

Tribunals (Scotland) Act 2014

Consultation on Draft Regulations regarding:

(1) the Transfer of Functions and Members of the Scottish Charity Appeals Panel to the Scottish Tribunals;

(2) the rules of procedure for the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals;

(3) the Composition of the First-tier and Upper Tribunals for Scotland and

(4) the Eligibility for Ordinary Membership of the First-tier Tribunal for Scotland General Regulatory Chamber

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PART 1: BACKGROUND

1. The Tribunals (Scotland) Act 2014 (the 2014 Act) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act creates two new tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals.
2. The Scottish Charity Appeals Panel (SCAP) was established by the Charities and Trustee Investment (Scotland) Act 2005, in order to hear appeals against certain decisions of the Office of the Scottish Charity Regulator. The SCAP is a “listed tribunal”, by virtue of inclusion in Schedule 1 to the 2014 Act at paragraph 2.
3. The functions of the listed tribunals are to be transferred in to the new tribunals structure, and the functions of the SCAP in particular are to be allocated to the new General Regulatory Chamber of the First-tier Tribunal for Scotland.
4. The functions and members of the SCAP will transfer into the Scottish Tribunals system on 30th November 2017, and become part of the General Regulatory Chamber. The SCAP as it presently stands will then be abolished.
5. The draft regulations are attached at **Annexes A, B, C and D**.
6. The draft regulations in **Annex A** provide for:
 - The transfer of functions of the SCAP to the Scottish Tribunals;
 - Transitional arrangements to regulate how cases pending, in progress and new cases will be dealt with;
 - Consequential amendments and repeals required in light of the transfer of functions;
 - The transfer of members of the SCAP to the Scottish Tribunals.
7. The draft regulations in **Annex B** set out the Rules of Procedure for the First-tier Tribunal General Regulatory Chamber Charity Appeals.
8. The draft regulations in **Annex C** set out the type and number of members who can hear cases in the First-tier Tribunal General Regulatory Chamber.
9. The draft regulations in **Annex D** set out the eligibility criteria for membership of the First-tier Tribunal General Regulatory Chamber.

PART 2: CONSULTATION ON DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF THE SCAP TO THE SCOTTISH TRIBUNALS AND REPEAL EXISTING REGULATIONS.

Background

10. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.
11. Schedule 2 and section 29 of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members of the listed tribunals to the First-tier or Upper Tribunals.

Draft Regulations

12. The policy intent is for the SCAP to transfer into the Scottish Tribunals structure with their existing functions. Upon transfer the SCAP will be abolished and thereafter first instance decisions will be heard in the First-tier Tribunal General Regulatory Chamber with onward appeal to the Upper Tribunal.
13. All existing members of SCAP will transfer into the Scottish Tribunals as long as they meet the eligibility criteria and also are not subject to the provisions set out in paragraph 14. Chairs of SCAP will transfer in as legal members of the First-tier Tribunal. Other members of the SCAP will transfer in as ordinary members of the First-tier Tribunal with allocation to the General Regulatory Chamber.
14. Paragraph 11 of schedule 9 of the 2014 Act amends the Judicial Pensions and Retirement Act 1993 so that the ordinary and legal members of the Scottish Tribunals are added to the list of offices which are required to retire from office on reaching the age of 70. This brings tribunal members' retirement age in line with court judiciary. There is also provision to enable members aged 70 or over to continue in office, on an annual rolling basis, up until the age of 75 if the Scottish Ministers, after consultation with the President of Tribunals, consider it is desirable in the public interest for them to continue to do so.

15. Section 21(1) of the 2014 Act requires each Chamber of the First-tier Tribunal to have one or more Chamber Presidents. Due to the low caseload in SCAP we are proposing to disapply this provision until two more jurisdictions transfer into the First-tier Tribunal and are allocated to the General Regulatory Chamber. We envisage that this will take place within the next couple of years. Until then the President of Tribunals will allocate members if there is an appeal against a decision of the Office of the Scottish Charity Regulator.
16. The draft regulations set out the transitional arrangements that cases in progress on the day of transfer will be continued in the First-tier Tribunal. If a hearing is in progress then it will be completed by the First-tier Tribunal comprised of the same members, where possible. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.
17. If a party wishes to appeal a decision of the SCAP but has not exercised this right before 30 November 2017 then the appeal route will be to the Upper Tribunal as opposed to the Court of Session. We propose that if a party has already exercised their right of appeal before 30 November 2017 then the appeal will not be affected by the new regulations and will be completed by the Court of Session.
18. The regulations will repeal Schedule 2 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), which set up the SCAP. Once the SCAP is transferred into the Scottish Tribunals the relevant sections of the 2014 Act will cover the equivalent provisions.
19. The draft regulations make amendments to existing legislation, replacing references to the SCAP with references to the First-tier Tribunal, and references to the Court of Session with references to the Upper Tribunal.
20. The draft regulations also repeal The Scottish Charity Appeals Panel Rules 2006¹ and replace those with the new Rules and Procedure for the General Regulatory Chamber Charity Appeals, which replicate the previous rules subject to the alterations set out at Part 3 of this consultation.

¹ <http://www.legislation.gov.uk/ssi/2006/571/contents/made>

QUESTIONS ON THE TRANSFER OF THE SCAP

Q1: Do you have any comments on the draft transfer of functions and members Regulations?

