

**PAFSO's Q&A on Promotion and Classification at
The Department of Foreign Affairs and International Trade (DFAIT)
and Citizenship and Immigration Canada (CIC)
[January 2008 update]**

PAFSO has received a lot of questions about existing FS staffing issues such as the competition/deployments to FS2 and FS3, progression to FS2 and FS3 other than through a competition (and the related question of "grandfathering") and promotions to FS4.

Obviously, the responsibility for these issues lies with Human Resources ("HR") at DFAIT and CIC respectively. However, PAFSO has prepared its own Q&A on Promotion and Classification to provide members with guidance on many of the more common questions. The format of this document is to first provide the Question, then PAFSO's understanding of HR's response, and then finally and where appropriate, a commentary by PAFSO. The HR response is generally derived from information provided by members, based on their own experience in dealing with HR, and often based on response from HR orally or in individual e-mails. Accordingly, we cannot guarantee the accuracy of the "HR Answers". Nonetheless, these Q&A's should dispel some common misconceptions and provide a useful starting point for member interactions with HR. We welcome your comments or corrections, and will continue to update this Q&A as new information becomes available.

For your ease of reference, we set out the topics covered in this Q&A, together with the page on which they are found:

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Key Terms used in this document

"Individual merit" describes the processes by which people are promoted based on an assessment of their personal competence, rather than as measured against the competence of other persons¹. This type of process is to be used most significantly for promotion of

¹ The old *Public Service Employment Act* (PSEA) (available at http://www.psc-cfp.gc.ca/plcy-pltq/staf-dot/psea-lefp/psea_e.htm#i10) made a distinction in Article 10 between selections based on "relative merit", indicating that the person appointed must be the person who is the best qualified from

FS-1 to FS-2 after 3 years, and for those FS-2 hired before January 1, 2003 who are “grandfathered” to the FS-3 level.

General questions about PAFSO’s involvement in consultation and promotion process at both CIC and DFAIT

Question: Has PAFSO been consulted about the promotion process?

HR Answer: Yes.

PAFSO Comment: PAFSO has not been consulted on the various promotion processes. We were informed after the processes were announced and our concerns have not been addressed.

Question: What can PAFSO do in the context of collective bargaining to remedy deficiencies in the competition or promotion exercise?

HR Answer: [Not applicable]

PAFSO Comment:

PAFSO will raise in upcoming collective bargaining (which has been delayed to begin in early 2008) issues relating to the progression between levels (i.e. the issue of promotion of FS-1s to FS-2 and FS-2s to FS-3 on the basis of “individual merit”, where some PAFSO members are presently “grandfathered” while others are not).

Unfortunately, staffing generally is one of the subjects that has been excluded from collective bargaining. Thus, PAFSO cannot raise in the collective bargaining process the details of how general competitions are run. The complaint process under the new *Public Service Employment Act* is employee-driven. In other words, PAFSO cannot complain on an individual employee’s behalf. However, we can provide support and representation on individual complaints. (See article in the February *PAFSO Update* on the new PSEA at http://www.pafso.com/uploads/File/Update_February_2007EN.pdf, starting at page 3).

General procedure for filing formal complaints regarding problems in a competition

Question: At what time can I file a Complaint to the PSST relating to a competition?

among those in a competition; and appointment based on the competence of individuals "as measured by such standard of competence...rather than as measured against the competence of other persons", referred to as "individual merit". The new PSEA, which came into force January 1, 2007, does not contain this distinction.

Answer (from PSST website): All complaints must be filed within 15 calendar days following public notice of the appointment.

PAFSO Comment: The public notice of the appointment will occur when people are promoted out of the pool (as occurred recently for example for those successful in the “Track 3” EX-1 rotational pool –see <https://jobs-emplois.psea-lefp.publiservice.gc.ca/cli109.do?id=23174&lang=en>). Note that the form for filing a Complaint is fairly short. You do **not** need to address in that form all the grounds for your complaint. That information can be fleshed out in the complaint process.

Question: On what grounds can I bring a complaint to the PSST relating to a competition?

Answer: From PSST Procedural Guide – p. 4: “[T]he grounds for complaint are abuse of authority and denial of the right to be assessed in the official language of the person’s choice”. Therefore, the most likely complaint would be based on an “abuse of authority”. That term is open to interpretation, since as set out in the Procedural Guide:

Parliament has not defined the concept of abuse of authority, other than to stipulate that it includes bad faith and personal favouritism [subs. 2(4) of the PSEA]. The concept of abuse of authority will be developed as the Tribunal rules on cases brought before it and develops its case law. Each complaint will be decided on a case by case basis, in accordance with the facts.

PAFSO Comment: PAFSO will attempt to assist you in the course of the complaint process, to structure your evidence to support a claim for abuse of authority. Guidance will hopefully be obtained through the complaint brought in relation to the FS-4 competition at CIC.

Although there are other grounds for bringing a complaint such as not having been permitted to compete in the language of choice, the most common grounds on which a complaint may brought to the PSST are abuse of authority in the setting of the merit criteria (qualifications) and abuse of authority in the assessment of the merit criteria.

If you were screened out on the basis of not having met the essential experience qualifications and you feel that you did meet the essential experience qualifications, you could allege abuse of authority in the assessment of your experience qualifications.

Allege abuse of authority in the establishment of the merit criteria would likely involve a challenge to the “essential qualifications”. Essential qualifications are defined as those that are absolutely essential to perform the work at the FS-4 level. Specialists who did not have two of the last 5 essential qualifications (for example management experience and experience in consultative process with stakeholders) were screened out of the selection exercise. If you were one of these people, you could allege abuse of authority in the setting of the essential qualifications.

