

## POLICY NOTE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND LOCAL TAXATION CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND (RULES OF PROCEDURE) (MISCELLANEOUS AMENDMENT) REGULATIONS 2023

#### SSI 2023/40

The above instrument is made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to the negative procedure.

1. In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted the President of the Scottish Tribunals in respect of these Regulations, as well as the Lord President as an appropriate person under paragraph 4(3)(b) of that Schedule.

#### **Purpose of the Instrument:**

The purpose of the instrument is to amend the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364) and Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 (SSI 2022/365), both of which were made 8 December 2022 and laid 12 December 2022.

#### **Policy Objectives**

2. 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 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. The Upper Tribunal will in due course be organised into divisions. 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.
3. A suite of regulations has been laid in Parliament to effect the transfer of functions of the Council Tax Reduction Review Panel (“CTRRP”) (The First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023) and the Valuation Appeal Committees (“VACs”) (The First-tier Tribunal for Scotland (Transfer of Functions of the Valuation Appeal Committees) Regulations 2023) to the Local Taxation Chamber of the First-tier Tribunal, and the transfer of the valuation rating appeal functions of

the Lands Tribunal for Scotland to the Upper Tribunal (The Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023).

4. The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364) were made 8 December 2022 and laid on 12 December 2022. They make provision for the rules of procedure which are to apply in the Local Taxation Chamber of the First-tier Tribunal when hearing appeals under the Valuation Acts, council tax appeals, appeals against a determination of an application for council tax reduction, and penalty notice appeals under the Non-Domestic Rates Act 2020.

5. The transfer in to the First-tier Tribunal of the functions of the VACs and CTRRP has provided an opportunity to bring together, so far as appropriate, the rules of procedure of the VACs and the CTRRP. The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 set down one set of rules for the Local Taxation Chamber which will cover all cases which would have gone to the VACs or the CTRRP. However, due to the nature of these appeals, the instrument contains bespoke rules, as well as general rules, which relate to the specific functions to be exercised by the Local Taxation Chamber.

6. The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 (SSI 2022/365) make provision for the rules of procedure which are to apply in the Upper Tribunal in relation to any appeal or complaint under the Valuation Acts referred to it by the First-tier Tribunal, or when hearing an appeal against a decision by the First-tier Tribunal not to make such a referral.

7. The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 provide rules of procedure for the Upper Tribunal, but these relate to appeals from the First-tier Tribunal only, so it was necessary to constitute new rules for the Upper Tribunal when sitting as an initial appellate tribunal.

8. During the course of technical scrutiny of the instruments by Parliament's Delegated Powers and Law Reform Committee a number of drafting errors were identified. In The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022, there were a number of incorrect references, and clarity needed on definitions and the position in relation to expenses. Clearer definitions were required for the Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022.

9. In light of the points raised by the Delegated Powers and Law Reform Committee, and in order to ensure that the instruments operate as intended giving full effect to the policy intent, this instrument makes amendments to the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 and the Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022. The instrument will come into force on the same day as the regulations being amended.

10. Regulation 2 amends the Rules in the schedule of the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022. Amendments are made to rule 1, to insert additional defined terms and to amend the wording of existing terms to improve clarity. Regulation 2 also makes minor corrections to rules 17, 20, 22, 23, 25, 26, 27 and 35. Provision to ensure that appellants and respondents provide the First-tier Tribunal and each other with relevant information in relation to their case is also added to rule 25 (appeals lodged prior to 1 April 2023).

11. Regulation 3 amends the Rules in schedule 1 of the Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022, and the form in schedule 3 of those Regulations for the purposes of the referral of an appeal from the First-tier Tribunal for Scotland to the Upper Tribunal for Scotland. This regulation also makes changes to clarify rules 31 and 32.

12. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals (Scotland) 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**

13. 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/>

14. The Lord President, President of Tribunals, and Chamber President have been consulted in relation to this instrument.

### **Impact Assessments and Financial Effects**

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

<https://www.webarchive.org.uk/wayback/archive/20160112111506/http://www.gov.scot/Publications/2013/05/9299/downloads>

16. 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.
- Tribunals 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.

17. 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.

18. 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.

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

Scottish Government  
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