

## **POLICY NOTE**

### **THE SCOTTISH TRIBUNALS (ELIGIBILITY FOR APPOINTMENT) REGULATIONS 2015**

#### **SSI 2015/381**

1. The above instrument was made in exercise of the powers conferred by paragraphs 1(2) and 5(2) of schedule 3 and paragraph 5(2) of schedule 5 of the Tribunals (Scotland) Act 2014 (the 2014 Act).

#### **Policy Objectives**

2. The 2014 Act specifies that the First-tier Tribunal may comprise ordinary and legal members and that the Upper Tribunal may comprise legal, judicial, and ordinary members

3. The regulations create eligibility criteria for ordinary and legal members of the First-tier Tribunal and legal members of the Upper Tribunal. The criteria for ordinary members will be jurisdiction specific and cover the criteria for the first two jurisdictions to transfer into the Scottish Tribunals (housing and tax). The criteria for legal members will be generic across the First-tier Tribunal and Upper Tribunal.

4. The regulations aim to create an appropriately broad pool of potential applicants as both ordinary and legal members of the First-tier Tribunal. In particular the regulations, while insisting on at least 5 years practising experience for the First-tier Tribunal and 7 years for the Upper Tribunal, would broaden the pool of legal members to persons who are not currently practising because they are a tribunal judge or in the case of the First-tier Tribunal an academic teaching or researching law. The legal criteria also captures advocates no longer practising who work, say in an in house legal team or in a government department.

5. The regulations create a debarment provision which means that insofar as a person is applying on the basis of experience gained in past practice in a professional discipline the person must not have been debarred or subject to any sanction which would make them ineligible to belong to their professional body had they not ceased to be a member. The policy intent is that persons subject to a serious sanction should not be eligible to apply.

6. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

#### **Consultation**

7. A consultation with interested parties took place between July and October 2015. There were 17 responses to this consultation. The responses are available on the Scottish Government website:

<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/eligibility-criteria-for-appointment-to-tribunals>

### **Impact Assessments**

8. An equality impact assessment has already been completed on the Tribunals (Scotland) Bill – see link below.

<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

9. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Learning and Justice Directorate  
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