Once submitted, with your consent and the agreement of the Tribunal, PAFSO might include your complaint in a group of complaints with the same or similar allegations in order to expedite matters. For example, an allegation of abuse of authority in setting management experience as an essential qualification for work that requires few

management skills, presuming that the FS-4 work is work for individuals who had special expertise in certain subject matters could represent one group of complainants. There is a lot of confusion as to the nature of the FS work. As mentioned previously, there were clear indications that FS work was work in areas requiring special expertise in a subject. On the other hand, current FS-4 assignments also include management positions. To further confuse matters, we are told that all current FS-4 assignments are under review.

Another group of complaints alleging abuse of authority in the assessment of the essential qualification could be established. There were many individuals who would want to allege that they were screened out on the grounds of not having met the essential qualifications, when, in fact, they did have the experience qualifications as described on the competition poster.

Question: How does the complaint process work?

Answer: See PSST Procedural Guide.

PAFSO Comment: PAFSO will attempt to assist you in the course of the complaint process, to structure your evidence to support a claim for abuse of process, and to guide you through the procedural steps.

Question: If I grieve and am successful, will I risk making someone who succeeded in the competition lose their promotion?

Answer: We don't know if this question has been put to HR, but PAFSO's understanding is "no": if you succeed you will be added to the pool of successful candidates (and will need to get an assignment at the appropriate level to obtain your promotion). Under the new *Public Service Employment Act*, there is no single list from which one individual is selected (meaning that if another person wins their challenge the person who won the competition loses their position). Instead, appointments are done individually.

Questions about specific processes

The sections below largely deal with the many processes at DFAIT, with the exception of the FS-4 process at CIC.

Note that some PAFSO advice relating to the FS-4 promotion process at DFAIT is on the PAFSO website, at http://www.pafso.com/news_releases.cfm?newsID=47.

We have drawn on all HR documents that we are aware of on these issues:

- Information on the staffing process: <http://intranet.dfait-maeci.gc.ca/panorama/2007/03/0319-HMO-Information-FS-StaffingProcess-en.asp>
- Q&As on the FS4 competition: <http://intranet.dfait-maeci.gc.ca/panorama/2007/03/0322-HCM-Qs&As-en.pdf>

- A message on April 8, 2007: <http://intranet.dfait-maeci.gc.ca/departement/hr/FSrestructuring/questions-answers-en.asp>
- The update on the exercise sent out on April 1: <http://intranet/panorama/2007/04/0413-HCM-FS-ProcessUpdate-en.asp> .

Questions about the FS-2/3/4 Competitions/Deployments and the Testing process at DFAIT generally

Question: If I passed the test, when will I be promoted?

HR Answer: Assuming that the further checks (language and references) are completed successfully, which hopefully will be done by January for the FS-3 pool (and dates unknown for FS-2 and FS-4), you will be placed in the “pool” of those eligible to be promoted.

(in response to a question about the FS-3 competition, but presumably this applies for the FS-2 competition as well) - Assignments to FS-3 positions and promotions to FS-3 will go together, that is, if you are in the pool of successful candidates you will be promoted to FS-3 once you are confirmed in a new FS-3 assignment.

Question: If I am in the pool of successful candidates, but I am not presently in a position at that level (whether FS-2,3 or 4), will I be given priority for getting an assignment?

HR Answer: Priority will be given to those who are already substantively at the relevant level (e.g. a substantive FS-3 will be given preference over someone in the pool of successful candidates for FS-3 positions).

Question: If I passed the test, how long will my exam results be valid?

HR Answer: The pool will be valid for a limited time. This means that you need to get an FS-2/FS-3/FS-4 position within a certain time in order to be promoted. HR has not to our knowledge confirmed what that period of time will be, though informal indications are that they appreciate it needs to be fairly long to account for those on postings in lower positions who will not be able to apply for higher positions until the end of their posting..

While the pool will be valid for a limited time, the exam results will not expire. For promotion to FS-3, this means that unless the exam changes in the future, “grandfathered” FS-2 officers (hired before January 1, 2003) who passed the exam but would not manage to get an FS-3 position by the time they reach the top of the FS-2 scale will not need to write the exam again to be promoted, even if the pool has expired by then. Presumably the same principle would be applied to “non-grandfathered” FS-1s hired in 2006 or later who will need to write an exam to be promoted to FS-2.

PAFSO Comment: We would prefer that those in the successful pool be promoted immediately, before having to find a position. Failing that, we believe that those who are in the successful pool should have a reasonable time based upon their individual circumstances to obtain an assignment at the relevant level.

Question: What are my chances of getting a position before the pool expires?

HR Answer: We are not aware of HR answering this question formally (or, to be fair, if it has been put to them directly). However, informal indications are that HR realizes that there is a particular problem for FS-3s, where 211 successful candidates in the pool will be competing with the existing excess of FS-3s for a limited number of FS-3 positions at HQ and abroad.

PAFSO Comment: The problems that will result particularly in the FS-3 competition, with likely over 200 people in the pool of successful candidates competing for few FS-3 assignments, and with those in the pool receiving less preference than existing FS-3s, emphasize in our view that a more appropriate solution would be to promote all of those successful in the competition, rather than waiting until they obtain an assignment at that level.

Question: If I failed the exam, can I see my test?

HR Answer: No. HR takes the position that it is not appropriate to share the "correct" answers to the questions as this would give an unfair advantage to people who have already written the test (since they plan to keep using these tests for the foreseeable future). Supporting HR's position is the precedent of the MCO promotion competition, where someone sought to see the marking scheme and was refused (see decision of the Public Service Staffing Tribunal at [http://www.psst-tdfp.gc.ca/cmslib/general/2006-0147\(Savoie\).EN.pdf](http://www.psst-tdfp.gc.ca/cmslib/general/2006-0147(Savoie).EN.pdf))

Question: What options are available to me if I am "screened out" of a competition, or if I did not pass the exam?