Q2: Are you content with the provisions regarding transitional arrangements?

Q3: Are you content with the provisions relating to the transfer of functions and members?

Q4: Do you have any other comments you wish to make?

PART 3: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER CHARITY APPEALS

Background

21. Schedule 9, paragraph 2(2) and section 81 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both the First-tier Tribunal and the Upper Tribunal.

Draft Regulations

22. As the SCAP already has comprehensive procedural rules in place these have been replicated where possible in the draft General Regulatory Chamber Charity Appeals Rules in Annex B. A number of the rules have been redrafted and there are four main areas where the draft Rules differ from the existing rules of procedure to ensure consistency within the Scottish Tribunals.

23. Firstly, a party who wishes to appeal a decision to the Upper Tribunal must first seek permission to do so from the First-tier Tribunal. This brings the jurisdiction in line with provisions in the 2014 Act. If the First-tier Tribunal refuses permission to appeal a party may seek permission to appeal from the Upper Tribunal itself.

24. Secondly, parties and the First-tier Tribunal on its own initiative will be able to seek a review a decision. The review procedure will not extend the 30 days that parties have to seek permission to appeal a decision. Parties will now need to seek permission to appeal a decision to the Upper Tribunal from the First-tier Tribunal within 30 days of the decision being sent to the parties. If this is not granted they have a right of appeal within 30 days to the Upper Tribunal. The aim is for these time limits to strike the right balance between access to justice and a more streamlined appeals process. Our aim is to give users a quicker route through the review and appeal process overall.

25. Thirdly, there is a new provision allowing staff of the Scottish Courts and Tribunals Service with appropriate legal qualifications to carry out functions of a judicial nature as long as they are preliminary or incidental in nature. This will allow the legal members of the tribunal to focus on the more complex tasks.

26. Finally, parties will be able to be accompanied by a representative (either legal or lay) and/or a supporter. The supporter may assist a party and provide moral support if required.

QUESTIONS ON THE FIRST-TIER GENERAL REGULATORY CHAMBER RULES OF PROCEDURE

Q1: Do you have any comments on the draft regulations on the First-tier General Regulatory Chamber Charity Appeals Rules of Procedure?

Q2: Do you have any comments on the new review procedure?

Q3: Do you have any comments on the new rule allowing SCTS staff to carry out functions of a judicial nature?

Q4. Do you have any comments on the new rule allowing parties to be accompanied by a representative and/or a supporter?

Q5: Do you have any other comments you wish to make?

PART 4: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE COMPOSITION OF THE FIRST-TIER AND UPPER TRIBUNAL FOR SCOTLAND

Background

27. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-tier and Upper Tribunals.

Draft regulations

28. The draft regulations in **Annex C** apply to the composition of members when hearing cases within the First-tier Tribunal General Regulatory Chamber and appeals or referrals from the First-tier Tribunal General Regulatory Chamber to the Upper Tribunal.

29. The policy intention is to mirror the existing composition for first instance cases as set out in Schedule 2 of the Charities and Trustee Investment (Scotland) Act 2005. This means that cases will be heard by three members one of whom is to be the chairing member. The chairing member will be a legal member.

30. Appeals from the First-tier Tribunal will be heard by the same type of judiciary i.e. Court of Session judges, as currently hear appeals in the courts. However, the appeals will take place in the Upper Tribunal as opposed to the Court of Session. The President of Tribunals will determine how the Upper Tribunal should be composed on a case by case basis.

31. Despite there not being a Chamber President in post, the draft regulations allow the person holding this position to hear cases in the Upper Tribunal if selected to do so. This will allow the General Regulatory Chamber President to hear a case in the Upper Tribunal when a President is appointed.

QUESTIONS ON COMPOSITION REGULATIONS

Q1: Do you have any comments on the proposals regarding the composition of the First-tier Tribunal General Regulatory Chamber?

Q2: Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing referrals or appeals from the General Regulatory Chamber?

Q3: Do you have any other comments you wish to make?

PART 5: DRAFT REGULATIONS SETTING OUT THE ELIGIBILITY FOR MEMBERSHIP OF THE FIRST-TIER TRIBUNAL GENERAL REGULATORY CHAMBER

Background

32. The draft regulations contained in Annex D prescribe eligibility criteria for ordinary members of the First-tier Tribunal. The criteria for ordinary (i.e. non legal) members have been developed specifically to cover members assigned to the General Regulatory Chamber.
33. The criteria for legal membership of the First-tier Tribunal is generic across the Scottish Tribunals, and are already covered by the Scottish Tribunals (Eligibility for Appointment) Regulations 2015². Briefly, a person may only be appointed as a legal member if the person is practising and has practised for a period of not less than 5 years as a solicitor or advocate in Scotland. If a person is not currently practising in Scotland they must be subsequently engaged in exercising judicial functions in any court or tribunal, have had practice or employment as a lawyer of any kind or teaching or have been researching law at or for an educational institution.

Draft Regulations

34. The draft regulations contained within Annex D set out the criteria proposed to be applied by the Scottish Ministers in appointing ordinary members that hear cases within the General Regulatory Chamber.
35. The eligibility criteria for ordinary members are based on the eligibility criteria used in the job descriptions for SCAP members during the initial recruitment exercise. This ensures that all existing members who are under 70 are eligible to transfer into the First-tier Tribunal.

