

**Tribunals (Scotland) Act 2014: Consultation on Draft Regulations Making Provisions in  
Relation to Social Security Appeals  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 The LITRG welcomes the opportunity to respond to the Scottish government consultation on draft regulations making provision in relation to Social Security appeals. Much of our response focuses on the draft rules of procedure.
- 1.2 For the most part, the proposed rules of procedure for the First-tier Tribunal (FtT) Social Security Chamber (SSC) for Scotland and the Upper Tribunal (UT) for Scotland draw on the current rules for the UK FtT Social Entitlement Chamber and UT. There are also elements that reflect the existing rules of procedure for the Scottish Tribunals. On the whole, we welcome this approach. There are areas, however, where we think improvements could be made, and we draw attention to those areas in this response.
- 1.3 In terms of the FtT SSC and the UT, there are some important principles to bear in mind. It is important that the tribunals are independent – both in fact (real independence) and appearance (perceived independence) – from the Scottish Social Security agency; the tribunal system must be accessible to all; appellants must be fully advised of their appeal rights and be provided with adequate and neutral guidance on tribunal procedures.
- 1.4 Effective case management is key, and in this regard we welcome the explicit requirement in the rules for the FtT and UT to have regard to the Scottish Social Security Charter.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 The Scotland Act 2016 devolves 11 benefits to the Scottish parliament. The Scottish government will deliver devolved Social Security assistance on a phased approach, once the Social Security (Scotland) Bill has completed the parliamentary process, which is anticipated to occur in spring 2018. The Tribunals (Scotland) Act 2014 created a new framework for tribunals in Scotland and brought existing tribunal jurisdictions together; it also created two new tribunals, the FtT and the UT (together, the Scottish Tribunals). The intention is to establish a new chamber of the FtT, to deal with appeals against determinations of entitlement to assistance delivered under the Scottish Social Security system. It is also anticipated that ultimately, appeals in Scotland against decisions on reserved benefits will be heard by the new chamber of the FtT.
- 3.2 The consultation deals with six sets of regulations, designed to create a new chamber of the FtT – the SSC – and make provision for the UT.
- 3.3 We are commenting on the draft regulations from the viewpoint of an appellant on a low income who cannot afford to pay for professional assistance with their case. We focus specifically on the areas where we feel we can add value.

- 4 Draft Regulations Establishing a Chamber of the First-tier Tribunal for Scotland Dealing with Entitlement to Social Security and Setting out its Functions (Annex A)**
- 4.1 ***Do you have any comments on the description of functions exercisable by the Social Security Chamber in considering entitlement to assistance under the Scottish social security system?***
- 4.1.1 The description of functions exercisable by the SSC appears reasonable and we have nothing further to add.
- 4.2 ***Do you have any comments on the power of the Social Security Chamber to consider all aspects of a determination which it is called upon to review?***
- 4.2.1 Regulation 6 gives the SSC a very broad power. If both parties accept certain aspects of a determination, it might be perceived as inappropriate for the FtT SSC to consider and perhaps overturn those aspects. If this broad scope approach is adopted, there should be very clear communications to recipients of assistance under the Scottish Social Security system that an appeal to the FtT SSC might result in changes to other aspects of the determination, which they are not in fact appealing against. These changes may be positive or negative from the appellant's perspective. This power should also be exercised with care and we would expect the FtT SSC to have detailed guidance on the use of this power and to advise its members to take the Scottish Social Security Charter into account when doing so. Guidance might include examples of when it would be appropriate to exercise this power, for example, if there is new, compelling evidence that was not available when the original determination was made. Consideration should also be given as to whether this power is likely to create a disincentive to appeal and whether it is consistent with the Scottish government aspiration for a compassionate Social Security system.
- 4.3 ***Do you have any other comments you wish to make on the draft regulations?***
- 4.3.1 We have no further comments in respect of the draft regulations.
- 5 Draft Regulations Adding the Name of the Social Security Chamber to the List of Chambers into which the First-tier Tribunal for Scotland is divided (Annex B)**
- 5.1 ***Do you have any comments you wish to make on the draft First-tier Tribunal for Scotland (Chambers) Amendment Regulations?***
- 5.1.1 Draft regulation 1(1) currently reads "These Regulations may cited as the..."; this should be amended to read "These Regulations may **be** cited as the ...".

