

Equalities, Human Rights and Civil Justice Committee

15th Meeting, 2023 (Session 6), Tuesday 20 June 2023

Subordinate legislation

Note by the Clerk

Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instrument:
 - [The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland \(Composition and Procedure\) \(Miscellaneous Amendment\) Regulations 2023 \[draft\]](#) - Policy Note and any other associated documents are at [Annexe A](#).

2023/Draft: The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition and Procedure) (Miscellaneous Amendment) Regulations 2023

2. The instrument is made under powers in the Local Government Finance Act 1992 and the Tribunals (Scotland) Act 2014.
3. This instrument makes amendments to the rules which were introduced earlier this year in connection with the transfer of appeals functions to the First-tier and Upper Tribunal for Scotland from the bodies which had previously deal with such appeals.
4. It amends the procedural rules for valuation and council tax appeals as follows:
 - Regulation 2 of the instrument changes the rules on the composition of the Upper Tribunal (e.g. how many judges must sit on the panel), by making the rule the same for all types of valuation rating appeals: that they must be heard by 1-3 panel members as specified in regulation 4 of the First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland

(Composition) Regulations 2023 ([SSI 2023/47](#)). Previously the rule was different for appeals under s. 1(3A) or 3(BA) of the Lands Tribunal Act 1949 (i.e. appeals under the Valuation Acts), which required 3 members of the Upper Tribunal to sit. Regulation 2 also provides that the same rules on composition apply to cases which were previously dealt with by the Lands Tribunal but have been transferred to the Upper Tribunal.

- Regulation 3 increases from 6 week to 6 months the deadline for a council tax assessor to serve a decision notice when rejecting a proposal to change a valuation banding for council tax. The change made by regulation 3 returns the time limit to that which applied before the new rules came into force on 1 April 2023. The Policy Note states that this is being done in response to representations from stakeholders that the shorter period was overambitious.
- Regulation 4 corrects a cross-referencing error in regulation 94(3) of the Council Tax Reduction (Scotland) Regulations 2021 ([SSI 2021/249](#)).
- The error was introduced by an amending instrument which the Delegated Powers and Law Reform (DPLR) Committee considered on [10 January 2023](#): the [First-tier Tribunal for Scotland \(Transfer of Functions of the Council Tax Reduction Review Panel\) Regulations 2023](#). The error (whereby reference was made to regulation 70A(2) instead of regulation 93(4)(c)) was reported by the DPLR Committee. The Scottish Government indicated that it intended to correct the error. This instrument now makes the correction.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [30 May 2023](#) and agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit, but welcomed that this instrument fulfils the Scottish Government's commitment to amend the previously noted cross-referencing error.

Equalities, Human Rights and Civil Justice Committee Consideration

Procedure for Affirmative instruments

6. The draft instrument was laid on 22 May 2023 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6) and, if approved, due to come into force on 1 July 2023. It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
7. The Minister for Victims and Community Safety has, by motion [S6M-09108](#), proposed that the Committee recommends the approval of the instrument.

8. The Minister for Victims and Community Safety is due to attend the Committee meeting on 20 June to answer any questions on the instrument and to move the motion for approval.
9. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 30 June 2023. Thereafter, the Parliament will be invited to approve the instrument.**
10. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instrument for publication.**

Clerks to the Committee
June 2023

Annexe A

The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition and Procedure) (Miscellaneous Amendment) Regulations 2023 [draft]

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by sections 80, 87 and 113(1) of the Local Government Finance Act 1992, and sections 10(2)(a) and 40(1), (3) and (4) of the Tribunals (Scotland) Act 2014. The instrument is subject to affirmative procedure.

Purpose of the instrument

The purpose of the instrument is to amend the First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2023, the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 and the Council Tax Reduction (Scotland) Regulations 2021.

Policy objectives

The Tribunals (Scotland) Act 2014 (“the 2014 Act”) creates a new structure for the devolved tribunals in Scotland. The First-tier Tribunal for Scotland (“First-tier Tribunal”) and Upper Tribunal for Scotland (“Upper Tribunal”) were established by the 2014 Act. The First-tier Tribunal is organised into chambers according to, amongst other things, the different subject matters falling within the Tribunal’s jurisdiction.

