

Consultation Response

Tribunal Procedure Committee

Consultation on possible
amendments to the power
to set-aside a decision

August 2024



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Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Immigration and Asylum sub-committee welcomes the opportunity to consider and respond to the Tribunal Procedure Committee *Consultation on possible amendments to the power to set-aside a decision*.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Possible amendments to the power to set-aside a decision - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/possible-amendments-to-the-power-to-set-aside-a-decision)



Consultation Questions

Possible amendments to the power to set-aside a decision

Question 1: Do you agree with the proposed changes to clarify that, if and in so far as the rules do not already allow tribunals to set aside decisions of their own initiative, the First-tier Tribunal and Upper Tribunal may exercise a power to set aside a decision on their own initiative in the future? Please give reasons for your answer.

Comments to question 1:

We have no specific comments.

Question 2: Do you see any difficulties with making the proposed changes for the future and/or any adverse impact on other areas of tribunal practice or procedure? If so, how do you consider that such difficulties or adverse impact might be mitigated or resolved? Do you believe that any transitional provisions are required?

Comments to question 2:

It might be argued that it is fundamentally unfair for a Tribunal to make a decision on a case without giving a party the opportunity to make representations. This could be overcome with a clause indicating that the power shall not be exercised without the Tribunal notifying each party of its intention to do so and, if any party objects allowing them to make representations in writing setting out their reasons for this (within, eg, 28 days).



Question 3: Do you believe that where a tribunal exercises the power to set aside of its own initiative, it should be required to give the parties notification of that exercise in writing?

Comments to question 3:

Yes. It would be fundamentally unfair for a decision to be made without notifying parties of the decision.

Question 4: Do you have any other comments?

Comments to question 4:

We have no further comments.



For further information, please contact:

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