HR Answer: You may on request take part in an "informal discussion concerning elimination". This applies both if you are screened out and if you did not pass the exam.

If you did not pass the exam, you will only be told the exact percentages that you were scored, together with the results that were required to pass. The person providing you with the interview will neither have a copy of your test, nor know the basis on which the test was scored.

If you were screened out, you likely have already had your informal interview (although not everyone has yet received their informal interview). If it was a proper informal interview, it was conducted with a manager who had the power to put you back into consideration for the competition. We understand that there were 3 basic responses:

- 1) your experience and capacities do not meet the requirements;
- 2) your experience and capacities may meet the requirements, but it was not evident from your application, so you cannot be screened back in; or

3) your experience and capacities may meet the requirements, it is evident on your application, so we apologize for the error and you are screened back in.

We understand that while answer 3 was rare, it has occurred, and those screened back in were given the opportunity to write the exam.

PAFSO Comment:

Initial suggested steps on being screened out: We would suggest that you write to the responsible staffing officer pointing out that in combination with your letter of application and your CV that you demonstrated that you met the screening criteria. In order to make your case you will need to match up what is in your CV and covering letter the areas that they have screened you out. If you have supporting examples include them in your response. Once you have done this, you should ask to be reinserted into the selection process and ask to write the exam.

If this doesn't produce the desired result you should ask to invoke the informal discussion stage. The purpose of the informal process is to discuss why you were screened out, as set out in more detail on the Public Service Commission (PSC)'s website (at http://www.psc-cfp.gc.ca/psea-lefp/framework/policy/discussion_e.htm). As set out in the Q&As on the PSC's website, among other things the meeting "allows the manager to correct any errors that come to his/her attention before a final decision is made". So while the informal process is not a legal "recourse", we would suggest that you treat the meeting as an opportunity to argue why you should not have been screened out. You should review the Merit Criteria and be prepared to explain how you believe that you meet the criteria on which you were screened out. If you wish, someone from PAFSO (staff or executive committee availability permitting) can come with you (or you could bring someone else).

Note that meeting with a consultant that did not have the power to screen you back in does **not** meet the requirements for an "informal consultation". If this happened to you, we recommend that you write back to HR and insist upon your right to receive a proper informal consultation.

Initial suggested steps if you do not pass the exam: First, be reassured that you are not alone. For example, as the statistics below indicate, almost a third (79 of 290 candidates) failed the FS-3 exam, and we know anecdotally that this included many well qualified FS-2s. Not passing the test is an indication of the arbitrary and artificial nature of the testing process, not your true capacities.

At this time we have little advice to offer you specifically, other than suggesting that you may wish to seek an informal consultation process. As we understand it, short of a simple error in comparing your marks to the required thresholds (for example if you needed a 60% to pass a particular element, you received 60% for that element, but by mistakenly said you failed that element), there is little useful that can be done through the informal consultation process since you will not see your exam, the breakdown of the marks, nor the scoring matrix against which your marks were assessed.

Given that this is the first administering of this exam (and it is not sure how FS relevant experience was brought into the marking phase), we have serious concerns about the

appropriateness of the process. In what we see as a indication of the artificiality of the testing process, some individuals during their informal discussion have been advised to try to get the Department to send them to courses (which are apparently available) which will help them to pass the exam in the future. In other words, there appears to be an unfortunate attitude that instead improving a flawed exam, the appropriate solution is for individuals to learn how to jump through this artificial hoop.

For both not passing the exam and being screened out:

If the informal process does not resolve your concerns, you may be able to **bring a complaint** to the new Public Service Staffing Tribunal (“PSST”)(information about complaints generally is set out on their website at <http://psst-tdfp.gc.ca/article.asp?id=2322> , including a link to the more detailed Procedural Guide). Key elements of the process of bringing a complaint are set above at page 2 in the section on the general process for filing complaints. PSST rules require that you file a complaint within 15 days of posting a “Notice of Appointment or Proposed Appointment” for the process (though if there are several such Notices the PSST advises that you have multiple opportunities to complain). The first such notice, for the FS-4 competition, was posted January 8, 2008, with a deadline of January 23, 2008.

There is presently a complaint before the PSST relating to the FS-4 promotion process at Citizenship and Immigration Canada. PAFSO has provided assistance, including paying for legal counsel, in that case which we see as a test case that will hopefully establish useful benchmarks against which to judge the competitions at DFAIT. A hearing has already been held, but the decision has not yet been delivered.

Question: Will further tests take place?

HR Answer: For those who are “grandfathered” into FS-3 (and apparently for those not “grandfathered” into FS-2s, though our information on that is less clear) tests will continue to be administered. Otherwise, informal indications are no further general competition will be run until 2009.

Question: How was the screening process conducted?

HR Answer: Informal information suggests that the screening was conducted by a single ADM, who compared the material that was included in the application (but no other information available to the Department) against the individual criteria.

PAFSO Comment: We believe that there are numerous flaws in the screening process. To list a few:

- The information provided to candidates about expectations for the application was extremely limited. This was particularly unfair for FS, who generally have had little if any experience in the usual government competition process. As a result many people wrongly assumed that they could make brief reference to their experience and capacities because the Department has in its possession further details (when in fact, as noted above, the screening was based only on what was contained in the application).

- Considering the variety of positions, including those that are specialist rather than management positions, requiring a candidate to have experience in all of the criteria to us appears ridiculous. The result, for example, is that many highly specialized members were screened out of the FS-4 exam for failure to have management experience.
- There was apparently no weighting of the various factors. So someone who minimally met all of the elements was screened in, while someone with extensive experience in all but one element was screened out.

Question: How were the tests run/marked?