A suite of regulations to effect the transfer of functions of the Council Tax Reduction Review Panel (“CTRRP”) and the Valuation Appeal Committees (“VACs”) to the Local Taxation Chamber of the First-tier Tribunal came into force on 1 April 2023 (respectively, the First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 and the First-tier Tribunal for Scotland (Transfer of Functions of the Valuation Appeal Committees) Regulations 2023). At the same time, the valuation rating appeal functions of the Lands Tribunal for Scotland were transferred to the Upper Tribunal (the Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023).

The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2023 (“the Composition Regulations”) set out the composition of the First-tier Tribunal when hearing non-domestic rates and council tax appeals, and of the Upper Tribunal when hearing referrals or appeals under sections 1(3A) or (3BA) of the Lands Tribunal Act 1949 (“the valuation rating appeal functions”).

This instrument makes amendments to the Composition Regulations, the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (“the 1993 Regulations”) and the Council Tax Reduction (Scotland) Regulations 2021 (“the 2021 Regulations”).

This instrument amends the Composition Regulations to align the Upper Tribunal when exercising the valuation rating appeal functions with the Upper Tribunal when hearing all other appeals. The composition of the Upper Tribunal could be:

- a) a member of the Upper Tribunal acting alone
- b) two or three members of the Upper Tribunal
- c) the Chamber President (except a temporary Chamber President), acting alone or with no more than two members of the Upper Tribunal
- d) the President of Tribunals, acting alone or with the Chamber President or with no more than two members of the Upper Tribunal, or
- e) the Lord President, acting alone or with the Chamber President or with no more than two members of the Upper Tribunal.

This change is being made to introduce greater flexibility to the composition of the Upper Tribunal when exercising the valuation rating appeal functions, and to align it with the composition when hearing all other appeals.

The 1993 Regulations are amended to change the time period for service of a notice in respect of a proposed alteration of a council tax valuation band from 6 weeks to 6 months. Regulation 15 of the 1993 Regulations was substituted by the First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeal Committees) Regulations 2023 with the changes taking effect on 1 April 2023. Prior to the substitution, regulation 15 placed a requirement on an assessor to carry out various different actions within a time period of six months when the assessor is of the opinion that a proposal is not well-founded.

Within the new regulation 15 the time period for the equivalent actions has been changed to six weeks. Following representations from stakeholders, there are concerns that this timeframe is overambitious. The amending regulations will change the time periods from six weeks to six months.

Regulation 94 of the 2021 Regulations was substituted by the First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 with the changes taking effect on 1 April 2023. This amending instrument corrects a consequential amendment in regulation 94 of the 2021 Regulations.

Consultation

A consultation regarding the suite of transfer regulations took place with interested parties between 20 September and 28 November 2021. There were 13 responses to this consultation. 11 respondents gave permission to publish their responses, which are available on the Scottish Government website:

https://consult.gov.scot/justice/local-taxation-vac-etc-transfer-of-functions/consultation/published_select_respondent

The President of Tribunals has been consulted in relation to this instrument, in accordance with section 11(2) of the 2014 Act.

Impact assessments

An Equality Impact Assessment was completed for the Tribunals (Scotland) Bill:

Tribunals (Scotland) Bill - Equality Impact Assessment:

<https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Publications/2013/05/9299>

The Bill Equality Impact Assessment made a number of key findings:

- The operation of the tribunal jurisdictions transferring into the new structure will not be affected
- Tribunal users will not be affected directly by the Bill provisions.
- Tribunal distinctiveness will be protected.
- Tribunal members will not be adversely affected and their independence will be enhanced.

Given the conclusions set out in the Bill Equality Impact Assessment, a separate Equality Impact Assessment is not considered to be necessary for these regulations.

A Business and Regulatory Impact Assessment was not considered to be required as the instrument has no financial effects on the Scottish Government, local government, the third sector or on business.

A Data Protection Impact Assessment was not considered to be required for the suite of transfer regulations and is not considered necessary for this instrument. This instrument does not involve a change in data controller or the data to be processed.

A Child Rights and Wellbeing Impact Assessment was not considered necessary as there are no children's impact issues arising.