² <http://www.legislation.gov.uk/ssi/2015/381/contents/made>

QUESTIONS ON ELIGIBILITY REGULATIONS

Q1: Do you have any comments on the proposals regarding the eligibility criteria for ordinary members with charity regulatory experience?

Q2: Are there any additional criteria you would wish to see prescribed?

Q3: Are there any proposed criteria that you do not wish to see prescribed?

Q4: Do you have any other comments you wish to make?

PART 6: RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by 1 August 2017

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1 August 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Emily Adams

Tribunals and Administrative Justice Policy

GW15 St Andrew's House

Regent Road

Edinburgh

EH1 3DG

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the

provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Tribunals.consultations@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2017 No.

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal for Scotland (Transfer of Functions of the
Scottish Charity Appeals Panel) Regulations 2017**

<i>Made</i>	- - - -	2017
<i>Coming into force</i>	- -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 79(1)(b) and 80(1) of, and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014⁽³⁾ and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2017 and come into force on [] 2017.

(2) In these Regulations—

the “2005 Act” means the Charities and Investment (Scotland) Act 2005⁽⁴⁾;

the “2014 Act” means the Tribunals (Scotland) Act 2014;

the “Chair” means a member of the Scottish Charity Appeals Panel appointed under paragraph 1(1) and (4) of schedule 2 of the 2005 Act to chair that panel;

the “functions of the Scottish Charity Appeals Panel” means the functions exercised by the Scottish Charity Appeals Panel by virtue of section 76 of the 2005 Act;

“other member” means a member of the Scottish Charity Appeals Panel other than the Chair appointed under paragraph 1(1) and (4) of schedule 2 of the 2005 Act; and

the “Scottish Charity Appeals Panel” means any panel constituted in accordance with section 75(1) of the 2005 Act.

⁽³⁾ 2014 asp 10.
⁽⁴⁾ 2005 asp 10.

Transfer of functions of the Scottish Charity Appeals Panel to the First-tier Tribunal and abolition of the Scottish Charity Appeals Panel

2.—(1) The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal General Regulatory Chamber.

(2) The Scottish Charity Appeals Panel is abolished.

Transfer of members of the Scottish Charity Appeals Panel to the First-tier Tribunal

3.—(1) Subject to paragraphs (2) and (3), the members of the Scottish Charity Appeals Panel under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal, with—

- (a) the Chairs becoming legal members of the First-tier Tribunal; and
- (b) other members becoming ordinary members of the First-tier Tribunal.

(2) Members of the Scottish Charity Appeals Panel transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

(3) Paragraph (1) does not apply to any member of the Scottish Charity Appeals Panel if the member has already been transferred to and is a member of the First-tier Tribunal by virtue of regulations made under section 28(2) of the 2014 Act which were in force prior to these Regulations coming into force.

(4) A member of the Scottish Charity Appeals Panel who is aged 70 or over on coming into force of these Regulations shall transfer only if the Scottish Ministers in consultation with the President of Tribunals consider it desirable in the public interest that the member should transfer.

Transitional and savings provisions

4.—(1) Section 21(1) of the 2014 Act shall not apply to the First-tier Tribunal General Regulatory Chamber until two further sets of regulations have been made under sections 20(2) and 28(2) of that Act transferring functions to the First-tier Tribunal with allocation to the General Regulatory Chamber and the two sets of regulations have come into force.

(2) Schedule 1 of these Regulations contains further transitional and savings provisions.

Consequential provisions

5. Schedule 2 of these Regulations contains consequential provisions.

Revocations

6. Schedule 3 of these Regulations contains revocations

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Regulation 4

Transitional and savings provisions

Appeals and proceedings in progress before the Scottish Charity Appeals Panel immediately before 30 November 2017 to transfer to the First-tier Tribunal

1. Any appeal to the Scottish Charity Appeals Panel in progress immediately before 30 November 2017 but not yet determined and any proceedings of the Scottish Charity Appeals Panel in progress immediately before that date shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 30 November 2017 hearing the case as members of the Scottish Charity Appeals Panel.

Decisions, directions and orders of the Scottish Charity Appeals Panel to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in or in respect of an appeal, and proceedings before, the Scottish Charity Appeals Panel which is in force immediately before 30 November 2017 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

Time limits in respect of references and claims to, and proceedings before, the Scottish Charity Appeals Panel to carry over to the First-tier Tribunal

3. Any time limit which has started to run before 30 November 2017 in respect of appeals to, and proceedings before, the Scottish Charity Appeals Panel (and which has not expired) shall continue to apply where appeals and proceedings are transferred to the First-tier Tribunal.

Unexercised right of appeal to Court of Session, if exercised, is an appeal to the Upper Tribunal

4. Where in respect of a decision of the Scottish Charity Appeals Panel before 30 November 2017, there lies a right of appeal to the Court of Session, which has not been exercised before that date but is still exercisable, any appeal on or after 30 November 2017 shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

Exercised right of appeal to the Court of Session shall be completed by the Court of Session

5. Where in respect of a decision of the Scottish Charity Appeals Panel before 30 November 2017, there lies a right of appeal to the Court of Session which has been exercised before that date, the appeal shall not be affected by these Regulations and be completed by the Court of Session.