HR Answer: See generally presentations (at http://intranet.dfait-maeci.gc.ca/department/hr/resource/fs_pres-en.asp). See also the specific Q&As about the FS-4 process, which based upon the general information already provided likely will apply in many material aspects to the other competitions (those Q&As, together with PAFSO's comments, are reproduced below).

For marking, photocopies of everyone's answers to the exam were given to two independent evaluators (from the same company who prepared the test) who have no relation to DFAIT but who had been given the "correct" answers to the questions. Each evaluator individually scored the exam to determine scores under a variety of categories (such as "judgment"). Partial marks could be obtained. For each category, a pass required a certain percentage, usually 60%, but 70% for some categories.

Evaluators then sat together to compare their scores for each question. If their scores were identical, that was the final mark for that question for that person. If their scores were different, they discussed the marks until they reached a consensus. There was no "bell-curving" i.e. the evaluators did not predetermine how many candidates could pass the exam and set the pass mark accordingly.

PAFSO Comment: We believe that it makes no sense to give "correct answers" to a question to outside evaluators without experience in the Foreign Service. By the nature of the questions, there cannot be a "correct" answer to a situational judgement question, and therefore such a test will invariably result in finding perfectly good answers to be "wrong" because they do not correspond to the previously determined "correct" response. It would seem more logical to have someone with direct/current FS experience (political and commercial) involved in the marking process, as it is foreseeable that those from the outside without experience may have a difficult time understanding the subtlety of practiced diplomatic reasoning and writing (not to mention the obvious challenge in drafting this in the form of "correct answers" for the markers to use).

We also have concerns regarding transparency given that the company that designed the course is also the one that corrects it, especially given the justification that this was necessary because independent correctors would not be qualified to mark the exam. This suggests bias on the part of the correctors since if it really were possible to have "correct" answers compared to what a person has written, an independent outside corrector could do that.

Question: Were there separate tests for Political and Trade streams?

HR Answer: Certainly not for FS-4 or FS-3, and we believe not for FS-2.

PAFSO Comment: We are sceptical of the value of a test which purports to test abilities (particularly at the FS-4 level, where some positions are intended to be “subject matter experts”) that makes no differentiation on the nature of the work performed by the individual. While we appreciate that a different test for each stream would have its own difficulties (since work within streams varies substantially as well), the lack of any differentiation in the tests does appear problematic.

Question: If I applied for a competition in both the political and trade streams, do I go into separate pools?

HR Answer: Yes. While the exam was the same, and you only had to write it once, conceptually you have succeeded in two competitions, and are therefore in both “pools”, and therefore eligible to apply for assignments in either stream. Your stream will therefore be decided by the first assignment you obtain (e.g. if you succeeded in the FS-3 competition for both trade and political, the first FS-3 assignment you get will determine your stream).

Question: How many candidates are there, for how many positions, and how many will be in the pool of successful candidates?

HR Answer: At the first information session, HR advised they did not know the number of candidates (because the screening process was not complete), nor the number of positions that are to be filled.

PAFSO Comment: The department has not confirmed the number of candidates who were screened in for any of the exercises. The 2005 Restructuring Q&As (at Q. L.1) indicated that there were 155 FS-4 assignments at the time of conversion, which we understand subsequently increased to 175. However, HR has advised that all of these positions are being reviewed for possible reclassification, meaning that the number could be reduced. We understand the department is only looking at only promoting 80-100 during this FS-4 exercise.

In terms of the number of people who applied for screening, HR on March 8, 2007 issued a “Collective Staffing Update” (see <http://intranet.dfait-maeci.gc.ca/panorama/2007/03/0308-HCM-StaffingUpdate-en.pdf>) which showed the following numbers of applicants:

FS-2 (Trade):	Departmental Competition -137	Deployment: 80
FS-2 (Political):	Departmental Competition – 221	Deployment: 151
FS-3 (Trade):	Departmental Competition -200	Deployment: 82
FS-3 (Political):	Departmental Competition – 290	Deployment: 134
FS-4 (no differentiation between Trade and Political):		
Departmental Competition -508		

Informal information from HR suggests that those who passed the exam for the Departmental Competition are as follows:

FS-2 (Trade and Political): 104 passed, 75 did not pass.

FS-3 (Trade and Political): 211 passed, 79 did not pass.

FS-4 (Trade and Political): the Notice of January 8, 2008 indicates that approximately 120 people are so far in the successful FS-4 pool, out of the approximately 200 people who we understand passed the screening.

Note that not everyone that passed the FS-2 and FS-3 exam will necessarily be in the pool of successful candidates. Some may withdraw (apparently some have already), and some may not pass the reference/language checks required. Conversely, informal discussions are ongoing, and it is possible that some people could be screened back in and allowed to write the exam.

Question: What if I have not passed my language test?

HR Answer: HR has advised some individuals that if they did not get language tested within a certain time; they would not be considered for the bilingual “imperative” pool. Candidates who are otherwise successful (i.e. who passed the exam and whose references check out) will be put in the bilingual “non-imperative” pool

PAFSO Comment: Generally, we are concerned that the requirement to pass the language test may impose additional unreasonable burdens on certain PAFSO members who have not had the opportunity to obtain maintenance courses (e.g. who are or were on long term leave such as maternity and educational). If you feel that in your personal situation the requirement for language testing is unfair, please contact PAFSO.

We do not know to what extent (if any) those in the non-imperative pool will be eligible to compete for assignments. Even accepting that a language test is appropriate, the arbitrary requirement to pass language exams at a fixed date prior to the completion of the competition appears to us unreasonable, and we would encourage anyone in that position to consider grieving if they are prejudiced by being placed in the non-imperative pool.

Question: How does the competition relate to the deployment?

HR Answer: Preference for positions will be given to qualified candidates already working in DFAIT over candidates from OGDs.

