissions – Redress Processes (Continued)

Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Local Authority – Internal Review	Conducts reviews, on request, of decisions regarding animal dealer licensing	Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2009	The Sheriff Court may dismiss the appeal, or give any such directions to the Licensing Authority as it sees	There is a limited onward right of appeal to the Sheriff Court, on a point of law only.
Licensing Board – Internal Review	Conducts its own reviews, or reviews on request, of gambling and alcohol licenses it has granted	Licensing (Scotland) Act 2005; Gambling Act 2005	The Board can decide to take no action as a result of review, or can take action including to vary, revoke or suspend a licence	There is an onward right of appeal to the Sheriff Court for decisions regarding gambling premises licensing and alcohol personal licensing.
				There is an onward right of appeal to the Sheriff Principal for decisions regarding alcohol premises licensing.
The Sheriff Court	Hears appeals against decisions of Licensing Authorities in regard to licences issued under the Civic Government (Scotland) Act 1982	Civic Government (Scotland) Act 1982	The Sheriff Court may dismiss the appeal, or take any decision the Local Authority could have taken, vary or revoke any conditions, or remit the case back to the Licensing Authority for a fresh decision	There is a limited onward right of appeal to the Court of Session, on a point of law only.
	Hears appeals against decisions of Licensing Authorities in regard to: animal licensing; child entertainment licensing; caravan site licensing; venison dealer licensing; firearms licensing; explosives licensing; and fireworks sales licensing	Animal Boarding Establishments Act 1963; Dangerous Wild Animals Act 1976; Breeding of Dogs Act 1973; Riding Establishment Act 1964; Pet Animals Act 1951; Zoo Licensing Act 1981; Caravan Sites & Control of Development Act 1960; Deer (Scotland) Act 1996; Firearms Act 1968; Explosives Regulations 2014; Fireworks Regulations 2004	The Sheriff Court may dismiss the appeal, or take any decision the Local Authority could have taken, vary or revoke any conditions, or remit the case back to the licensing authority for a fresh decision	None.

Licensing and Permissions – Redress Processes (Continued)				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of a Licensing Board and Licensing Board Review regarding gambling premises licensing, and alcohol personal licensing	Licensing (Scotland) Act 2005; Gambling Act 2005 Explosives Regulations 2014; Fireworks Regulations 2004	The Sheriff Court may dismiss the appeal, or take any decision the Local Authority could have taken, vary or revoke any conditions, or remit the case back to the licensing authority for a fresh decision	There is a limited onward right of appeal to the Court of Session, on a point of law only.
Sheriff Principal	Hears appeals against decisions of the Licensing Boards and against decisions taken after review by Licensing Boards in regard to alcohol premises licensing, extended hours applications and occasional licensing	Licensing (Scotland) Act 2005	The Sheriff Principal can reverse the Licensing Board's decision, grant the license, make any other appropriate decision, or refer the matter back to the Board for a fresh decision	There is a limited onward right of appeal to the Court of Session, on a point of law only.
Secretary of State for Work and Pensions	Hears appeals against the decisions of Licensing Authorities regarding the Petroleum Storage Certificates and licensing	Petroleum (Consolidation) Regulations 2014	The Secretary of State can dismiss the appeal, or grant the Certificate or licence	None.

The Gambling Commission

19.46 The Gambling Act 2005 established the Gambling Commission to regulate commercial gambling throughout Great Britain. The Commission works in partnership with Licensing Authorities, which in Scotland are the Licensing Boards of Local Authorities detailed at sections 19.18-19.22, above.

19.47 The Commission's objectives are to prevent gambling from becoming a source of crime or disorder, to ensure that gambling is open and fair, and to protect against the exploitation of vulnerable people in gambling.⁷⁰² It does this partly through the operation of a licensing scheme, which works alongside the gambling licensing scheme of Licensing Boards.