SCHEDULE 2

Regulation 5

Consequential amendments

Tribunals and Inquiries Act 1992

5.—(1) The Tribunals and Inquiries Act 1992(5) is amended as follows.

(⁵) 1992 c.53.

(2) In Schedule 1 (Tribunals to which this Act applies, in Part II (Scottish tribunals) paragraph 47A is omitted.

Charities and Trustee Investment (Scotland) Act 2005

6.—(1) The Charities and Trustee Investment (Scotland) Act 2005⁽⁶⁾ is amended as follows.

(2) In section 73 (Effect of decisions)—

(a) in subsection (2)(b)(i) for “Panel” substitute “First-tier Tribunal”; and

(b) in subsection (2)(b)(ii) for “Panel” substitute “First-tier Tribunal” and for “Court of Session” substitute “Upper Tribunal”.

(3) Section 75 (Scottish Charity Appeals Panel) and schedule 2 (Scottish Charity Appeals Panel) are repealed.

(4) In section 76 (Appeals to Scottish Charity Appeals Panel) —

(a) in subsection (1) for “Panel” substitute “First-tier Tribunal”;

(b) in subsection (2) for “Panel” substitute “First-tier Tribunal”;

(c) . in subsection (5) for “Panel” in each place occurring substitute “First-tier Tribunal”; and

(d) in subsection (5) for “Panel’s” substitute “First-tier Tribunal’s”.

(5) The title of section 76 becomes “**Appeals to the First-tier Tribunal**”.

(6) In section 77 (Reconsideration of decision remitted to OSCR), in subsection (1)(C) for “Panel” substitute “First-tier Tribunal”.

(7) Section 78 (Appeals to Court of Session) is repealed.

(8) In section 106 (General Interpretation)—

(a) after the entry of “equal opportunities” insert ““the First-tier Tribunal” means the First-tier Tribunal for Scotland General Regulatory Chamber”; and

(b) omit the entry for “the Panel”.

Public Services Reform (Scotland) Act 2010

7.—(1) The Public Services Reform (Scotland) Act 2010⁽⁷⁾ is amended as follows.

(2) In schedule 5 (Improvement of public functions: listed bodies) in paragraph 1 (Scottish public authorities with mixed functions or no reserved functions), the entry of “Scottish Charity Appeals Panel” is omitted.

(3) In schedule 8 (Information on exercise of public functions: listed bodies) in paragraph 1 the entry of “Scottish Charity Appeals Panel” is omitted.

Public Records (Scotland) Act 2011

8.—(1) The Public Records (Scotland) Act 2011⁽⁸⁾ is amended as follows.

(2) In schedule 1 (Authorities to which Part 1 applies) the entry of “Scottish Charity Appeals Panel” is omitted.

⁽⁶⁾ 2005 asp 104.

⁽⁷⁾ 2010 asp 8.

⁽⁸⁾ 2011 asp 12.

SCHEDULE 3

Regulation 6

Revocation of subordinate legislation

1. The Scottish Charity Appeals Panel Rules 2006⁽⁹⁾ are revoked.

St Andrew's House,
Edinburgh
2017

A member of the Scottish Government

⁽⁹⁾ S.S.I. 2006/571.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Scottish Charity Appeals Panel was set up in accordance with section 75 of Charities and Trustee Investment Act 2005 to deal with appeals against decisions of the Office of the Scottish Charity Regulator.

These regulations make provision for the transfer to the First-tier Tribunal of the functions and members of Scottish Charity Appeals Panel. The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject matter of the case. The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal for Scotland with allocation to the General Regulatory Chamber.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

TRIBUNALS AND INQUIRIES
**The First-tier Tribunal for Scotland General Regulatory Chamber
Charity Appeals (Procedure) Regulations 2017**

<i>Made</i> - - - -	2017
<i>Laid before the Scottish Parliament</i>	2017
<i>Coming into force</i> - -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014⁽¹⁰⁾ and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, they have consulted the President of the Scottish Tribunals and such other persons as they have considered appropriate.

Citation and commencement

9.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017, and the Rules set out in the schedule may be cited as The First-tier Tribunal for Scotland General Regulatory Chamber Rules of Procedure 2017.

(2) These Regulations come into force on [] 2017.

Application of the Rules set out in the schedule

10. The Rules in the schedule apply to proceedings before the First-tier Tribunal for Scotland General Regulatory Chamber, when exercising the functions allocated to it by regulation 2(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2017⁽¹¹⁾.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

⁽¹⁰⁾ 2014 asp 10.

⁽¹¹⁾ S.S.I. 2017/XXX.

SCHEDULE

Regulation 2

THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER CHARITY APPEALS RULES OF PROCEDURE 2017

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Interpretation

1.—In these Rules—

“the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005⁽¹²⁾;

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

“appeal” means the exercise of a right of appeal under section 46(1) of the 2014 Act;

“appellant” means a person who appeals to the First-tier Tribunal under section 76 of the 2005 Act;

“chairing member” means the chairing member of the First-tier Tribunal, who is a legal member of that tribunal;

“Chamber President” means the President of the First-tier Tribunal;

“decision” means a decision of OSCR referred to in section 76(1) of the 2005 Act unless the context requires otherwise;

“direction” means any order or other determination by the First-tier Tribunal other than a decision;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000⁽¹³⁾ and “electronic signature” has the same meaning as in section 7 of that Act;

“First-tier Tribunal” means the First-tier Tribunal for Scotland General Regulatory Chamber;

“hearing” means a sitting of the First-tier Tribunal for the purpose of enabling the First-tier Tribunal to take a decision on an appeal or on any question or matter at which the parties are entitled to attend and be heard; and

“OSCR” has the meaning given in section 1 of the 2005 Act;

“register” means the register of appeals and decisions kept in accordance with rule 25 and

“review” means the internal review provided for by section 43(1) of the 2014 Act.

