**Consultation on 2 sets of**

**Draft Regulations which make**

**provision for:**

**1) A time limit within which to seek**

**permission to appeal a decision of**

**the Scottish Tribunals and Rules of**

**Procedure for the Upper Tribunal; and**

**2) Offences in the Scottish Tribunals.**

**Analysis of Responses**

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June 2016

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**ANALYSIS OF RESPONSES TO THE CONSULTATION ON DRAFT REGULATIONS THAT MAKE PROVISION FOR:**

1. **A TIME LIMIT WITHIN WHICH TO SEEK PERMISSION TO APPEAL A DECISION OF THE SCOTTISH TRIBUNALS AND RULES OF PROCEDURE FOR THE UPPER TRIBUNAL AND**
2. **OFFENCES IN 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 (prhp), homeowner housing panel (hohp) and their relevant committees and the Scottish Tax Tribunals (STT) will transfer.
3. The Scottish Government ran a consultation between 22 September and 15 December 2015 on draft regulations covering the time limit within which parties may seek permission to appeal a decision of the Scottish Tribunal, rules of procedure for the Upper Tribunal for Scotland and offences in proceedings in the Scottish Tribunals.

**Consultation responses**

1. There were 24 responses to the consultation, 21 organisations, one tribunal and one individual and one organisation who wished to remain anonymous. The full list of respondents is available in Annex A. 21 respondents commented on the draft Upper Tribunal Rules and time limits for permission to appeal a decision. 16 respondents commented on the draft regulations which set out Offences in proceedings.
2. Due to the relatively small number of responses to each question this analysis relies on consideration of responses relating to each set of regulations rather than an in-depth statistical analysis of the responses.

**Analysis of responses**

Time limits for Permission to Appeal

1. The majority of respondents were content with the 30 day time limit for permission to appeal. The draft regulations cover time limits for permission to appeal for the prhp, hohp and STT which will be the first tribunals to transfer into the Scottish Tribunals structure. Those respondents who wished a longer time period were mainly commenting in relation to a tribunal which will transfer-in at a later stage in the programme of tribunal transfers. There could be flexibility in the Upper Tribunal rules to have varying time limits once more tribunals are transferred into the Scottish Tribunals structure.
2. One respondent noted that the draft regulations did not include provisions as to when the notice of appeal must be lodged with the Upper Tribunal. We have amended the regulations to specify that the notice of appeal must be received by the Upper Tribunal within 30 days after the date that the tribunal that gave permission to appeal sent notice of such permission to the appellant.
3. One respondent suggested some additions to the interpretation section of the regulations which have been taken on board.

Upper Tribunal Rules of Procedure

1. The main comments were in relation to rule 11 (Dismissal of a party’s case). A number of respondents commented that rule 11 as currently drafted was too severe and did not give the tribunal enough flexibility to dismiss a case. We have amended the regulations to remove rule 11(1) which states that the tribunal will dismiss proceedings or the appropriate part of them if the appellant has failed to comply with an order. We will rely on rule 11(3) which says that the tribunal may dismiss proceedings or the appropriate part of them if the appellant has failed to comply with an order. This will give the Upper Tribunal more flexibility to decide whether to dismiss proceedings. We have also included a rule that in proceedings which have been transferred from the First-tier Tribunal, the Upper Tribunal considers there is no reasonable prospect of the appellant’s case, or part of it succeeding then the Upper Tribunal may dismiss the case.
2. One stakeholder raised whether there should be a rule restricting unsuitable representatives or supporters from appearing at a hearing. We have amended the draft rules to include a provision that the tribunal may, if it feels there are good and sufficient reasons for doing so, refuse to permit a lay person from assisting or supporting a party.
3. Two stakeholders commented that pro forma templates should be made available to assist parties. This comment has been passed onto the Scottish Courts and Tribunals Service who are responsible for the administration of the tribunals.
4. A few stakeholders raised the point that other parties such as the Commission on Human Rights and tax professional bodies should be allowed to intervene in a case. This is covered by rule 8(3)(e) which allows the Upper Tribunal to permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party.
5. One respondent raised that the First-tier Tribunal and Upper Tribunal should be required to notify decisions in writing. In all cases in the First-tier Tribunal if a decision can be notified orally then the parties have the right to request a written notification of the decision if they wish. Rule 29(2) requires the Upper Tribunal to provide each party and interested party as soon as reasonably practicable after making a decision with a decision notice. Therefore, we believe that this point is already covered in the current draft of the rules.
6. One stakeholder raised that a party should be able to be represented by a person of their own choice and that representation should not be limited to a lawyer. This comment has been taken on board and a person may be represented by either a legal or lay representative.
7. There were a number of comments in relation to tribunals that will transfer into the Scottish Tribunals at a later stage in the timetable. These have not been taken on board as the current version of the Upper Tribunal rules is aimed specifically at the prhp and hohp which will be the first to transfer into the new structure and the Scottish Tax Tribunals which will be the next tribunals to transfer.

Offences in proceedings

1. A number of respondents commented that the penalties for failure to comply with the regulations could be excessive. As these regulations will apply across all tribunals when they transfer into the Scottish Tribunals structure we believe that it is better to give the Procurator Fiscal the flexibility to impose fines/prison sentences that they feel appropriate within the maximum limit set out in the Tribunals (Scotland) Act 2014.
2. A few responses requested the list of offences to be expanded. The list of offences is set out in the Tribunals (Scotland) Act 2014 and therefore we are unable to add additional offences in these regulations.
3. One respondent suggested that the first offence of making a false statement in an application in a case should be amended to read knowingly make a false statement in an application in a case. We have amended the draft regulations to make it a defence for a person charged with an offence to prove that the false statement was not knowingly made or that a thing was not knowingly altered, concealed or destroyed.
4. One respondent commented that the rules of procedure for the Upper Tribunal and the First-tier Tribunal Chambers should include reference to committing an offence. This has been considered but the decision was taken that if the offences in proceedings are referred to in other regulations this may imply there is more than one of this type of offence.

**Next Steps**

1. The draft regulations have been amended to incorporate respondents’ comments as listed above. We propose to lay these regulations in the Scottish Parliament in the Autumn. The intention is for these regulations to come into force in December 2016.

**ANNEX A – LIST OF RESPONDENTS**

Responses were received from the following organisations/individuals:

Borders, Edinburgh, East Lothian and Midlothian Registered Tenant Organisation Regional Network

Central Region Registered Tenant Organisation Regional Network

Chartered Institute of Taxation

East Dunbartonshire Registered Tenant Organisation Regional Network

Equality & Human Rights Commission

Faculty of Advocates

Glasgow and Western Isles Registered Tenant Organisation Regional Network

Highland and Argyll & Bute Registered Tenant Organisation Regional Network

Housing and Social Welfare Campaign Group

Law Society of Scotland

Mental Health Tribunal for Scotland

Northern Lights Registered Tenant Organisation Regional Network

Perth and Kinross Council

Scottish Assessors Association

Scottish Tribunals & Administrative Justice Advisory Committee

Scottish Valuation Appeal Committee Forum

Shelter Scotland

South Lanarkshire Council

South West Scotland Registered Tenant Organisation Regional Network

Tayforth Registered Tenant Organisation Regional Network

User and Carer Involvement

West Strathclyde Registered Tenant Organisation Regional Network

One organisation and one individual who wished to remain anonymous.