⁷⁰² Gambling Act 2005, s.1 and s.22

19.48 The Commission can grant two types of licence – an Operational Licence and a Personal Licence.⁷⁰³ An Operational Licence is required by all commercial gambling operators, and the holding of such a licence is a prerequisite to obtaining a Premises Licence from the Licensing Board of a Local Authority.⁷⁰⁴ The Operational Licence can authorise a range of operations, which include:

- the operation of a casino
- the provision of bingo facilities
- the provision of gaming machines
- the promotion of a lottery
- the manufacture and provision of gambling software

19.49 A Personal Licence is only required for those who perform a management or operational role in more large-scale commercial gambling establishments, and it is not required for “small scale operators”.⁷⁰⁵

19.50 The Gambling Commission assesses applications for both types of licence. This involves an assessment of the suitability of the applicant, including financial, criminal and competency background checks.⁷⁰⁶ The Commission can grant or refuse a licence; grant only some specified operations; and is free to attach any conditions which it sees fit upon a licence in order to uphold its objectives. The Commission can also carry out reviews of Operational Licences it has granted, either on its own initiative or after request from an interested party or authority, to ensure their continued suitability.⁷⁰⁷ The licensee will be offered the opportunity to make representations during this review.⁷⁰⁸ The Commission has the power to suspend or revoke an Operational Licence on review if it deems this necessary.⁷⁰⁹

19.51 There is a right to appeal a decision of the Gambling Commission, within 28 days of the original decision.⁷¹⁰ The decision of the Commission to refuse to grant an Operational or Personal Licence, to attach conditions to a licence, or to take action on review of an Operational Licence, can be appealed to the UK First-tier Tribunal (General Regulatory Chamber). The Tribunal can confirm or quash the Commission’s decision, take any decision the Commission could have taken or add to the initial decision, or remit the case back to the Commission for a fresh decision.⁷¹¹ There is a further right of appeal against the decision of the First-tier Tribunal, on a point of law only, to the UK Upper Tribunal.⁷¹²

⁷⁰³ *Ibid*, Part 5 and Part 6

⁷⁰⁴ *Ibid*, s.159; see sections 19.18-19.22, above

⁷⁰⁵ *Ibid*, s.129

⁷⁰⁶ *Ibid*, Part 5 and Part 6

⁷⁰⁷ *Ibid*, s.116

⁷⁰⁸ *Ibid*

⁷⁰⁹ *Ibid*, ss.116-122

⁷¹⁰ *Ibid*, s.141

⁷¹¹ *Ibid*, s.144

⁷¹² The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, Part 4

The Gambling Commission – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
UK First-tier Tribunal (General Regulatory Chamber)	Hears appeals against licensing decisions of the Gambling Commission, and against action taken after review	Gambling Act 2005	The Tribunal can confirm or quash the Commission’s decision, take any decision the Commission could have taken or add to the initial decision, or remit the case back to the Commission for a fresh decision	There is a limited onward right of appeal to the UK Upper Tribunal (Administrative Appeals Chamber), on a point of law only.

The Horserace Betting Levy Board

19.52 The Horserace Betting Levy Board was established by the Betting Levy Act 1961, and is responsible for the collection of a statutory levy from the horserace betting profits of bookmakers throughout the UK.

19.53 Bookmakers have a right to appeal the amount of levy payable to the Board, and this is to the independent Horserace Betting Levy Appeal Tribunal.⁷¹³ This can determine the amount payable.

The Horserace Betting Levy Board – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Horserace Betting Levy Appeal Tribunal	Hears appeals against determinations of amounts payable by bookmakers under the statutory horserace betting levy	Betting Levy Act 1961; Betting, Gaming and Lotteries Act 1963	Can confirm the amount payable, or determine another amount	None.

The Office of the Scottish Charity Regulator

19.54 The Office of the Scottish Charity Regulator was established by the Charities and Trustee Investment (Scotland) Act 2005, and is responsible for the regulation and registration of charities in Scotland. The Regulator assesses applications for registration on the Scottish Charity Register against the statutory “Charity Test”.⁷¹⁴ The Regulator is also responsible for assessing applications to make certain changes to charities (including functions, composition and objectives) and for ensuring that registered charities comply with the provisions of the Act.⁷¹⁵

⁷¹³ Betting Levy Act 1961; Betting, Gaming and Lotteries Act 1963, s.29

⁷¹⁴ The Charities and Trustee Investment (Scotland) Act 2005, ss.4-7

⁷¹⁵ *Ibid*, Chapters 2-8

19.55 Inquiries can be carried out to ensure that a charity is being managed and administered in accordance with the law.⁷¹⁶ The Regulator is empowered to take enforcement action and to give directions in relation to charities it deems no longer meet the statutory charity test, to be in breach of the Act, or where misconduct has been found on the part of a person who undertakes activities on behalf of the charity.⁷¹⁷ This can include withdrawing the charity from the Register, or suspending or removing certain persons from the management or administration of a charity.