Delegation to staff

2. — (1) Staff of the Scottish Courts and Tribunals Service with appropriate legal qualifications may, with the approval of the Chamber President, carry out functions of a judicial nature permitted or required to be done by the First-tier Tribunal provided the functions are of a preliminary or incidental nature. .

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

Notice of appeal

3.—(1) An appeal to the First-tier Tribunal in terms of section 76 of the 2005 Act shall be made by giving notice in writing in accordance with the following paragraphs.

(2) The notice shall be addressed to the First-tier Tribunal and shall include—

(a) the name and address of the appellant;

(b) the date and, if known, the reference number of the decision against which the appeal is made;

⁽¹²⁾ 2005 asp 10.
⁽¹³⁾ 2000 c.7.

(c) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required, by these Rules, to be sent to the appellant should be sent to the representative instead of the appellant;

(d) a brief statement setting out the reasons for the appeal; and

(e) a statement that the notice is a notice of appeal.

(3) The appellant or the representative of the appellant (if any) must sign the notice of appeal.

Confirmation of appeal by the First-tier Tribunal

4.— (1) Within 14 days of receipt of the notice of appeal, the First-tier Tribunal shall—

(a) send an acknowledgement of receipt of the notice of appeal to the appellant;

(b) enter the particulars of the appeal referred to in rule 3.(2)(a) and (b) in the register; and

(c) advise the appellant and OSCR, in writing, of the following—

(i) the case number of the appeal;

(ii) the date by which the appellant may submit written representations to the First-tier Tribunal together with copies of all documentation provided to OSCR for the purpose of OSCR reaching the decision against which the appeal is made; and

(iii) the date by which OSCR may make written representations to the First-tier Tribunal and by which it must send to the First-tier Tribunal an authenticated copy of the decision against which the appeal is made.

(2) The date referred to in (1)(c)(ii) is to be no later than 28 days after the date of acknowledgement of receipt of the appeal.

(3) The date referred to in (1)(c)(iii) is to be no later than 42 days after the date of acknowledgement of receipt of the appeal.

Appeal documents

5. The First-tier Tribunal must as soon as possible after receipt of any document from a party to proceedings, send a copy of that document to the other party.

Withdrawal of appeal

6.—(1) A party may give notice to the First-tier Tribunal of the withdrawal of the case made by it in the First-tier Tribunal proceedings, or any part of that case—

(a) by sending or delivering to the First-tier Tribunal a notice of withdrawal; or

(b) orally at a hearing.

(2) Where an appeal is withdrawn, no further appeal may be made in relation to the same decision.

Withdrawal of response by OSCR

7. OSCR may give notice to the First-tier Tribunal of the withdrawal of the case made by it in the First-tier Tribunal proceedings, or any part of that case-

- (a) by sending or delivering to the First-tier Tribunal a notice of withdrawal; or
- (b) orally at a hearing.

Additional, substitution and removal of parties

8.— (1) The First-tier Tribunal may make an order adding, substituting or removing a party as an appellant or a respondent including where—

- (a) the wrong person has been named as a party; or
- (b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.

(2) If the First-tier Tribunal makes an order under paragraph (1) it may make such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the First-tier Tribunal to be added or substituted as a party under this rule.

(4) If the First-tier Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the First-tier Tribunal.

Evidence and submissions

9. — (1) The First-tier Tribunal may give orders as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of any such evidence;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include an order for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The First-tier Tribunal may exclude evidence that would otherwise be admissible where—

- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction.

(b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction; or

(c) it would otherwise be unfair to admit the evidence.

(3) The First-tier Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Sending and delivery of documents

10.—(1) Any document to be provided to the First-tier Tribunal under these Rules, a practice direction or an order must be—

(a) sent by pre-paid post or document exchange, or delivered by hand, to the address of the First-tier Tribunal; or

(b) sent or delivered by such other method as the First-tier Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

(3) If a party informs the First-tier Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the First-tier Tribunal or a party sends a document to a party or the First-tier Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The First-tier Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving notification to the contrary.

Chairing Member

11. Where a matter is to be decided by two or more members of the First-tier Tribunal, the Chamber President must determine the chairing member.

Notice of hearing

12.—(1) The First-tier Tribunal must, with due regard to the convenience of the parties, fix the date, time and place of the hearing of the appeal and, where appropriate, set a timetable for the hearing.

(2) The First-tier Tribunal shall, not less than 14 days before the date fixed under paragraph (1), send to both parties a notice of hearing.