## **6 Draft Regulations Setting out Rules of Procedure for the First-tier Tribunal for Scotland Social Security Chamber (Annex C)**

### **6.1 Do you have any comments on:**

**(a) Any of the elements of the draft rules of procedure described at paragraphs 27-38 above;**

**(b) Any other aspect of the draft rules of procedure?**

- 6.1.1 We strongly welcome the fact that the draft rules of procedure make explicit reference to the overriding objective that when dealing with cases the FtT and UT may have regard to the Scottish Social Security Charter that is to be prepared and published in accordance with the future Social Security (Scotland) Act 2018. Not only do we support the legislative basis for the Scottish Social Security Charter, but we believe it is important that the FtT and UT are empowered to take the Charter into account when dealing with appeals, while maintaining judicial independence.
- 6.1.2 We welcome the omission of provisions stating that proceedings will be dismissed automatically if a party fails to comply with an order that expressly states non-compliance will lead to striking out and allowing for dismissal of a case because the FtT considers there is no reasonable prospect of the appellant's case succeeding.
- 6.1.3 In contrast, we are concerned about the omission of provisions allowing the FtT to bar the respondent from taking further part in the proceedings (see paragraph 30 of the consultation document). We note that on occasion this type of power has been used to good effect against, for example, HMRC, where HMRC have been in flagrant breach of orders. We think it would be appropriate for the FtT to have some sanction against the respondent in the (hopefully rare) event that it repeatedly ignores deadlines or fails to comply with orders.
- 6.1.4 The UK FtT Social Entitlement Chamber has a no-costs regime, without exceptions. Provision is made there for appellants to be reimbursed out-of-pocket expenses incurred in attending a hearing. We think that there should be additional provisions to clarify that the FtT SSC will essentially have a no-expenses regime, other than those as described in paragraph 31 of the consultation document. In relation to the provision for orders of expenses, it would be helpful to understand in what instances the FtT SSC might decide to make an award of expenses *against the appellant*. It is important that potential appellants, who are already in a vulnerable position, are not given a disincentive to appeal due to the fear of being made to pay an order of expenses. The fear of an adverse order of expenses may discourage not only those who do not have a legitimate or reasonable claim, but also those who have a good case. We trust that before making an award of expenses against an appellant the FtT SSC will first take into account, consider and assess the appellant's financial means. There should also be an opportunity for the party to make representations before the FtT SSC makes an award for expenses against them.
- 6.1.5 We welcome rule 13, which provides for interpreters.
- 6.1.6 We have some concerns about the proposal that the SSC may carry out a review of their decision either at the request of a party to the case or as a result of the FtT deciding to

revisit its own decision, although as noted below, we think it is useful in certain circumstances. The ability of the FtT to instigate a review, even if the decision has been accepted by both parties, introduces uncertainty for both parties as to whether or not a decision made by the FtT is final. This is particularly unhelpful when dealing with appeals from vulnerable people. Consideration should be given as to how this rule sits with Scottish government aspirations for a compassionate Social Security system. Although rule 40(1) makes provision for this to occur “where it is necessary in the interests of justice to do so”, we think the rule should clarify further in what circumstances the FtT might require this power. For example, it might be appropriate for the SSC to carry out a review of their decision if a new issue of law emerges subsequently, one which was not known to either party or to the FtT at the time of the hearing and it is in the interests of justice for the matter to be reconsidered in the light of the new issue of law. This may include, for example, a case which was correctly decided in domestic UK law, but it later emerges that domestic UK law is in contravention of EU law, or human rights law, or some other supra-national jurisdiction to which the UK is a signatory. Another example of when it might be appropriate to use this power would be where it would obviate the need to go to appeal; thus it would provide a quick route to correct matters, which the FtT can admit it got wrong, provided all parties are properly represented or their interests are properly taken into account. It would also be helpful if there could be clarification of the time limit that applies to the FtT in deciding to revisit its own decision.

6.1.7 We think that a *pro bono* service for low-income, unrepresented appellants to obtain assistance with presenting their case, or directing unrepresented appellants to where such a service can be found, would be in the interests of justice and would also save costs in the long run.

