

# Equalities, Human Rights and Civil Justice Committee

1st Meeting, 2023 (Session 6), Tuesday 17 January 2023

## Subordinate legislation

### Note by the clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instruments:
  - [First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland \(Composition\) Regulations 2023 \(SSI 2022/Draft\)](#)
  - [Upper Tribunal for Scotland \(Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland\) Regulations 2023 \(SSI 2022/Draft\)](#)
  - [First-tier Tribunal for Scotland \(Transfer of Functions of Valuation Appeals Committees\) Regulations 2023 \(SSI 2022/Draft\)](#)

## Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on [20 December 2022](#). The DPLR Committee agreed that it did not need to draw the Parliament's attention to any of the instruments on any grounds within its remit.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

3. The draft instruments were laid on the following dates and referred to the Equalities, Human Rights and Civil Justice Committee:
  - 12 December 2022: First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2023 (SSI 2022/Draft);

- 13 December 2022: Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 (SSI 2022/Draft);
  - 13 December 2022: First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeals Committees) Regulations 2023 (SSI 2022/Draft).
4. The instruments are subject to affirmative procedure (Rule 10.6) and are due to come into force on 1 April 2023. It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instruments should be approved.
  5. The Minister for Community Safety has, by motions [S6M-07211](#), [S6M-07225](#) and [S6M-07223](#) proposed that the Committee recommends the approval of the instruments.
  6. The Minister for Community Safety is due to attend the Committee meeting on 17 January to answer any questions on the instruments and to move the motions for approval.
  7. **It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by the following dates:**
    - **5 February 2023:** First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2023 (SSI 2022/Draft);
    - **6 February 2023:** Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 (SSI 2022/Draft);
    - **6 February 2023:** First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeals Committees) Regulations 2023 (SSI 2022/Draft).
  8. **Thereafter, the Parliament will be invited to approve the instruments.**
  9. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instruments for publication.**

Clerks to the Committee  
January 2023

# Annexe A

## Scottish Government Policy Note

### First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2023 (SSI 2022/Draft)

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 10(2) and (3), 38(1) to (3) and 40(1), (3) and (4) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to affirmative procedure.
2. In accordance with section 11(2) of that Act, the President of the Scottish Tribunals has been consulted.

#### Purpose of the Instrument

3. The purpose of this instrument is to make provision as to the composition of the Local Taxation Chamber of the First-tier Tribunal for Scotland when convened to decide any matter in a case.
4. The First-tier Tribunal was established by section 1 of the 2014 Act. It is organised into chambers according to, among other things, the different subject matters falling within the Tribunal’s jurisdiction.
5. The Local Taxation Chamber deals with a range of matters relating to local taxation including property valuation for non-domestic rates purposes, council tax banding and council tax reduction appeals. Members of the tribunals can be ordinary members, legal members or judicial members according to criteria set out in the 2014 Act and regulations made thereunder.
6. This instrument also makes provision as to the composition of the Upper Tribunal for Scotland when dealing with non-domestic rates cases referred from the Local Taxation Chamber, and in respect of any appeal against a decision not to refer such a case.

#### Policy Objectives

7. The First-tier Tribunal for Scotland (“First-tier Tribunal”) and the Upper Tribunal for Scotland (“Upper Tribunal”) were established by the 2014 Act. The First-tier Tribunal is organised into chambers according to, among other things, the different subject matters falling within the Tribunal's jurisdiction.

There is provision for the Upper Tribunal to be organised into divisions on a similar basis.

8. The functions of the Valuation Appeals Committees (“VACs”) and Council Tax Reduction Review Panel (“CTRRP”) are to be transferred to the Local Taxation Chamber by way of regulations which are being laid concurrently with these regulations (The First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeals Committees) Regulations 2023 and The First-tier for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2022). These regulations provide for the composition of the First-tier Tribunal, Local Taxation Chamber when hearing appeals previously heard by the VACs or CTRRP.
9. The functions of the Lands Tribunal for Scotland that relate to appeals and complaints arising from the valuation of property for rating purposes (“the valuation appeal functions”) are to transfer to the Upper Tribunal by way of regulations which are being laid concurrently with these regulations, The Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023. The functions to be transferred are only the functions conferred on the Lands Tribunal for Scotland by section 1(3A) to (3BA) of the Lands Tribunal Act 1949; the Lands Tribunal for Scotland’s remaining functions are unaffected. These regulations provide for the composition of the Upper Tribunal when hearing a ratings valuation appeal referred from the Local Taxation Chamber, or an appeal of a decision by the Local Taxation Chamber not to refer a ratings valuation appeal to the Upper Tribunal.
10. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

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

## Consultation

11. A consultation with interested parties took place 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:

[Published responses for Local taxation - Valuation Appeals Committees etc: transfer of functions - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

## Impact Assessments and Financial Effects

12. An Equality Impact Assessment (“EQIA”) has already been completed for the Tribunals (Scotland) Bill – see link below:

[Tribunals \(Scotland\) Bill - Equality Impact Assessment - Results \(webarchive.org.uk\)](#)

13. The Bill EQIA 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 EQIA, a separate Equality Impact Assessment is not considered necessary for these regulations.

14. A [Business and Regulatory Impact Assessment](#) has been completed and is attached. The impact on the Scottish Government is minimal. The impact of this policy on the Scottish Legal Aid Board is minimal.

15. A Data Protection Impact Assessment was not considered to be required for these regulations. The transfer will involve a change in data controller, but no change to the data to be processed. A consultation with the Information Commissioner's Office took place in November 2022. The Information Commissioner's Office confirmed that no further engagement was required at this point in time.