PAFSO Comment: We are pleased that, following our successful court case last year, the Department has not tried to repeat the process of conducting a deployment exercise alone. We are also pleased that preference will be given for those working within DFAIT. However, we believe that this is still not fair, since preference should further be given within DFAIT to FS (who have already undergone a rigorous broad selection process and training, and who have in many cases taken financial sacrifices in order to become FS). We also note with concern that there is apparently no preference within the deployment process for FS in other government departments (notably CIC) who have also passed through that selection and training process. Given the number of successful candidates in the FS-3 competition and the low number of available jobs, we would expect no deployment to FS-3 unless there are no successful candidates with certain specialized qualifications (e.g. lawyers or economists).

Question: If I am in an acting position and I fail to pass the exam, will I still receive acting pay?

HR Answer: Some FS-2 have apparently been told that if they are unsuccessful and in an acting FS-3 position, they will no longer continue to receive acting pay.

PAFSO Comment: This is contrary to our collective agreement, which requires that acting pay be paid to employees performing the duties of a higher classification level. The Department cannot amend the collective agreement. If the Department attempts to remove acting pay, we will assist you in filing a grievance.

Question: What happens if I have an acting assignment (e.g if I am an FS-1 but have a posting abroad at the FS-2 level) and fail the exam?

HR Answer: If you have a signed PCF assigning you to an acting FS-02 abroad at the time you write the competency exam, then that commitment will be honoured even if you do not succeed in the exam. However, if no PCF is yet in place and you fail the exam, then you will not be assigned to an acting FS-02 abroad.

Similarly, if you are currently in an acting FS-02 position at HQ and you do not pass the exam, that acting assignment will continue until its natural conclusion. However, you cannot expect to receive another acting FS-02 until you demonstrate that you possess the competencies. That point may be when you are promoted from the FSDP at the end of the three-year program.

PAFSO Comment: We consider it grossly unfair that individuals will be penalized for writing the exam. We do not accept that it is appropriate that a person who has been already selected through the assignment process to be the appropriate candidate could then be rejected on the basis of the test result. If this happens to you, we would advise you to argue the point with HR, but also please advise PAFSO. We can at least make representations on your behalf to management.

FS-4 Promotion at DFAIT

Note that general information about the promotion process, including for FS-4, is discussed above. In terms of timing, we do not know when the Department expects to complete this promotion process, nor how many people succeeded on the exam.

The following Questions and Answers are directly from the Department's notice at <http://intranet.dfait-maeci.gc.ca/panorama/2007/03/0322-HCM-Qs&As-en.pdf>. PAFSO comments are, obviously, from PAFSO. We have not commented on every point, but that does not mean that we agree with the substance of the answer, only that we have nothing to add on that issue at this time. The answers to these questions (and the PAFSO comments) overlap somewhat with the questions in the general section on promotion/competition, but for ease of reference we have not attempted to avoid duplication.

Q1. Can you please provide information about the pool of qualified candidates for FS-04 positions and how the appointment process will work?

Step 1. The employees who successfully complete the test and have their reference confirmed shall be placed in a pool of qualified candidates. This pool is an unranked inventory of candidates who have been fully assessed and have been found fully qualified for appointment.

Step 2. Once in the pool, all candidates are considered eligible for appointment. Appointment decisions will be made by a committee of managers who will decide which candidate will be appointed to a particular position based on his or her area of specialization and level of experience.

PAFSO Comment: At DFAIT the FS-4 is often thought of as a “specialist” category without management responsibility. That is not quite accurate: as described in the 2005 Restructuring Q&A (at L.5) it was anticipated in many cases that FS-4 would supervise staff. However, that document made it clear that some FS-4 would not have significant management responsibility. PAFSO therefore considers it inappropriate that both the screening process and the test itself appear to be focussed principally on management skills. Notably, individuals with substantial specialist expertise have been screened out on the basis that they did not have supervisory experience. This could be the basis for a complaint before the PSST.

Q2. Will all employees in the pool of qualified candidates be appointed?

It is unlikely that all employees in the pool of qualified candidates will be immediately appointed to an FS-04 position. The appointment to an FS-04 position will depend on whether an FS-04 assignment matching the area of specialization and level of experience of a candidate is available. However, DFAIT is committed to ensuring that candidates placed in the pool of qualified candidates will be appointed to an FS-04 position as soon as possible.

PAFSO Comment: In other words, until you get an FS-4 assignment, you will not become substantive FS-4.

Q3. Will candidates in the pool of qualified candidates for FS-04 positions be paid FS-04 salaries?

Only candidates who receive a letter of offer appointing them to an FS-04 position will be paid FS-04 salaries.

PAFSO Comment: Those in acting FS-4 positions would obviously also receive that pay.

Q4. Are there fewer positions for FS-04 abroad than at headquarters?

Yes, given the nature of the work, the majority of the FS-04 positions are located at headquarters. A review is currently underway to examine the classification of FS-04 positions and confirm their location within the organization.

Q5. Who did the screening of candidates?

The screening was initially performed by Human Resources professionals and subsequently validated by senior departmental executives.

PAFSO Comment: We are concerned that the screening process laid too much emphasis on management skills, though we do not know if that is as a result of guidance provided by HR, or the “validation” of senior departmental executives. We are further concerned that the entire process was flawed, given the results of the screening.

Q6. Will there be other selection processes in the near future?

Additional selection process will be launched depending on departmental needs. At present, no additional selection process has been scheduled.

PAFSO Comment: Our understanding is that there are presently 175 FS-4 positions open. HR has advised that all of these positions are being reviewed for possible reclassification, meaning that the number could be reduced. If the number of FS-4s to be promoted does not increase beyond the approximately 120 listed in the January 8, 2008 notice, it suggests one of several possibilities: that reclassification is intended to drastically reduce the FS-4 positions available; that a further selection process will be needed shortly; or that many FS-4 positions will remain filled by either non-FS or by FS in acting positions.