6.2 ***With reference to (a), do you have any comments, in particular, on:***

- ***The proposal that hearings will be recorded as a matter of routine?***
- ***The possibility of referral for a medical examination, and the circumstances in which this may happen?***

6.2.1 We think that the proposal that hearings will be recorded as a matter of routine is reasonable. All parties should be made aware of this and reminded of this before the hearing takes place; moreover, at the time of making an appeal to the tribunal, an appellant should be made aware of this. At the time of making the appeal, the appellant should have the opportunity to make representations as to why they think this (routine recording) should not apply to their hearing. There should also be a clear process for appellants to request a copy of the recording.

6.2.2 On the one hand, we welcome the fact that the rules include provision for medical examinations (where considered necessary) to be carried out by an independent medical practitioner, rather than by a member of the FtT. This is important in ensuring that the examination and conclusions are both independent and seen to be independent. We do have a concern though that in cases where such an examination is required, this will place more stress on an individual who is already dealing with a stressful situation (participating in an appeal at the FtT). Moreover, we are concerned that this may prolong the tribunal

process or create delays in the process – the rules do not specify when or where such an examination should take place or at what stage in the proceedings. We think the rules should set out time limits within which the medical examination should take place, in order to keep any delay to a minimum.

6.3 ***Would you welcome provision for supporters in cases before the Social Security Chamber to have the opportunity, with appropriate permission, to make representations during proceedings?***

6.3.1 In relation to supporters, we welcome the suggestions at paragraph 33 of the consultation document, and agree that it would be helpful to provide for supporters involved in cases before the FtT to have a more expansive role, such as putting forward representations, where this is agreed to by the FtT and both parties.

6.4 ***Are there any other respects in which you would consider that the approach of the 2008 Rules should be departed from?***

6.4.1 Like the 2008 Rules, these rules are unbalanced as time runs against the appellant from when the respondent or the FtT **sends** the document, while time does not run against the respondent or the FtT until the document sent by the appellant is **received**. It is also not clear how the appellant is to know the precise date on which the respondent or FtT sends the document, although that date is crucial in determining when the appellant's time limit starts to run. We would prefer to see a balanced approach to the way in which time runs against different parties. We think it would be preferable, for example, to simply rely on the section 7 of the Interpretation Act 1978, where if something is sent by post, properly addressed and with postage pre-paid, it is deemed to be received "at the time at which the letter would be delivered in the ordinary course of post".

6.5 ***Do you have any other comments which you would wish to make on the draft procedure regulations?***

6.5.1 Rule 1 sets out how to interpret certain terms used within the rules. The definition of "party" should be extended to include the phrase "(or was at the time that the First-tier Tribunal disposed of the proceedings)".

6.5.2 We think that rule 2 sets the right tone. Particularly for the unrepresented party, it is important that the tribunal process deals with them fairly in order to achieve the overriding objective of ensuring that justice is served.

6.5.3 In terms of the parties' responsibilities, we note that rule 2(4)(a) states that parties must "help the First-tier Tribunal to further the overriding objective". We welcome the fact that this is preceded by the phrase, "insofar as reasonably possible", as otherwise, we do not believe this requirement would be feasible or fair for unrepresented appellants. By way of example, if the appellant has to forgo a day's wages, or incur additional childcare or other costs which they cannot afford, in order to "help the First-tier Tribunal to further the overriding objective", unfairness could result. In respect of this responsibility, we recommend that every unrepresented appellant should receive good, plain English guidance

as to the Tribunal rules and procedures in order to enable them to fulfil their obligations. Such guidance should be produced in hard copy as well as being available online.