19.56 There is a right to request the Regulator to review any decision it has made, including those that relate to registration or removal from the Register, refusal to authorise changes to a charity, enforcement action taken, or directions ordered.⁷¹⁸ This must be done within 21 days of the original decision, and can result in confirmation of the decision or reversal, revocation or variation of the decision. Persons aggrieved by confirmation of the original decision then have a right of appeal against the decision.⁷¹⁹

19.57 The right to appeal against the decisions of the Regulator is to the Scottish Charity Appeals Panel, except for action which results in suspension or removal of a person who undertakes activities on behalf of the charity - these specific appeals are made directly to the Court of Session.⁷²⁰ On appeal, the Panel can confirm the decision, quash it and direct the Regulator to take any such action as the Panel sees fit, or remit the case to the Regulator for a fresh decision.⁷²¹ Appeals which go to the Scottish Charity Appeals Panel can be appealed further, to the Court of Session.⁷²² The Court of Session can confirm the decision, or quash it and direct the Regulator to take any such action as the Court sees fit.

⁷¹⁶ *Ibid*, Chapter 4

⁷¹⁷ *Ibid*

⁷¹⁸ *Ibid*, s.74

⁷¹⁹ *Ibid*, s.76

⁷²⁰ *Ibid*, s.78

⁷²¹ *Ibid*, s.76

⁷²² *Ibid*, s.78

Office of the Scottish Charity Regulator – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
Office of the Scottish Charity Regulator – Internal Review	Conducts reviews, on request, of decisions it has made	The Charities and Trustee Investment (Scotland) Act 2005	The Regulator can confirm the decision or can reverse, revoke or vary it	There is an onward right of appeal to the Scottish Charity Appeals Panels.
Scottish Charity Appeals Panels	Hears appeals, after internal review, against decisions of the Scottish Charity Regulator, with the exception of appeals relating to suspensions or removal of persons from charity management	The Charities and Trustee Investment (Scotland) Act 2005	The Panel can confirm the decision, quash it and direct the Regulator to take any such action as the Panel sees fit, or remit the case to the Regulator for a fresh decision	There is an onward right of appeal, to the Court of Session.
The Court of Session	Hears appeals against decisions of the Scottish Charity Regulator to suspend or remove a person from the management or administration of a charity; and hears onward appeals from the Appeals Panels	The Charities and Trustee Investment (Scotland) Act 2005	The Panel can confirm the decision, quash it and direct the Regulator to take any such action as the Panel sees fit, or remit the case to the Regulator for a fresh decision	None.

Electoral Appeals

19.58 Under the terms of the Representation of the People Act 1983, every eligible person has the right to be registered as entitled to vote in Parliamentary and Local Government elections.⁷²³ The Register of Electors is maintained by Electoral Registration Officers, who are appointed by Local Authorities (or jointly by Local Authorities).⁷²⁴ The Officers assess applications to be registered as an elector, and also to vote by post or proxy at elections.⁷²⁵ The law provides a right for registered persons to raise objections with the Officers as to the registration of another person.⁷²⁶

⁷²³ Representation of the People Act 1983, s.4

⁷²⁴ *Ibid*, s.8

⁷²⁵ *Ibid*, s.9

⁷²⁶ *Ibid*, s.10ZC-10ZE

19.59 Electoral law provides for a right of appeal against decisions of the Electoral Registration Officers.⁷²⁷ The refusal to register an applicant, as well as the decision to register where there has been an objection, can be appealed by the applicant and the objector, respectively.⁷²⁸ Any decision of the Officers relating to an application to vote by post or proxy can also be appealed. These appeals are to the Sheriff Court. The Sheriff Court can dismiss the appeal, or allow it and direct the Electoral Registration Officers to alter the Register as it sees fit.⁷²⁹ There is an onward right of appeal from the Sheriff Court, on a point of law only, to the Court of Session.⁷³⁰

Electoral Registration – Redress Processes				
Body	Remit	Legislative Basis	Forms of Redress	Onward Appeal or Review
The Sheriff Court	Hears appeals against decisions of Electoral Registration Officers in relation to the Register of Electors, and applications for post or proxy voting	Representation of the People Act 1983	The Sheriff Court can dismiss the appeal, or allow it and direct the Electoral Registration Officers to alter the Register as it sees fit	There is a limited onward right of appeal to the Court of Session, on a point of law only.