Q7. a) What happens if I have accepted an FS-3 assignment abroad and I am found qualified at the FS-4 level?

If your assignment to an FS-03 position has been confirmed through a Posting Confirmation Form, you are expected to begin your assignment as decided.

PAFSO Comment: We do not accept that individuals who have in good faith accepted an assignment abroad should be prejudiced as a result of the department’s late information on this point (essentially at the same time as the test was being written, and presumably after the decision to accept the assignment was made). PAFSO’s view is employees who are qualified at the FS-04 level should be paid at the FS-04 level.

b) If I proceed on an assignment abroad [at the FS-3 level], will this have an impact on my appointment to an FS-04 position?

Yes, this will have an impact on the timing of your promotion because you will not be appointed to an FS-04 position during this assignment period. You will remain in the pool of qualified candidates.

PAFSO Comment: Depending on the length of your assignment, this could delay your appointment to the FS-04 level by up to four years. This makes no sense to us.

Q8. What will happen to employees currently acting in positions classified at the FS-04 level? What will happen to a non-rotational ES-06 employee acting in an FS-04 position?

Employees who are acting in positions classified at the FS-04 level will remain in these positions until the end of their acting assignment. These employees may apply for other FS-04 acting assignments. However, priority will be given to employees in the FS-04 pool.

PAFSO Comment - Some Members have asked the related question of whether there is any recourse by “successful” candidates on an exam against someone in an “acting” position who did not succeed. The answer is that there is none. These employees are in acting positions and are entitled to acting pay for as long as they are in those positions. Similarly, there is no ability for a candidate who was successful but who is not promoted to lodge a complaint to the PSST.

Q9. What will happen to employees currently acting in an FS-04 position who participated in the selection process and did not qualify for appointment? Will the acting assignment end?

Employees who are acting in FS-04 positions will remain in these positions until the end of their acting assignment. However, their assignment cannot be extended.

PAFSO Comment: Some FS-4 in acting positions at headquarters are being told that their assignment is on a year to year basis. This suggests that some people in acting FS-4 positions could be removed from their position at the end of that year, to be replaced with someone who succeeded at the competition. We do not accept that this is equitable. This is an example of the department making up the rules as they go along. Assignments at Headquarters were normally for a 2-year period.

Q10. If all FS-04 positions are filled in the area of specialization of a qualified employee, could this limit the choice of assignments of an employee?

Yes, there are fewer opportunities at the FS-04 level in all areas of specialization.

PAFSO Comment: This will obviously impact on rotationality which was never the intent for restructuring the FS.

Q11. What is the career implication for an employee appointed to an FS-04 position who is interested in an executive level position?

FS-04 positions are specialized positions within various fields. You can apply for a managerial position if you previously acquired relevant qualifications while occupying other positions.

PAFSO Comment: As noted above, the evidence so far suggests that it is deceptive to describe the FS-04 positions as “specialist” positions given the emphasis on management skills in both the screening and the test. The FS-04 was intended to be an equivalent to EX1 positions and an alternate career path for FS employees who were not interested in EX positions.

Q12. How will the area of specialization of an employee be assessed?

The experience of employees will be assessed using the experience criteria and confirmed by in-depth structured reference checks.

PAFSO Comment: A number of members have suggested that the assessment of specialist expertise was inadequate, but we do not have sufficient information to determine for each specialist area how, and how appropriately, the expertise was assessed.

Q13. This selection process will result in a number of employees being appointed to FS-04 positions. Many of them are seeking assignments abroad. It is possible for employees appointed to an FS-04 position to apply for an FS-03 assignment. Will this employee be considered?

As required under the Assignment Guidelines, priority shall be given to candidates at level. Employees at the FS-04 level are expected to apply for and be assigned to FS-04 positions.

FS-4 Promotion at CIC

Question: How were qualified candidates for FS-04 positions determined?

HR Answer: CIC launched its first FS-04 staffing exercise in early 2006 to fill the 44 FS-04 positions that resulted from the 2005 conversion exercise. The screening process at CIC consisted of 3 managers reviewing the applications to determine whether or not candidates fully met the Essential Qualifications (focused on language, education and experience). The experience requirement in particular stipulated a combination of overseas and HQ experience. An applicant found to be unqualified on any element of the Essential Qualifications was eliminated from participating in the competition. After independently completing their initial assessments, the 3 managers then met to compare results. Where the assessments were consistent, the result was maintained. Where the assessments were inconsistent, notes were compared and discussion led to a consensus decision. The entire exercise was administered by managers with a good understanding of FS work at CIC. In addition, members were able to access the managers' notes and so ascertain the reasons for which they were found qualified or unqualified on each element. Some 90 persons were found eligible to participate in the competition. Candidates were then assessed using both written and oral tests and references were verified.

PAFSO Comment: We consider it inappropriate that the Department required 2 years of headquarters experience in order to be promoted to FS-4. This is a new requirement not previously used in FS staffing exercises. Unlike DFAIT, the vast majority of FS jobs at CIC are abroad. This operational reality and the requirement of rotationality make it entirely possible to have many years of experience at CIC, most of which has been spent on postings abroad. In many cases, the HQ experience requirement has prevented well qualified individuals from competing for jobs they had previously held, or were even occupying at the time of the competitions. The lack of logic in the HQ experience requirement was reinforced by CIC clarification that experience in the HQ of any Canadian government department would suffice. In PAFSO's view, it would have been fairer and more appropriate to include HQ experience as an Asset Qualification rather

than as an Essential Qualification. These issues are the focus of a current complaint by some CIC members before the Public Service Staffing Tribunal (see Question below for more details).

Question: How many qualified candidates were in fact promoted to FS-4?