- 6.5.4 Rule 5(2) reads “conduct **and** disposal”; we note that the UK rules read “conduct **or** disposal”, and question whether the change is deliberate.<sup>1</sup>
- 6.5.5 More generally in relation to the case management powers set out in rule 5, it should be noted that, in order to gain the confidence of unrepresented appellants, it is essential that the FtT SSC processes are not only independent of the Scottish Social Security agency process, but are manifestly seen to be independent. In particular, appellants should have free access to the FtT SSC and its case management service at all times.
- 6.5.6 The Scottish government must of course also be satisfied that the wording of the rules allows sufficient flexibility to adopt different procedures for different types of appeals and hearings. It might be considered appropriate to ‘test’ the rules against a range of theoretical cases, by way of a practicality check.
- 6.5.7 Rule 6(4) states “Unless the First-tier Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any order to every party to the case.” We are doubtful whether there would ever be justification to not send written notice of directions and it would be useful to have some indication of the type of circumstances in which it is envisaged that this would be used. Presumably it would only be in extremely rare cases?
- 6.5.8 We think that rule 7(2) should include a further qualification that the FtT should take into account the circumstances of the party and any reason given for failure to comply. There is a need for leniency where the reason for failure to comply was that the party was, for example, unrepresented, or had not the means to travel to attend to give evidence, etc. Will such circumstances be taken into account in evaluating the action to take which the FtT SSC “considers just”? We would prefer the rules to be explicit.
- 6.5.9 Rule 9(4) reads “evidence to the **if the** First-tier”; this should be amended to read “evidence to the First-tier”.
- 6.5.10 Rule 11 deals with representatives and refers purely to “representative(s)”. We note that the UK rules refer to “legal or lay representative(s)” and wonder whether this divergence is deliberate. We think that rule 11(6) should be amended to read “required to be done **by a party** under these Rules”.
- 6.5.11 Rule 15 deals with the sending and delivery of documents. Should rule 15(1) also allow documents to be sent by “such other method” as the FtT may allow? We think rule 15(3) should be amended to read “the First-tier Tribunal **and all other parties** that ... (other than **pre-paid** post ...” In addition, we wonder whether a paragraph has been omitted from rule

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, rule 5(2): <http://www.legislation.gov.uk/uksi/2008/2685>.

15 – we think a new paragraph (4) should be inserted, such that the current 15(4) becomes 15(5). The new rule 15(4) should read:

(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.

- 6.5.12 In relation to rule 15, consideration should also be given as to whether it should set out issues of service. For example, if a document is sent by email, at what point is it deemed to be received and sent? We wonder if the rule should also contain provisions setting out how an intended recipient can show that an email was never received, for example in the case of a mis-typed email address or similar.
- 6.5.13 We can envisage problems with the proposed power to issue orders requesting expert evidence (rule 17(1)(c)). What will happen where a party is required to provide expert evidence but cannot afford to appoint an expert?
- 6.5.14 We think that rule 19(3)(a) should be amended to read “directed that any **notice of withdrawal will**”.
- 6.5.15 Rule 23 deals with time and venue of hearings. We feel there should be additional rules here requiring the President of Tribunals to have assessed any special needs of the parties prior to giving notice of the hearing time or venue. We acknowledge that this issue may to some extent be assisted by the requirement on the FtT SSC to have regard to the Scottish Social Security Charter. Nevertheless, we think rule 23 should explicitly refer to the need to take account of factors such as disability, lack of means to attend a hearing at a distant location and so forth in ensuring the hearing takes place at a suitable time and location.
- 6.5.16 Rule 24(4) sets out the details that a notice of appeal must state. These include 24(4)(e) “the outcome which the appellant is seeking”. While we acknowledge that when making a complaint, it can be helpful for the respondent to understand what outcome the complainant is seeking, in respect of an appeal against a Social Security assistance determination, we are not convinced that it is helpful to the appellant. In the first place, the appellant may not be fully cognisant of the possible outcomes available and may find it difficult to articulate exactly what outcome they are seeking; secondly, we are concerned that the FtT’s decision and ruling may be affected by this – for example, if the appellant does not seek the most beneficial outcome for themselves, it is possible that the outcome may be limited or curtailed by the appellant’s expectations.
- 6.5.17 In addition, rule 24(5) imposes inappropriate requirements on unrepresented appellants, for whom it will be almost impossible to produce all the specified items with the notice of appeal. There should be provision for the appeal notice to be given, and for them to subsequently produce the other required items, with any necessary assistance from the Tribunal staff.
- 6.5.18 We think that rule 25(1) should be amended to read “as soon as **reasonably practicable**”.



