**Consultation on 2 sets of**

**Draft Regulations for:**

**1) The Transfer of Functions and Members of (A) the Private Rented Housing Panel (B) the Homeowner Housing Panel, to the Scottish Tribunals; and**

**2) The Composition of the Scottish Tribunals when hearing Housing and Property cases.**

**Analysis of Responses**

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June 2016

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

1. **THE TRANSFER OF FUNCTIONS AND MEMBERS OF (A) THE PRIVATE RENTED HOUSING PANEL AND (B) THE HOMEOWNER HOUSING PANEL, TO THE SCOTTISH TRIBUNALS , AND**
2. **THE COMPOSITION OF THE SCOTTISH TRIBUNALS WHEN HEARING HOUSING AND PROPERTY CASES**

**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 transfer of functions and members of the prhp and hohp and composition of the First-tier Tribunal and Upper Tribunal when hearing cases to and from the Housing and Property Chamber of the Scottish Tribunals.

**Consultation responses**

1. There were 20 responses to the consultation, 19 organisations and one individual who wished to remain anonymous. The full list of respondents is available in Annex A.
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**

Transfer of functions and members of prhp/hohp

1. There were very few comments on the draft regulations that transfer the prhp/hohp and their respective Committees into the Scottish Tribunals as they are technical in nature.
2. Seven responses mentioned the proposal to allow the First-tier Tribunal Housing and Property Chamber to award expenses against a party if they have caused the other party unnecessary or unreasonable expense. A small number of these responses sought clarification on the definition of “unreasonable or unnecessary expense”. We are considering this in the redrafted version of the regulations. Four respondents welcomed the provisions allowing the First-tier Tribunal to review a decision where there has been an administrative error.
3. One stakeholder highlighted that the draft regulations would allow the Scottish Tribunals to disapply the new regulations if they consider this necessary to ensure proceedings are dealt with fairly. This provision has been removed from the final draft of the regulations.
4. One organisation noted that tribunal users should be made aware of the change in appeal route from 1 December 2016. We are proposing to engage with housing stakeholders to ensure that users are aware of the changes from 1 December.
5. One organisation was concerned that there will be no Deputy President when the tribunals transfer into the Scottish Tribunals and that this might have a negative impact on the Chamber President. We have amended the Chamber Rules to allow the Chamber President to delegate her functions to any legal or ordinary member of the Chamber.
6. One organisation raised concerns that by not allowing those tribunal members over the age of 75 to transfer into the Scottish Tribunals we would be breaching the age discrimination provisions of the Equality Act 2010. This policy introduces a standard retirement age for tribunal members in line with that of members of the court judiciary. It will ensure that tribunal members are up-to-date with current practice and procedure in the field of their expertise and provide an opportunity to refresh tribunals.

Composition of the Scottish Tribunals when hearing cases to and from the Housing and Property Chamber

1. A number of respondents raised the point that the draft regulations allow a legal member to hear a case on their own. This maintains the status quo for cases currently heard in the prhp and hohp and therefore we propose to retain this provision. In practice the President of the prhp/hohp does not assign one legal member to hear a case on their own very frequently. By retaining the regulations as they are currently drafted this will give the Chamber President the flexibility to decide the most appropriate composition of the tribunal based on the complexity of the case.
2. One respondent was concerned that by not allowing a Temporary Chamber President to hear an appeal in the Upper Tribunal this could lead to a loss of expertise in the Upper Tribunal. The 2014 Act does not allow a Temporary Chamber President to hear a case in the Upper Tribunal and therefore the regulations need to reflect this.
3. One respondent raised the issue that allowing the Chamber President to hear appeals in the Upper Tribunal could reduce the impartiality of the Upper Tribunal. The President of the Scottish Tribunals will only appoint the Chamber President to hear appeals if they have not been involved in the case prior to the appeal. The President of the Scottish Tribunals will ensure that the impartiality of the Upper Tribunal is maintained. Allowing the Chamber President to sit in the Upper Tribunal will enable an expert in the subject matter jurisdiction to hear cases.

**Next Steps**

1. The draft regulations have been amended to incorporate respondents’ comments. 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

East Dunbartonshire Registered Tenant Organisation Regional Network

Faculty of Advocates

Highland and Argyll & Bute Registered Tenant Organisation Regional Network

Homeless Action Scotland

Housing and Welfare Campaign Group

Law Society of Scotland

Letscotland

Living Rent Campaign

Northern Lights Registered Tenant Organisation Regional Network

PRS4Scotland

Property Managers Association Scotland

Scottish Federation of Housing Associations

Scottish Property Federation

Scottish Tribunals & Administrative Justice Advisory Committee

South West Scotland Registered Tenant Organisation Regional Network

West Strathclyde Registered Tenant Organisation Regional Network

Wheatley Group

One individual who wished to remain anonymous.