(3) The notice of hearing must state—

(a) the date, time and place of the hearing;

- (b) the members of the First-tier Tribunal; and
 - (c) the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.
- (4) The notice of hearing should, where appropriate—
- (a) provide information and guidance as to attendance at the hearing of the parties and witnesses, the bringing of documents, the right of representation or assistance by another person and the procedure applicable to the hearing, having regard to any applicable rules of evidence and burden and standard of proof;
 - (b) explain the right of the parties to receive reasons in writing for a decision of the First-tier Tribunal;
 - (c) explain the possible advantages of attendance, consequences of non-attendance, and the right of the appellant and of OSCR, if not present and not represented, to make representations in writing; and
 - (d) specify the date by which the appellant and OSCR must inform the First-tier Tribunal whether or not they intend to be present or represented at the hearing, and that date must not be later than 7 days before the hearing.
- (5) The notice must include a request to inform the First-tier Tribunal of any special needs which any party may have which are relevant to the attendance of that party at the hearing.

Hearing in absence of a party

13.—(1) Where either party to the appeal informs the First-tier Tribunal that it does not intend to appear at the hearing, the First-tier Tribunal shall determine a date by which that party may provide further written submissions to be considered at the hearing.

(2) The First-tier Tribunal shall advise both parties to the appeal of the date determined in terms of paragraph (1).

(3) Where both parties inform the First-tier Tribunal that they do not intend to appear or be represented at the hearing, the First-tier Tribunal may proceed to decide the appeal at any time after the date determined by the First-tier Tribunal in terms of paragraph (1).

Absence of member of the First-tier Tribunal

14. If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the chairing member is absent, the hearing may be conducted by the chairing member alongside another member and in that event the hearing will be deemed to be properly constituted.

Representatives

15.—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the First-tier Tribunal prior to any hearing.

- (2) A party may disclose any document or communicate any information about the proceedings to that party's legal representative or lay representative without contravening any prohibition or restriction on disclosure of the document or information.
- (3) Where a document or information is disclosed under paragraph (2), the legal representative or lay representative is subject to any prohibition or restriction on disclosure in the same way that the party is.
- (4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or precognition.
- (5) The First-tier Tribunal may order that a lay representative is not to represent a party if—
 - (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
 - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.
- (6) Where a party is represented, the First-tier Tribunal must send all documents and notices concerning references or claims to the representative instead of the party.

Supporters

- 16.**—(1) A party who is an individual may be accompanied by another person to act as a supporter.
- (2) A supporter may assist the party by—
 - (c) providing moral support;
 - (d) helping to manage tribunal documents and other papers;
 - (e) taking notes of the proceedings;
 - (f) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the party might wish to raise with the tribunal.
 - (3) A party may disclose any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.
 - (4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.
 - (5) A supporter may not represent the party.
 - (6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—
 - (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
 - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

Failure of parties to attend

- 17.**—(1) If a party fails to be present or represented at a hearing, the First-tier Tribunal may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence—
 - (a) hear and decide the appeal in the absence of the party; or
 - (b) adjourn the hearing and may give such directions as it considers necessary (including an order for expenses under rule 22.).
- (2) Before deciding to dispose of any appeal in the absence of a party, the First-tier Tribunal must consider any representations in writing submitted by that party.

(3) Where an appellant has failed to be present or represented at a hearing of which the appellant was duly notified, and the First-tier Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to the First-tier Tribunal in relation to the same decision.

Hearings in public or in private

18.—(1) A hearing must be held in public unless the First-tier Tribunal, on its own initiative or on an application by a party, decides that it is necessary to do otherwise for a fair hearing.

(2) A direction of the First-tier Tribunal under paragraph (1) may require only part of a hearing of an appeal to be in private.

(3) Without prejudice to any other rule of law, the First-tier Tribunal may prohibit photography, audio recording, visual recording or any other recording at any hearing if satisfied that such a prohibition is desirable in order to ensure a fair hearing.

(4) The First-tier Tribunal may give an order excluding from any hearing, or part of it—

(a) any person whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing;

(b) any person whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;

(c) any person where the purpose of the hearing would be defeated by the attendance of that person; or

(d) a person under the age of sixteen years.

Directions

19.—(1) At any stage of the proceedings the First-tier Tribunal may, either on its own cause or on the application of a party, make such direction as it considers necessary for the hearing of the appeal and in particular may direct—

(a) a party to provide any further particulars, supplementary statements or documents which may reasonably be required;

(b) a party which has access to information which is not reasonably available to the other party, to prepare and file a document recording the information;

(c) a party to set out the issues upon which the First-tier Tribunal requires to hear evidence;

(d) that evidence should be excluded if the evidence is irrelevant, unnecessary or improperly obtained;

(e) a party to lodge, before the hearing, an outline argument.

(2) An application by a party for a direction under paragraph (1) (otherwise than during a hearing) must, not later than 7 days before the hearing, be made to the First-tier Tribunal in writing and must set out the direction which the party is seeking to have made together with the reasons for the application.

(3) If a party objects to the direction sought, the First-tier Tribunal must consider the objection and, if it considers it necessary for deciding the application, must give the parties an opportunity of being present or represented before the First-tier Tribunal.

(4) For the purposes of this rule, a party is not obliged to produce a document which that party would be entitled to refuse to produce in civil proceedings before the Court of Session.

(5) In giving effect to this rule, the First-tier Tribunal must take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive or consists of information communicated or obtained in confidence.