HR Answer: Ultimately, 22 individuals were found qualified, all of whom were promoted to FS-04. Since not all the available FS-04 positions were filled, there is now another FS-04 selection process underway. It is unclear at this time whether a pool of qualified candidates will be established or whether CIC will limit the number of qualified candidates to the number of vacant FS-04 positions.

PAFSO Comment: PAFSO's understanding was that the assignment process would involve individuals in the qualified pool having to apply for specific assignments as they became available. Promotion would only occur once a candidate was actually chosen from the pool to take up a specific assignment classified at the appropriate level (ie. in this case, FS-04). However, based on the first process where all qualified candidates were promoted to the FS-04 level, it is not clear that CIC is in fact following this model. This remains to be clarified.

Question: How many FS-4 positions are in HQ, and how many abroad?

CIC FS-04 positions are mostly Program Managers at full service or larger missions with significant staff and budgets to manage. 40 of the 44 FS-04 jobs in CIC are found at missions abroad. This contrasts with DFAIT, where a far greater proportion located at HQ.

Question: At what time can I file a Complaint to the PSST relating to a competition?

Answer (from PSST website): All complaints must be filed within 15 calendar days following public notice of the appointment (on the PublicService website). That period has finished for the present FS-4 process at CIC. What is particularly problematic about this requirement is that the Department advised that the 2 years of headquarters experience could have been at any level. For more information about complaints to the PSST see the general section about complaints to the PSST above starting on page 2.

Question: Have there been any complaints to the PSST about the FS-4 promotion process?

PAFSO Answer: Yes. Several individuals who were not successful in being placed in the FS-4 pool at CIC brought a complaint before the Public Service Staffing Tribunal (the "PSST"). The main basis of the complaint is the requirement of 2 years HQ experience. The complainants were assisted by lawyers retained by PAFSO, given the importance of this matter as a test case for all FS to determine whether the inadequacies of the FS-4 test can amount to an "abuse of authority". Hearings have been held, and the decision is pending.

Question: If the complaint to the PSST is successful, but I did not make a complaint, can I still be put into the pool of successful candidates?

PAFSO Answer: Regrettably no. The remedy for a complaint applies only to those who made one. However, we hope that if the complaint is successful, CIC will improve its process for promotion to FS-4 in the future, for the benefit of everyone.

Question: Can FS-3s be “grandfathered” like FS-2s and be promoted to FS-4 without competition in recognition of their service, performance and experience?

HR Answer: No. As noted above, you need to succeed on the FS-4 competition, be placed in the successful pool of candidates, and then obtain an assignment at the FS-4 level.

PAFSO Comment: PAFSO took the position on conversion from the 2 level to the 4 level FS-4 structure that it was not necessary to have a promotion process – that all of those with appropriate expertise should have been immediately converted to an FS-4 (both at CIC and at DFAIT). Unfortunately, that approach was not accepted by either Department unfortunately, and PAFSO has no legal way to compel such an approach.

FS-3/FS-2 Deployment at DFAIT

Question: Why are people also being deployed into the FS group?

HR Answer: They are needed to fill certain capacities.

PAFSO Comment: Given the large number of successful candidates on the FS-3 and FS-2 exams, we expect that deployments into FS-2 and FS-3 would be extremely few. We acknowledge that there are a limited number of positions where there are often not enough FS (for example studies in the past have identified economists and lawyers as being in short supply). The inability of the Department to fill those FS positions has led in some cases to them being reclassified into other employment groups (thus making the position forever unavailable to rotational FS), which we do not want to see continue. However, we do not believe that there are a large number of such positions. In any event, PAFSO’s position is that an appropriate solution to filling such positions would be to have a competition to fill those spots first for FS, and then in the necessary capacities do not exist within the FS ranks, to have a broader competition. The department for the past four years has not engaged PAFSO in any form of meaningful consultation on staffing issues.

FS-3 Promotion (for “grandfathered” FS hired before January 1, 2003)

Question: When are FS-2s hired before January 1, 2003 eligible for promotion to FS-3 on the basis of “individual merit” (i.e. without a competition)?

HR Answer: Twelve months after they first reach the maximum rung for pay in the FS-2 scale. As of summer 2007, DFAIT HR records indicate that 7 people are at this stage, and they were be informed directly by HR about the procedures for determining whether they can be promoted to FS-3 on “individual merit”.

PAFSO Comment: We do not have any independent way to verify the number of eligible FS-2. If you believe that you are in this position, we suggest that you contact HR. It would also be helpful to PAFSO in following this issue if you would advise us when you contact HR, and of any response that they provide.

Question: What is the process for promotion?

HR Answer: The same test as for the competition to FS-3 will be used. If someone has already written the test and failed (for example for the FS-3 competition), they will not be eligible to write the test again for twelve months.

PAFSO Comment: The Department has the right to use whatever reasonable method it wishes to determine whether an employee has the capacity for promotion to a particular level based on “individual merit”. This could be, as it has been in the past, based simply on a satisfactory appraisal, but in principle the Department is entitled to instead use a test. However, we have concerns about using the same test as for the competition. Among other things, those concerns arise both because of the flaws already evident in the FS-4 test, and because it is not clear that a test designed for a competition for a limited number of spaces will have an appropriate pass level. However, the grandfathered provision is a right negotiated and the department cannot amend the collective agreement on its own. If you fail the test in the competition process you are still eligible for an individual assessment under the collective agreement provision.

HR at DFAIT distributed a Q&A on this issue to those who then calculate are eligible to be grand fathered in summer 2007. Much of the information is the same as that produced in other sections, but we reproduce all here for ease of reference:

Questions and Answers:

Q1. Are there in fact two separate promotion processes for grandfathered and non-grandfathered FS02s? Can you describe the process for each group? If a grandfathered FS02 chooses to participate in the current process, are they giving up their right to participate in the transitional measures process?

