

**Administrative Justice Principles:
Written Response to Consultation by the Administrative Justice Committee
Law Society of Scotland**

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1. Name

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2. Organisation

JustRight Scotland & Scottish Association of Law Centres

About JRS

JustRight Scotland (JRS) is Scotland's legal centre for justice and human rights. We use the law to defend and extend people's rights. We operate 4 national centres of legal excellence providing direct legal representation, legal outreach, and legal education: (i) the Scottish Refugee & Migrant Centre; (ii) the Scottish Women's Rights Centre; (iii) the Scottish Anti-Trafficking & Exploitation Centre; and (iv) the Scottish Just Law Centre. You can find out more about us here: www.justrightscotland.org.uk.

About SALC

The Scottish Association of Law Centres (SALC) is the national body for the not-for-profit legal sector in Scotland, the community legal sector, and in particular community-based law centres across Scotland. SALC is an independent association, established to support the not-for-profit law sector to ensure the provision of free and accessible legal and related services to people, and communities including people experiencing discrimination and disadvantage.

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4. Paragraph 28 of the discussion paper ("the paper") states that the administrative justice system is, 'The overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including:

- * the procedures for making such decisions,
- * the law under which such decisions are made; and
- * the systems for resolving disputes and airing grievances in relation to such decisions.'

To what extent do you agree with this statement?

Strongly Agree

5. To what extent do you agree that Employment Tribunals, Financial Services Ombudsman and other types of private dispute resolution should be included within the scope of the administrative justice system (paragraph 29 of the paper)?

Strongly Agree

6. To what extent do you agree that the expression of principles is necessary to ensure that access to a system of administrative justice is practical and effective (paragraphs 32 and 33 of the paper)?

Strongly Agree

7. To what extent do you agree that there should be a statutory expression of the grounds for judicial review (paragraphs 45 to 48 of the paper)?

Strongly Agree

8. To what extent do you agree that a principles-based approach should incorporate the equality and human rights framework (paragraphs 58 to 61 of the paper)?

Strongly Agree

9. To what extent do you agree that there should be a right to legal representation, advocacy or other support (paragraph 60 and 61 of the paper)?

Strongly Agree

10. To what extent do you agree that a principles-based approach should apply both to first-instance decision-making as well stages such as mandatory reconsideration and other informal and formal dispute resolution (paragraphs 78 to 81 of the paper)?

Strongly Agree

11. Should administrative justice share principles in common with civil, criminal, family and other branches of the justice system (paragraphs 78 to 81)?

Agree

12. To what extent do you agree that these principles should require a culture of continual improvement for adjudication processes (paragraphs 78 to 81 of the paper)?

Strongly Agree

13. To what extent do you agree that these principles should apply to tribunals, ombuds services and other dispute resolution (such as mediation) procedures (paragraphs 78 to 81 of the paper)?

Strongly Agree

14. To what extent do you agree that there a need to consider more widely a 'right first time' approach in audit processes for public bodies in the administrative justice system and a wider role for scrutiny by Audit Scotland in this regard (paragraphs 85 and 86 of the paper)?

Strongly Agree

15. While there are already some responsibilities for oversight of the administrative justice system shared across Scottish Parliamentary committees, to what extent do you agree that the Scottish Parliament should have a Public Administration and Constitutional Affairs Committee (paragraphs 85 and 86 of the paper)?

Agree

16. Despite the need to 'get it right first time', to what extent do you agree that there should be greater role for alternative dispute resolution in the Administrative Justice system (paragraphs 88 to 91 of the paper)?

Agree

17. To what extent do you agree that the complexity of legal issues arising in the operation of the administrative justice system is a barrier to the development of Alternative Dispute Resolution for particular types of dispute or more generally (paragraphs 92 and 93 of the paper)?

Strongly Agree

18. To what extent do you agree that the administrative justice system should include all public services, whether operated by public bodies, or by private undertakings on their behalf (paragraphs 94 and 95 of the paper)?

Strongly Agree

19. To what extent do you agree that automated decision-making will have an ever increasing influence on the relationships between individuals and the state and on the administrative justice landscape (paragraphs 93 to 103 of the paper)?

Strongly Agree

20. To what extent do you agree that the expansion of automated decision-making makes the development of a principles-based approach to the administrative justice system a priority (paragraphs 96 to 103 of the paper)?

Strongly Agree

21. To what extent do you consider that principles should be incorporated into legislation so as to give rise to actionable rights (paragraphs 104 to 106 of the paper)?

Strongly Agree

22. To what extent do you agree that there should be a mechanism to ensure adherence to the performance of any duties in line with the principles if they are not contained in legislation (paragraphs 107 to 110 of the paper)?

Strongly agree

23. Please use this final comment box to outline anything else you would like to tell us.

We are responding to this consultation, as social justice lawyers based at law centres and legal charities across Scotland, because we have concerns about gaps in accountability in the administrative justice system in Scotland and believe that a principles-based approach is a positive way forward for ensuring wider access to justice for everyone in Scotland.

We are in favour of:

- Defining the administrative justice system broadly to cover the many types of decisions that impact people's lives
- A principles-based approach that incorporates the equality and human rights framework
- Ensuring that people have actionable legal rights to access representation, advocacy, or support in challenging administrative justice decisions
- Ensuring that principles cover both first instance decision making as well as a reconsideration and appeals
- Ensuring that a principles-based approach to administrative justice includes all public services, even when operated by private bodies
- Building a meaningful framework for oversight and accountability

We - JustRight Scotland and the Scottish Association of Law Centres - believe this work to be urgent, particularly in light of recent developments during the Covid-19 pandemic which has led to significant backlogs in administrative decision making and the justice system – as well as timely, in light of the likelihood that future administrative decision making will increasingly rely on automated decision making, an approach that has been proven to replicate and amplify existing bias in data sets and systemic inequality.

In summary, we support these proposals and believe that a human rights and equalities-based approach to developing the administrative justice system is necessary to underpin Scotland's commitment to being a leader in the promotion of human rights and creating a fairer and more equal society.

END