Alteration of arrangements for hearing and adjournments

20.—(1) The First-tier Tribunal may, with due regard to the convenience of the parties and prior to commencement of the hearing, alter the date, time or place of any hearing and the First-tier Tribunal must give the parties not less than 14 days' notice of any such alteration unless—

(a) a shorter period of notice is agreed by the parties; or

(b) the requirement to alter the date of the hearing is due to the illness of a member of the First-tier Tribunal or other exceptional circumstance which affects the availability of a member of the First-tier Tribunal to attend the hearing.

(2) If the First-tier Tribunal alters the date of the hearing under paragraph (1), that date must not, unless the parties agree, be before the date fixed in terms of rule 121).

(3) The First-tier Tribunal may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Persons entitled to be present

21.—(1) Subject to rule 18(4) the following persons shall be entitled to attend a hearing and the First-tier Tribunal's deliberations on the hearing, whether or not it is in private:

(a) a member of the First-tier Tribunal not sitting as a member of the First-tier Tribunal for the purpose of the hearing;

(b) a member of staff of the Scottish Courts and Tribunals Service; and

(c) any other person permitted by the First-tier Tribunal with the consent of the parties.

(2) None of the persons specified above who are present at the First-tier Tribunal's deliberations may take any part in those deliberations.

(3) Where the First-tier Tribunal sits in private it may admit persons to the hearing on such terms and conditions as it considers appropriate.

Expenses

22.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party or parties to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1), the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party or parties in whose favour the order for expenses is made.

Decisions of the First-tier Tribunal

23.—(1) A decision of the First-tier Tribunal may be taken by a majority and the decision must record whether it was unanimous or taken by a majority.

(2) Where the First-tier Tribunal is constituted by two members, the chairing member shall have a second vote.

(3) A decision of the First-tier Tribunal may be given at the end of the hearing or within 21 days of the hearing.

(4) A statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal.

(5) The First-tier Tribunal must provide to each party as soon as reasonably practicable after making a decision—

(a) a decision notice stating the First-tier Tribunal's decision

(b) statement of reasons

(c) notification of any rights of appeal against the decision and the time and manner in which such rights of appeal may be exercised.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which the chairing member signs the decision.

(7) The First-tier Tribunal may direct that particulars of a decision relating to—

(a) evidence heard before the First-tier Tribunal in private;

(b) evidence which refers to intimate personal or financial circumstances;

(c) evidence which is considered to be commercially sensitive;

(d) evidence which consists of confidential communication; or

(e) any other matter as the First-tier Tribunal considers appropriate for the protection of parties; must be excluded from publication in terms of rule 24 and from inspection in the register in terms of rule 25.

Publication of decisions

24.— (1) The First-tier Tribunal must make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally at a public hearing or by publishing its decisions in writing.

(2) Where the First-tier Tribunal has made a direction in terms of rule 19(7), the First-tier Tribunal may make any necessary amendments to the text of the decision for the purposes of publication.

(3) Where any decision refers to any evidence that has been heard in private, the material relating to that evidence must be omitted from the decision and the First-tier Tribunal may make any necessary amendments to the text of the decision for the purposes of publication.

(4) Decisions may be published electronically.

The register

25.—(1) A register must be kept by the First-tier Tribunal and must be open for the inspection during reasonable hours by any person without charge.

(2) The register may be made available electronically.

(3) The register must, unless the First-tier Tribunal has directed otherwise, include the following details for each appeal—

(a) the case number;

(b) the name of the appellant;

(c) the decision of OSCR which is being appealed;

(d) the date, time and place fixed for the hearing or the date the appeal is to be decided in absence of the parties; and

(e) the decision of the First-tier Tribunal.

(4) Where any decision refers to any evidence that has been heard in private, the material relating to that evidence must be omitted from the register.

Proof of documents and decisions

26.—(1) Any document purporting to be a document duly executed or issued by or on behalf of the First-tier Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the First-tier Tribunal to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of the matters contained in it.

Method of delivering and receipt of documents

27.—(1) All notices and documents required or authorised by these Rules to be sent to the First-tier Tribunal shall—

(a) be sent to or presented at the office of the First-tier Tribunal; or

(b) where the First-tier Tribunal has notified the parties that electronic communications are accepted in relation to an appeal, be transmitted by electronic communication to a specified address for such communications.

(2) All notices and documents required by these Rules to be sent by the First-tier Tribunal to the parties may—

(a) in the case of OSCR—

(i) be sent by post or delivered to OSCR at its principal place of business; or

(ii) where OSCR have agreed to accept electronic communications, be transmitted by electronic communication to a specified address for such communications.

(b) in the case of the appellant—

- (i) be sent by post or delivered to the address specified in the notice of appeal (or the representative of the appellant); or
- (ii) where the appellant has agreed to accept electronic communications, be transmitted by electronic communication to a specified address for such communications.

(3) Any notice or document sent to a person in accordance with this rule shall, unless the contrary is proved, be deemed to be received—

- (a) where the document is sent by post, on the third day after the day on which it was sent; and
- (b) in any other case, on the day on which the document was transmitted or delivered to that person.

Correction of clerical mistakes or accidental slips or omissions

28. The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it, by—

- (a) sending notification of the amended decision or order, or a copy of the amended document to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, order or document.

