

**Consultation on Chamber Structure and Schedules
Tribunals (Scotland) Act 2014 & Court Reform (Scotland) Act 2014**

Response of Scottish Tribunals and Administrative Justice Advisory Committee

The Committee is broadly in agreement with the proposals set out in the consultation subject to the following comments.

1. Firstly, we consider that there is a balance to be struck between on the one hand ensuring that members have appropriate expertise to ensure that tribunals are genuinely specialist in nature, and on the other ensuring that sufficient tribunal members can be recruited. We are aware that there have been some difficulties in recent recruitment exercises in attracting sufficient applications from persons with appropriate knowledge and expertise. We note that the draft regulations prescribe generic eligibility criteria for the appointment of all legal members. We agree that it would be inflexible to specify the particular aptitude and experience required for each jurisdiction in the regulations and that it is preferable for each recruitment exercise to specify the chamber in respect of which the recruitment is being run and the particular legal experience or aptitude considered desirable. Para. 29 of the paper qualifies that by saying that a well-qualified and experienced lawyer may be able to operate in a particular field (perhaps with appropriate training) notwithstanding a relative lack of experience in that field to date. The Committee agrees but notes that the extent to which it will be possible to rely on training rather than prior experience will vary considerably from one area of law to another. Care should, therefore, be taken in appointing members who do not already have experience specifically relevant to the jurisdiction in question. This point will also be relevant when appointing legal members who have qualified as solicitors or barristers in other UK jurisdictions. The ease with which they will be able to acquire understanding of the relevant field of Scots law will vary considerably from one area of law to another. Decisions on the recruitment of lawyers qualified in other jurisdictions should take into account to which the relevant aspects of Scots law and those other systems are comparable.
2. Secondly, we consider that the proposed requirements are too narrow. They will exclude anyone, whatever their legal expertise, who has not practised as a solicitor or advocate (or barrister) for at least five years or, in the case of the Upper tribunal, for seven years. This is narrower than the approach traditionally taken in tribunals and to the approach taken in the Tribunals, Courts and Enforcement Act 2007 (TCEA) which specifies the legal qualification for Scots lawyers as, 'is an advocate or solicitor in Scotland of at least five years' standing.' [TCEA, Sch 1, para 2] Eligibility should be widened to cover all persons who are in a meaningful sense lawyers. One example would be an academic lawyer who has completed less than five years practice as a solicitor or advocate but can demonstrate specialist expertise in the relevant area, e.g. by lecturing or publishing in the area. Another would be a person who has worked in a public sector or non-governmental organisation which deals with the relevant area of law. The ability to recruit such people would reduce the risk of being unable to recruit members with the relevant specialist expertise. The regulations could state that a person would be eligible if (a) he or she had been legally qualified for at least five years, and (b) could demonstrate appropriate legal

expertise in the relevant area of law. We note that TCEA envisages that a legal member might not have a professional legal qualification of any kind provided that the person ‘has gained experience in law which makes the person as suitable for appointment as if the person satisfied any of paragraphs (a) to (c).’ (those paras refer to legal qualifications’. [TCEA Sch 1, para 2 (d)]

3. Thirdly, we understand the need to use the term ‘ordinary members’ as this is the term used in the Tribunals (Scotland) Act 2014. However, the use of that term might give the impression that such members, who are likely to be experienced professionals in other fields, are somehow less important than the legal members. We suggest that although the term be used in the regulations, in practice such members be referred to as e.g. ‘housing members’, ‘surveyor members’ (these are the terms currently used in the hohp/prhp), and so forth
4. Finally, we note that the draft regulations on ordinary members cover only the housing and tax tribunals. We look forward to seeing further consultations at a later date about criteria of eligibility for ordinary members of the remaining Scottish tribunals.

Q3. Are there any additional criteria you would wish to see prescribed?

There should be a fourth option for eligibility for appointment as a legal member of the First-tier Tribunal for Scotland. It should be possible for a person to be eligible where that person:

(a) had been legally qualified for at least five years, and (b) could demonstrate appropriate legal expertise in the relevant area of law.

There should be a fourth option for eligibility for appointment as a legal member of the Upper Tribunal for Scotland

It should be possible to be eligible where a person:

(a) had been legally qualified for at least seven years, and (b) could demonstrate appropriate legal expertise in the relevant area of law.

Tom Mullen
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