

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

### **Response of Scottish Tribunals and Administrative Justice Advisory Committee**

This is the response of the Scottish Tribunals and Administrative Justice Advisory Committee to the Consultation issued by the Scottish Government on proposals to amend Schedule 1 to the Tribunals (Scotland) Act 2014, Schedule 4 to the Court Reform (Scotland) Act 2014 and for the organisation of the First-tier Tribunal for Scotland into Chambers.

**Question 1** *Have you any comments on the proposal to amend Schedule 1 of the Tribunals (Scotland) Act 2014 and Schedule 4 of the Courts Reform (Scotland) Act 2014?*

We regard the propose amendments as purely technical and welcome them.

**Question 2** *Do you have any comments on the proposed Chamber Structure for the First-Tier Tribunal?*

We note that the proposals are very similar to those made in the consultation on the proposals for a new tribunal system for Scotland conducted by the Scottish Government in 2012 (<http://www.gov.scot/Publications/2012/03/8967/downloads>) and to what was set out in the policy memorandum that accompanied the Bill which became the Tribunals (Scotland) Act 2014. We consider that, in general, the structure proposed for the First-tier Tribunal is appropriate, however, we make the points below.

#### Private Rented Housing Panel and Homeowner Housing Panel

We suggest that the table in Annex A is misleading in one respect. The Private Rented Housing Panel and the Homeowner Housing Panel are shown as a single tribunal, whereas, although the membership of the two panels is the same, they are separate jurisdictions which have been established by different legislation. Each currently has its own staff, budgets etc. To avoid any confusion, they should be presented as distinct entities.

#### Valuation Appeal Committees

We would question whether the Tax Chamber is the most appropriate place for the Valuation Appeal Committees. These committees deal with (i) appeals about the rateable value allocated by one of the Scottish Assessors to non-domestic properties in a given local authority area and (ii) appeals in relation to council tax banding of domestic properties. It is not obvious to us why these should sit alongside the Tax Tribunals for Scotland, which consider appeals against Revenue Scotland decisions on Lands and Buildings Transactions Tax and the Scottish Landfill Tax, and whose membership includes accountants, members of the Chartered Institute of Taxation; or others with substantial tax experience. Given the nature of the issues that they deal with, and the user groups which they serve, we consider that the Valuation Appeal Committees might more appropriately be located within the Housing and Property Chamber. There are several reasons why this would seem to make sense.

Firstly, the Committees deal with issues relating to land and to property valuations, which would seem to sit more logically with the housing tribunals. Secondly, council tax appeals

concern homeowners, as does the homeowner housing panel, and these two tribunals- therefore serve a similar group of users. Thirdly, commercial property valuations are usually based on rental evidence, and ratepayers who appeal are often represented by rating agents, who are generally chartered surveyors. There are clear parallels here with the rent assessment cases dealt with by the Private Rented Housing Panel. Where a tenant is dissatisfied with the 'fair rent' fixed by a Rent Officer, they can apply for a fair rent to be fixed by a Private Rented Housing Committee, which includes a surveyor and a housing member, as well as a legal chairperson. Finally, appeals from Valuation Appeal Committees go to the Lands Valuation Appeal Court, whereas appeals from the tax tribunals go to the Upper Tax Tribunal.

### Tribunals Omitted

Several Tribunals which deal with devolved matters are not included in the proposed structure, including the Council Tax Reduction Review Panel and the Scottish Solicitors Discipline Tribunal. The rationale behind including or excluding any particular tribunal in the new structure is not clear from the consultation paper, but on the basis of the tribunals which are included, we cannot see any obvious reason why these two tribunals should not be part of the structure.

The Council Tax Reduction Review Panel is not listed in Schedule 1 to the Act, nor was it mentioned in either the 2012 consultation or the Bill memorandum. Nevertheless, it has the essential characteristics of a tribunal: the members are drawn from a judicial panel and to be appointed a person must be "a suitably qualified and experienced tribunal judge and possess personal qualities appropriate to holders of a judicial office. Independence and impartiality are among those qualities." (*CTRRP Frequently asked Questions Guide*, <http://counciltaxreductionreview.scotland.gov.uk/documents/CTRRP%20FAQ%20-%20Public.pdf>). It is also supported by the Scottish Courts and Tribunals Service (SCTS). It is not clear to us what policy reasons there would be for excluding it from the new structure. Similarly, it is not clear what policy reasons there would be for excluding the Scottish Solicitors Discipline Tribunal (SSDT) from that structure.

That fact that neither tribunal is currently a listed tribunal is not a major obstacle as the necessary amendments to Schedule 1 could be made. However, further consultation with affected interests would be required before these tribunals could be added to Schedule 1. The fact that SSDT is not currently supported by SCTS is not a major obstacle either; we are not aware of any aspect of its work or methods which would make it unsuitable for administration by SCTS.

Finally, we would suggest that it would be helpful for the Scottish Government to set out a clear and consistent rationale as to why particular tribunals have/have not been selected for inclusion within the new tribunal structure.

15<sup>th</sup> July 2015