A1. Yes, the two processes are separate. Those who are scheduled to be promoted this year (grandfathered) AND applied on the competition have to decide if they want to be assessed through the current process or wait until their promotion date. Should one be successful in both the written exam and the reference checks, in the current process, he/she will be placed in a pool of qualified candidates until appointed to a higher level position.

Should one decide to wait until he/she reaches the “grandfathered” date, the written and reference checks will also be conducted, and if successful, the person will be appointed at the higher level.

Q2. How do people know that they are in fact part of the grandfathered group?

A2. Upon successful completion of the FSDP Program, FSDP participants hired prior to January 1, 2003, will be promoted to the FS-02 level. In these cases, FS-02 employees will be eligible for promotion to the FS-03 level twelve months after reaching the maximum rate of pay in the FS-02 scale. Successful completion of a written exam AND a structured reference check will be mandatory.

Q3. How will the process work for FS02s who are grandfathered, write the test, and pass? Will they automatically be appointed to the FS03 substantive level? Or will they also need to be selected from the pool of qualified candidates and placed into FS03 positions to become a substantive FS03?

A3. The substantive FS-02 grandfathered employees will be eligible for promotion to the FS-03 level, twelve months after reaching the maximum rate of pay in the FS-02 scale. Successful completion of a written exam AND a structured reference check will be mandatory. Those successful will be appointed at the FS-03 level.

Q4. For an FS02 who will reach the 12-month point at the top of the scale later this year, what are the consequences of writing the test now? If the FS02 does not pass the exam, will he/she be eligible for FS03 acting assignments? Will he/she be eligible for FS03 acting pay? What would happen if the person was confirmed for an FS03 posting this summer - would the posting go through? (Basically: is it worth the risk to try to get the FS03 now?)

A4. It is important to note that the abilities test has a re-test period of one year. Should an FS-02 choose to write the exam now and not be successful, there will be a one-year period before being eligible to re-write. As a result, the promotion date could be postponed.

Preferences for postings will be given to those at level. In the event that no substantive FS-03 is available for specific postings, only then, employees at the FS-02 level will be looked at.

If your assignment to an FS-03 position has been confirmed, you are expected to begin your assignment as decided.

PAFSO Comment: We do not accept that the Department can remove employees' right to be assessed on individual merit at their grandfathered date (which is a right, as noted above, negotiated in collective bargaining).

Q5. If the FS02 does NOT write the test now, will that person be eligible for FS03 assignments/acting pay/posting this summer? Is this tantamount to failing?

A5. See A4.

Q6. What about those who were screened out? Will they be allowed to take acting assignments?

A6. All actings will be based on organisational requirements, and again, should no substantive FS-03 be available, lower level employee may be considered to fill these positions.

Q7. If an FS02 reaches the top of the FS02 scale for 12 months at a defined point later this year, and decides to write the test at that time rather than now, will he/she be able to schedule a test on demand? Or will the next tests be held for a group, one year from now?

A7. As employees reach their expected date of promotion, they will be invited to be assessed through the written exam AND the structured reference check.

Q8. Does an FS02 (grandfathered or otherwise) who succeeds in the exam have to take an FS03 position to become an FS03 substantive?

A8. Non-grandfathered employees, who are successful in the current process, shall be placed in a pool of qualified candidates. This pool is an unranked inventory of candidates who have been fully assessed and have been found qualified. Once in the pool all candidates are considered eligible for appointment. Appointment decisions will be made by a committee who will decide which candidate will be appointed to a particular position, according to the organisational requirements.

For those who are grandfathered and who are successful at their date, as indicated in the transitional measures, will then be appointed to the FS-level.

Q9. On what basis will FS03 appointments be made from the pool of qualified candidates?

A9. see A8.

Q10. As of when will successful candidates receive their acting pay?

A10. The intent of this exercise IS NOT to provide acting pay. One will receive pay at the FS-03 level ONLY when appointed (via a letter of offer) to that level. Acting pay is only allowed when an employee performs the functions of a higher position, without being appointed substantively to that position.

Q11. How long are test results valid? If a successful candidate is in a position abroad, will he/she need to cut their posting short to take the promotion?

A11. If candidates are successful, the results of the test have no expiry date.

Employees who are in postings will remain in these positions until the end of the assignment. We remind you that of the one year waiting period for those who do not pass the exam. FS-02s need to ask their Compensation Advisor whether they are at the top of the FS-02 scale and how long they have been there.

FS-2 Promotion for “grandfathered” FSDP hired after January 1, 2003 but before 2006

(we believe the date is January 1, 2006, but have no clear information to that effect)

Question: When will I be eligible for promotion and what will the process be?

HR Answer: Thirty six months after starting work as an FS-1. As with past promotions to FS-2, promotion will be based on satisfactory appraisals.

Question: Why is it that I cannot be promoted to FS-3 on the basis of “individual merit”?

HR Answer: Your offer of employment told you that restructuring of the FS stream was in place, and therefore you should have expected that you might not be promoted on the basis of “individual merit”

PAFSO Comment: PAFSO plans to try to address this issue in this round of negotiations.

FS-2 Promotion for FSDP hired in 2006 or later

(we believe the date is January 1, 2006, but are aware of no clear statement from HR to that effect)

Question: When will I be eligible for promotion and what will the process be?

HR Answer: Thirty six months after starting work as an FS-1. As with current promotion of “grandfathered” FS-2 to the FS-3 level, you will have to write a test to determine your “individual merit” to be promoted to the FS-2 level. If you have passed the FS-2 exam, your results will not “expire”, so as long as the exam does not change you will not need to re-write the exam at the end of thirty-six months.

PAFSO Comment: We do not believe that adding an additional test for promotion to FS-2 is in any way useful. As with non-grandfathering to FS-3, this is an issue that we will try to raise in the context of collective bargaining.