- 6.5.19 We think that rule 27(1)(a) should be amended such that it reads “**each party has consented** to ...”, rather than “no party has objected to ...”. The requirement for consent ensures that each party has been asked whether or not they are happy for the matter to be decided without a hearing. A requirement for no objection would mean that in some cases a party might inadvertently (and perhaps without receiving notification) allow the decision to be made without a hearing.
- 6.5.20 There should be a time limit within which the Tribunal must issue a final decision – “as soon as reasonably practicable”, rule 33(2), is not adequate. We think that rule 33(2) should also include the phrase “**subject to rule 16 (disclosure of documents and information)**”. Otherwise, this rule departs from the UK equivalent rule in a manner which we think inappropriate.
- 6.5.21 The reference to “rule 16” in rule 34(4) is incorrect, as it should read “rule 16 (**disclosure of documents and information**)”.
- 6.5.22 To ensure clarity, we think that rule 37(1)(b) should read “one **or more** of the conditions”. In addition, we think that rule 37 should include provision for setting aside a decision which disposes of proceedings if a new issue of law emerges subsequently, one which was not known to either party or to the FtT at the time of the hearing, and it is in the interests of justice for the matter to be reconsidered in the light of the new issue of law. This may include, for example, a case which was correctly decided in domestic UK law, but it later emerges that domestic UK law is in contravention of EU law, or human rights law, or some other supra-national jurisdiction to which the UK is a signatory.
- 6.5.23 We suggest that rule 39 should provide for the FtT to first consider whether to review the decision in accordance with rule 40, when it receives an application for permission to appeal against its decision.

## **7 Draft Regulations Setting out the Composition of the First-tier Tribunal for Scotland Social Security Chamber and the Upper Tribunal for Scotland (Annex D)**

### **7.1 (a) Do you have any comments on the proposed composition of the Social Security Chamber when dealing with an appeal against a determination of entitlement to assistance under the Scottish Social Security system?**

- 7.1.1 There is no indication in the regulations as to whether panels consisting of more than one member must decide cases unanimously or by majority. If a majority is required, we note that in tribunals consisting of two members, one of the members must have a deciding vote. From the appellant’s point of view, if differing views are held among panel members it is less unpalatable if a decision against the appellant is handed down by a clear majority than by means of a casting vote. The casting vote method of determining the outcome is also presumed to be demotivating for the ‘junior’ panel member; yet it is difficult to see how this situation might be avoided, short of avoiding panels comprised of two members altogether.

7.1.2 The composition of the FtT as set out in regulation 2 is very prescriptive. We think that consideration must be given as to whether this will be straightforward to implement in practice; in addition, thought should be given as to whether there is a possibility of some cases falling within the terms set out in both regulation 2(a) and regulation 2(b) – and what solution would be adopted if this were to occur.

7.2 ***(b) In particular, are you content with the default position that cases should be decided by only one member, namely the legal member, unless certain forms of assistance are under consideration?***

7.2.1 We are content with this default position.

7.3 ***Do you have any comments on the proposed composition of the Upper Tribunal for Scotland when deciding appeals from the Social Security Chamber to the Upper Tribunal?***

7.3.1 We have no comments.

7.4 ***Do you have any other comments you wish to make on the draft composition regulations?***

7.4.1 We have no comments.

## **8 Draft Regulations Setting out Eligibility Criteria for Appointment of Ordinary Members of the First-tier Tribunals for Scotland: Medical and Disability Experience (Annex E)**

8.1 ***Do you have any comments on the proposals regarding eligibility criteria for appointment of ordinary members of the First-tier Tribunal with medical and disability experience?***

8.1.1 We welcome the approach taken in relation to eligibility criteria for appointment of ordinary members of the FtT. It seems appropriate to us that individuals who have experience of the needs of persons who have a disability should be eligible to sit as ordinary members, and that the necessary experience can be gained through a variety of ways, including having a disability, working (professionally or voluntarily) with people who have a disability and providing care to a person who has a disability.

8.1.2 In relation to new regulation 3C(a), we wonder whether this needs to specify which registered medical practitioners are eligible – for example, if they must be registered with the General Medical Council in particular, it would provide useful clarification if the regulation referred to this.