Application for permission to appeal a decision of the First-tier Tribunal

29.—(1) A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged point or points of law on which the person making the application wishes to appeal; and
- (c) state the result the party making the application is seeking.

First-tier Tribunal's consideration of application for permission to appeal

30.—(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties and any interested party as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission on any point of law it must provide with the record of its decision—

- (a) a statement of its reasons for such a refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

Review of a decision

31.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review any decision made by it where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the 2014 Act must—

(a) be made in writing (and copied to all other parties);

(b) be made within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons were sent to the parties (if later); and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal shall refuse the application and shall also inform the parties of the reasons for the refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal shall send a notice to the parties—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) at the discretion of the First-tier Tribunal, setting out the First-tier Tribunal's provisional views on the application.

(5) Except where paragraph (3) applies, the decision shall be reviewed at a hearing unless the First-tier Tribunal considers, having regard to any response to the notice provided under paragraph

(4), that a hearing is not necessary in the interests of justice.

(6) Where practicable, the review shall be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it shall inform the parties of the reasons why the decision is being reviewed and the decision shall be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) either at its own instance or on an application of a party does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016⁽¹⁴⁾ for making an application for permission to appeal.

A member of the Scottish Government

St Andrew's House,
Edinburgh
2017

⁽¹⁴⁾ S.S.I. 2016/231.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Tribunals (Scotland) 2014 Act created a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as head of the Scottish Tribunals. It provided for a First-tier Tribunal and an Upper Tribunal and for the First-tier Tribunal to be divided into chambers dependent on the subject-matter of the case before it and similarly for the Upper Tribunal to be divided into divisions. The First-tier Tribunal has been divided into chambers, one of which is the general regulatory chamber. These Regulations provide for the rules of procedure which are to apply in that chamber when hearing charity appeals, which are set out in the schedule of the regulations. Paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014 enables the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions conferring responsibility on the Scottish Civil Justice Council and the Court of Session for the making of Tribunal Rules are commenced.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

TRIBUNALS AND INQUIRIES
**The First-tier Tribunal for Scotland General Regulatory Chamber and
Upper Tribunal for Scotland (Composition) Regulations 2017**

Made - - - - - 2017

Coming into force - - - - - 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014⁽¹⁵⁾ and all other powers enabling them to do so.

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

In accordance with section 79(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland General Regulatory Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 and come into force on [] 2017.

(2) In these Regulations “the First-tier Tribunal” means the First-tier Tribunal for Scotland General Regulatory Chamber.

Composition of First-tier Tribunal

2.—The First-tier Tribunal, when convened to decide any matter in a case, must consist of three members at least one of whom shall be a legal member who shall chair the hearing.

⁽¹⁵⁾ 2014 asp 10.

Composition of Upper Tribunal hearing appeals or referrals from First-tier Tribunal

3.—(1) The Upper Tribunal, when deciding an appeal in a case decided by the First-tier Tribunal to the Upper Tribunal, shall consist of—

- (a) a Court of Session judge, acting either alone or with another judicial member of the Upper Tribunal;
- (b) the President of Tribunals, acting either alone or with another judicial member of the Upper Tribunal; or
- (c) the Lord President, acting either alone or with another judicial member of the Upper Tribunal.

(2) In this regulation “judicial member of the Upper Tribunal” means a judge of the Court of Session.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the General Regulatory Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing appeals from the First-tier Tribunal for Scotland General Regulatory Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the general Regulatory Chamber projected to deal with a range of diverse matters including charity appeal. Members of the tribunals can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. This instrument sets out which member or members may hear cases in the two tribunals.

SCOTTISH STATUTORY INSTRUMENTS

2017 No.

TRIBUNALS AND INQUIRIES

The Scottish Tribunals (Eligibility for Appointment) Amendment
Regulations 2017

<i>Made</i>	- - - -	2017
<i>Laid before the Scottish Parliament</i>		2017
<i>Coming into force</i>	- -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80 and paragraph 1(2) of schedule 3 to the Tribunals (Scotland) Act 2014⁽¹⁶⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 and come into force on [] 2017.

(2) In these Regulations, “the 2015 Regulations” means the Scottish Tribunals (Eligibility for Appointment) Regulations 2015⁽¹⁷⁾.

Amendment of the 2015 Regulations

2.—(1) The 2015 Regulations are amended in accordance with paragraph (2).

(2) After regulation 3, insert—

Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland (charity regulatory experience)

3B. A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland if the person has knowledge and experience in law or accounting or governance of public and private bodies.”

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
2017

⁽¹⁶⁾ 2014 asp 10.
⁽¹⁷⁾ S.S.I. 2015/381

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to provide eligibility criteria for appointment of ordinary members of the First-tier Tribunal in respect of general regulatory experience. They also revoke regulation 4 of the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005.

**Tribunals (Scotland) Act 2014 - Consultation on Draft Regulations
regarding:**

**(1) the Transfer of Functions and Members of the Scottish Charity Appeals
Panel to the Scottish Tribunals;**

**(2) the rules of procedure for the First-tier Tribunal for Scotland General
Regulatory Chamber Charity Appeals and**

(3) the composition of the First-tier and Upper Tribunals for Scotland

**(4) the eligibility for ordinary membership of the First-tier Tribunal for
Scotland General Regulatory Chamber**

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
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