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

## Annexe B

# Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 (SSI 2022/Draft)

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 28(2), (6) and (7), 54(1), 79(1) and paragraph 1(1) and 2 of schedule 2 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”).

## Purpose of the Instrument

2. The purpose of the instrument is to make provision for the transfer to the Upper Tribunal for Scotland (“the Upper Tribunal”) of certain functions and members of the Lands Tribunal for Scotland (“the LTS”).
3. The functions of the LTS that relate to appeals and complaints arising from the valuation of property for rating purposes (“the valuation appeal functions”) are to transfer to the Upper Tribunal. The functions transferred are only those conferred on the LTS by section 1(3A) to (3BA) of the Lands Tribunal Act 1949 (“the 1949 Act”); the LTS’s remaining functions are unaffected.
4. The members of the LTS appointed by virtue of experience in the valuation of land in accordance with section 2(2A)(b) of the 1949 Act are to transfer in to the Upper Tribunal.
5. The Upper Tribunal was established by section 1 of the 2014 Act, along with the First-tier Tribunal for Scotland (“the First-tier Tribunal”). The Upper Tribunal hears appeals from the First-tier Tribunal for Scotland but may also hear cases as an initial appellate tribunal. The valuation appeal functions will be exercised in relation to matters which are more appropriate for a higher tribunal, including where the facts or evidence are complex or highly technical, or where the law is uncertain or difficult to apply.
6. This instrument makes provisions to manage the transfer of on-going casework. This instrument also makes consequential amendments to legislation.

## Policy Objectives

7. The First-tier Tribunal and the Upper Tribunal were established by the 2014 Act. The First-tier Tribunal is organised into chambers according to, among other things, the different subject matters falling within the Tribunal's jurisdiction. The 2014 Act also allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of that Act to the Scottish Tribunals.

8. These regulations transfer into the Upper Tribunal the functions of the LTS that relate to appeals and complaints arising from the valuation of property for rating purposes. The functions transferred are only those conferred on the LTS by section 1(3A) to (3BA) of the Lands Tribunal Act 1949. The LTS's remaining functions are unaffected. The functions transferred to the Upper Tribunal will cease to be exercisable by the LTS.
9. The Upper Tribunal will hear first instance appeals against rating assessments for non-domestic premises which were previously heard by the Lands Tribunal. The Upper Tribunal will therefore mainly sit in relation to these matters as an initial appellate tribunal. However, it will also hear appeals against decisions by the Local Taxation Chamber (and in respect of such appeals heard prior to the point of transfer and not yet disposed of, Valuation Appeal Committees) not to refer cases to it.
10. These regulations also set out transitional provisions to manage the transfer of on-going casework and make necessary consequential amendments to legislation. Cases being dealt with by the LTS on the date of transfer will be completed by the Upper Tribunal.
11. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

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

## Consultation

12. A consultation with interested parties took place 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:

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## Impact Assessments and Financial Effects

13. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:

[Tribunals \(Scotland\) Bill - Equality Impact Assessment - Results \(webarchive.org.uk\)](#)

14. The Equality Impact Assessment completed for the Bill 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.

- Tribunals' distinctiveness will be protected.
- Tribunal members will not be adversely affected and their independence will be enhanced.

15. Given the above conclusions, a separate Equality Impact Assessment is not considered necessary for these regulations.

16. A [Business and Regulatory Impact Assessment](#) has been completed and is attached. The impact on the Scottish Government is minimal. The impact of this policy on the Scottish Legal Aid Board is minimal.

17. A Data Protection Impact Assessment was not considered to be required for these regulations. The transfer will involve a change in data controller, but no change to the data to be processed. A consultation with the Information Commissioner's Office took place in November 2022. The Information Commissioner's Office confirmed that no further engagement is required in this regard at this point.

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



## Annexe C

# First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeals Committees) Regulations 2023 (SSI 2022/Draft)

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 20(2), 28(2), (6) and (7), and 79(1) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to affirmative procedure.
2. 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.

## Purpose of the Instrument

3. The purpose of the instrument is to make provision for the transfer to the Local Taxation Chamber of the First-tier Tribunal of the functions of the valuation appeals committees.
4. The First-tier Tribunal was established by section 1 of the 2014 Act. It is organised into chambers according to, among other things, the different subject-matters falling within the Tribunal’s jurisdiction. The First-tier Tribunal Local Taxation Chamber will hear cases previously dealt with by valuation appeals committees and the council tax reduction review panel.
5. The instrument also sets out transitional provisions to manage the transfer of on-going casework. This instrument also makes consequential amendments to relevant local government legislation.

## Policy Objectives

6. The First-tier Tribunal for Scotland (“First-tier Tribunal”) and the Upper Tribunal for Scotland (“Upper Tribunal”) were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case. The 2014 Act also allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of that Act to the Scottish Tribunals.
7. These regulations transfer into the Scottish Tribunals the existing functions of the valuation appeals committees (VACs) in so far as practicable. Upon transfer, the valuation appeal panels and VACs will be abolished for all but the functions outlined at para 6 below and appeals will be heard in the First-tier Tribunal for Scotland, Local Taxation Chamber (“LTC”).
8. These regulations also set out transitional provisions to manage the transfer of on-going casework and make necessary consequential amendments to legislation. Cases being dealt with by a VAC on the date of transfer will be

completed by the First-tier Tribunal. This includes all appeals which have been notified to assessors, which will be transferred to the First-tier Tribunal.

9. To facilitate an effective transition, between 1 April 2023 and 30 September 2023, the procedural steps required for a party to appeal a case that was decided by a VAC by will continue to be carried out by VACs as far as possible.. Should the VAC either decline to do so when requested, or fail to respond to the request within 28 days, the functions may then be exercised by the First-tier Tribunal.
10. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

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