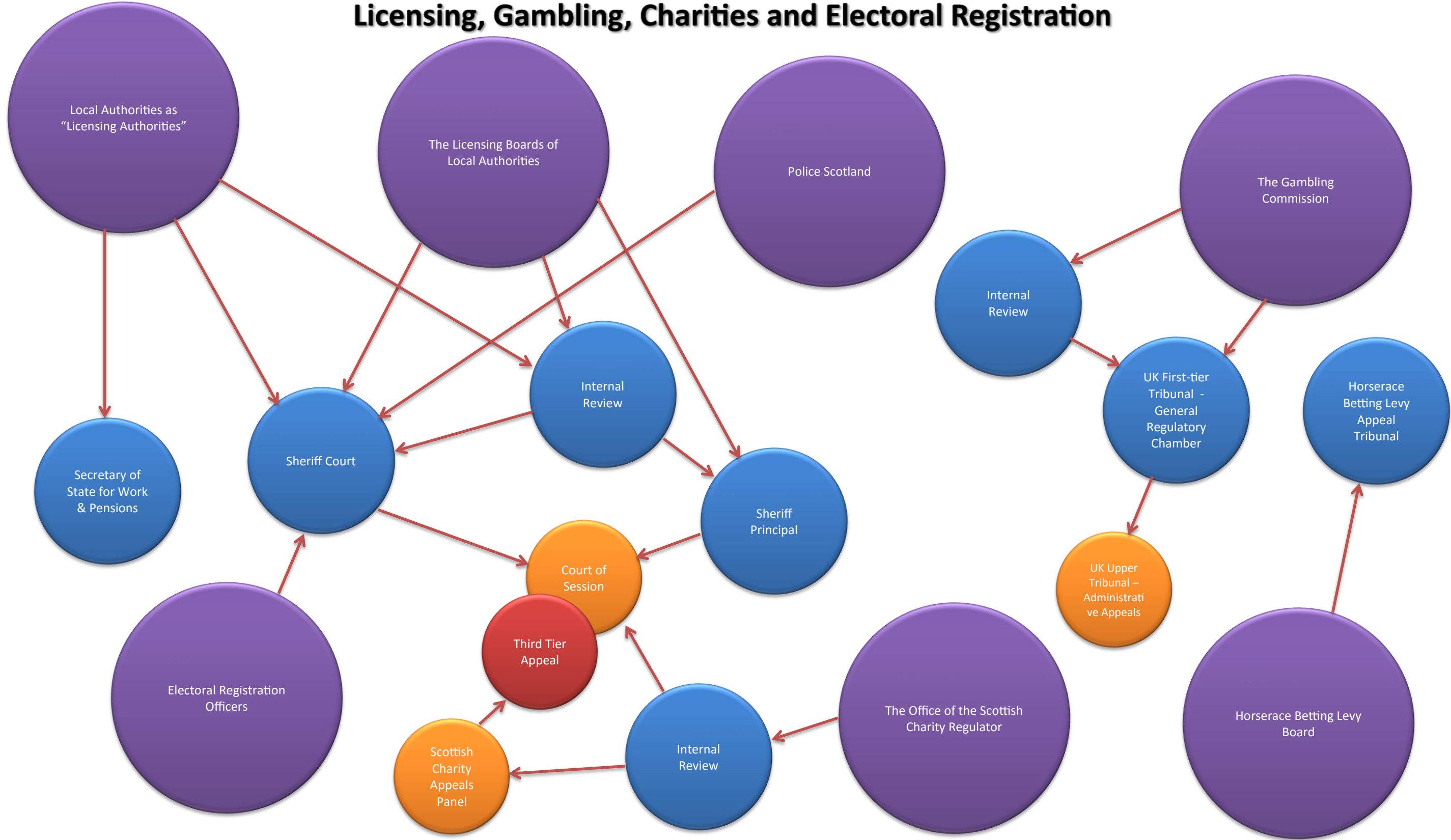
⁷²⁷ *Ibid*, s.56-57

⁷²⁸ *Ibid*

⁷²⁹ *Ibid*

⁷³⁰ *Ibid*, s.57

Licensing, Gambling, Charities and Electoral Registration





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