**Consultation on Draft Regulations that Prescribe Eligibility Criteria for Appointment to the Scottish Tribunals**

**Analysis of Responses**

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**ANALYSIS OF RESPONSES TO THE CONSULTATION ON DRAFT REGULATIONS THAT PRESCRIBE ELIGIBILITY CRITERIA FOR APPOINTMENT TO THE SCOTTISH TRIBUNALS.**

**Background**

1. The Scottish Government is in the process of implementing the Tribunals (Scotland) Act 2014 (the 2014 Act) which creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing an organised structure for new jurisdictions.
2. The 2014 Act creates two tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals. In due course all of the devolved tribunal jurisdictions will transfer-in to the Scottish Tribunals. In the first phase, the private rented housing panel, homeowner housing panel and the Scottish Tax tribunals will transfer.
3. The Scottish Government ran a consultation between 17 July and 9 October 2015 on draft regulations that prescribe eligibility criteria for appointment to the Scottish Tribunals. The consultation covered eligibility criteria for ordinary members in the housing and tax jurisdictions as they will be the first tribunals to transfer into the Scottish Tribunals structure. The consultation also covered generic eligibility criteria for appointment as a legal member in the First-tier Tribunal and Upper Tribunal.

**Consultation responses**

1. There were 16 responses to the consultation, seven organisations, four tribunals and five individuals two of whom wished to remain anonymous. The full list of respondents is available in Annex A. Two of the responses covered the criteria for ordinary members with housing experience and three covered eligibility criteria for ordinary members with tax experience. Six responses concerned the generic criteria for legal members across the First-tier Tribunal.
2. Due to the relatively small number of responses to each question this analysis relies on consideration of responses relating to each set of criteria rather than an in-depth statistical analysis of the responses.

**Analysis of responses**

Criteria for legal members

1. In relation to criteria for legal members of the First-tier and Upper Tribunal respondents were concerned that academics were excluded from becoming legal members of the Scottish Tribunals.
2. Respondents were divided as to whether eligibility criteria should be limited to Scots trained lawyers. Respondents also expressed concerns that legal members do not require experience in the jurisdiction concerned.
3. In response to comments received regarding the first point we have amended the regulations to allow academics who have previous engagement in practice for a period of not less than 5 years as a solicitor or advocate in Scotland to be eligible as a legal member of the First-tier Tribunal. This was not extended to membership of the Upper Tribunal as it was deemed that a member of this tribunal would require current legal experience.
4. Based on the responses received in relation to the second point, limiting eligibility to Scots trained lawyers we have amended the criteria to limit eligibility to Scots trained lawyers. As more tribunals transfer into the new structure this position may change.
5. We have decided not to specify that a legal member must have jurisdictional experience as the intention is that the ordinary tribunal members will bring the jurisdictional experience and the legal members will bring the legal experience. Having generic criteria for legal members means it will be easier for legal members to sit in other tribunals and may encourage cross-ticketing. If it is deemed necessary when recruiting legal members that they have jurisdictional experience then this can be specified as a desirable criteria in the application form.

Criteria for members with housing experience

1. One respondent suggested that eligibility criteria for members with housing experience should be extended to include tenants. Another respondent commented that references to housing should be replaced with references to housing and property and references to land management should be replaced with references to land and property management issues.
2. On the first point tenants who demonstrate relevant experience in housing matters would be eligible to apply for membership of the First-tier Tribunal. In relation to the remaining points the draft regulations were amended accordingly.

Criteria for members with tax experience

1. The main comment regarding eligibility criteria for members with tax experience was that the debarment provision should be extended to include those debarred from the Chartered Institute of Taxation. A respondent also raised the point that the criteria for tax members would need to be extended when the Valuation Appeal Committees are transferred to the Scottish Tribunals.
2. In relation to the first comment the regulations have been amended to extend the debarment provision to include those debarred from the Chartered Institute of Taxation.
3. Regarding the second comment eligibility criteria will be modified as more tribunals are transferred into the Scottish Tribunals. The Valuation Appeal Committees are likely to be in phase three of transfers which will be after 2020. Therefore, eligibility criteria for members of the Valuation Appeal Committees will be considered nearer the transfer-in date.

**Next Steps**

1. The draft regulations have been amended to incorporate respondents’ comments. The regulations were laid in the Scottish Parliament in November 2015 and came into force on 1st January 2016. The final version of the regulations are available at the link below:

<http://www.legislation.gov.uk/ssi/2015/381/contents/made>

1. The regulations will be amended as further tribunals are transferred into the Scottish Tribunals structure.

**ANNEX A – LIST OF RESPONDENTS**

Responses were received from the following organisations/individuals:

Derek Auchie

Additional Support Needs Tribunals for Scotland

Alan Gamble

Central and Tayforth Registered Tenant Regional Network

Chartered Institute of Taxation

Faculty of Advocates

Institute of Chartered Accountants of Scotland

Law Society of Scotland

Mental Health Tribunal for Scotland

President of the Private Rented Housing Panel and Homeowner Housing Panel

PricewaterhouseCoopers

Scottish Tribunals and Administrative Justice Committee

Scottish Valuation Appeal Committee Forum

Julian Stafford

Two respondents wished to remain anonymous.