8.2 ***In particular:***

***(a) can you envisage a situation in which a person may have gained experience of the needs of people with disabilities, but which may not be covered by the criteria set out in the draft regulations?***

***(b) do you have any concerns about our proposed approach to identifying when a person will be considered to have a disability?***

8.2.1 We think that the criteria set out in the draft regulations should cover those individuals who have gained experience of the needs of people with disabilities. We think that it is appropriate to use the definition of disability within section 6 of the Equality Act 2010, in order to identify when a person will be considered to have a disability.

8.3 ***Do you have any other comments you wish to make on the draft eligibility appointment regulations?***

8.3.1 Note 2 to regulation 1(2) refers to “S.S.I. 2015/381, which are amended by S.S.I. 2007/274.” The amending S.S.I. is “S.S.I. 2017/274”.

9 **Draft Regulations Setting out Rules of Procedure to be Applicable to the Upper Tribunal for Scotland when Dealing with Cases under the Current Social Security (Scotland) Bill (Annex F)**

9.1 ***Do you have any comments on:***

***(a) Any of the elements of the draft rules of procedure described at paragraphs 54-61 above?***

***(b) Any other aspect of the draft rules of procedure?***

9.1.1 Many of the points made on the FtT rules are replicated in the UT draft rules and, where they are of relevance, our comments above should also be taken as applying to the UT.

9.1.2 We reiterate our comments at paragraph 6.1.1 above.

9.1.3 Expenses can be a barrier to accessing justice.<sup>2</sup> Appellants of low or modest means will struggle to meet their own costs. The possibility of an adverse expenses award against them is a further disincentive to pursuit of their case. In the interests of justice, we favour an optional expenses regime at the UT. We suggest that the UT is given discretion to award some or all of the expenses, rather than it just being an all or nothing option.

9.1.4 In relation to the recommendation to give the appellant the ability to opt for the no-expenses regime in the UT, our particular concern is where the appellant has won at first instance and the respondent appeals to the UT. An appellant may be unable to be represented before the UT for fear of being liable for the respondent’s expenses. We cannot see that it is in the interests of justice that any appellant who has won in the FtT (and who therefore must have, by definition, at least a good arguable case) should be prevented from defending himself for fear of the expenses of doing so. Therefore, we think there is a need for provision in the UT rules for a discretion in respect of expenses awards in cases won by appellants in the FtT and which have then been appealed by the respondent to the UT.

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<sup>2</sup> We acknowledge that in the case of the UT the proposal is to provide for the payment of expenses only in relation to daily expenditure incurred – nevertheless, we believe that these could still prove to be a barrier to justice for some.

Otherwise, there is a danger of appellants, and particularly unrepresented appellants, being unwittingly exposed to the expenses regime.

9.2 ***Are there any other elements of the rules applicable to social security proceedings in the Upper Tribunal which you think should be replicated in the draft rules for the Upper Tribunal for Scotland, and have not been?***

9.2.1 We have no comments.

9.3 ***Conversely, are there any elements of the rules applicable to social security proceedings in the Upper Tribunal which have been replicated in the draft rules for the Upper Tribunal for Scotland, and which you do not think should be so replicated?***

9.3.1 We have no comments.

9.4 ***Do you have any other comments you wish to make on the draft procedure regulations for the Upper Tribunal?***

9.4.1 Many of the detailed points made on the FtT rules are replicated in the UT draft rules and, where they are of relevance, our comments above should also be taken as applying to the UT. For example, our comments in paragraph 6.5.7 above apply equally to rule 9 for the UT.

9.4.2 Regulation 2 should be amended to read “The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016” – the closing parenthesis is incorrectly positioned in the draft regulations.

9.4.3 Rule 1 – the three bullet points under “respondent” should be renamed “(a)”, “(b)” and “(c)”. Within the definition of “review period”, the reference to a review should be to “rule 31(1)”, and the reference to a notification should be to “rule 31(5)”.

9.4.4 Rule 17(4) should be amended to read “document to a party **or** the Upper”.

9.4.5 Rule 28 (Hearings in a party’s absence) refers to the UT being “satisfied that the party has been notified of the hearing”. How will the process ensure that this is the case? For example, if postal or email notification is given, it would be possible that the notification was never received. Will efforts be made to contact the party on the day of the hearing if they fail to appear? We note that there are two limbs to the conditions – with the second condition being that the UT must consider that it is in the interests of justice to go ahead, which we welcome.

LITRG  
10 April 2018