

Equalities, Human Rights and Civil Justice Committee

7th Meeting, 2021 (Session 6), Tuesday, 2 November 2021

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:

- [SSI 2021/341: The Scottish Tribunals \(Eligibility for Appointment\) Amendment Regulations 2021](#)

2021/341: The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2021

2. The SSI is being laid before the Scottish Parliament under section 79(3) of the Tribunals (Scotland) Act 2014 and come into force on 23 November 2021.
3. These Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to set eligibility criteria for appointment of ordinary members of the First-tier Tribunal for Scotland who have valuation or surveyor experience, and for ordinary members of the Upper Tribunal for Scotland who have surveyor experience.
4. These Regulations are part of a set of regulations which will bring the functions of the valuation appeals committees and the valuation appeals functions of the Lands Tribunal for Scotland into the Scottish Tribunals. Forthcoming regulations will make provision for the remaining aspects of the transfer.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [5 October 2021](#). The DPLR Committee agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.

6. A copy of the Scottish Government Policy Note is included at Annexe A together with links to any associated documents.

Equalities, Human Rights and Civil Justice Committee Consideration

Procedure for negative instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
8. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
9. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
10. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
11. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
12. Each negative instrument appears on the Equalities, Human Rights and Civil Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
13. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

14. The Committee is invited to consider the instrument and report to the Parliament by 15 November 2021.

Clerks to the Committee
28 October 2021

Annexe A

Scottish Government Policy Note

The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2021

The above instrument was made in exercise of the powers conferred by Section 32(1) and (3), paragraph 1(2) of schedule 3 and paragraph 1(2) of schedule 5 of the Tribunals (Scotland) Act 2014 (the 2014 Act).

Purpose of the instrument

The purpose of the Instrument is to amend the First-tier Tribunal for Scotland (Eligibility for Appointment) Regulations 2015. Those regulations, as amended, set the eligibility criteria for appointment of legal members of the First-tier Tribunal, legal members of the Upper Tribunal, and ordinary members of the First-tier Tribunal with tax experience, housing, property or surveying experience, health and education experience, or with charity regulatory experience.

Policy objectives

The 2014 Act specifies that the First-tier Tribunal may comprise ordinary and legal members and specifies the eligibility requirements for legal members.

These regulations create eligibility criteria for ordinary members of the First-tier Tribunal Local Taxation Chamber with either valuation experience or surveyor rating experience and for ordinary members of the Upper Tribunal for Scotland with surveyor experience.

A person will be eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland (valuation experience) if the person lives, works or runs a business in a valuation area, and has substantial experience of the valuation of domestic or non-domestic properties. This is to ensure ordinary members hearing appeals have local knowledge and appropriate expertise. The detailed meaning of 'substantial experience' is set out in the regulations.

A person will be eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland (surveyor rating experience) if the person is, or has within the last 5 years been, a member or fellow of RICS and has substantial experience as a surveyor in rating matters. This is to ensure members have a recent unbroken track record of expertise in the relevant matters which will be the subject of appeals to the Tribunal. The detailed meaning of 'substantial experience' is set out in the regulations.

A person will be eligible for appointment as an ordinary member of the Upper Tribunal for Scotland (surveyor experience) if the person is a member or fellow of RICS and has at least 10 years' experience as such a member or fellow in matters relating to valuation for rating. We consider this level of expertise and experience necessary to discharge the functions of ordinary members of the Upper Tribunal.

Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the 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

A consultation took place in July 2021 with stakeholders considered most likely to be affected or to have an interest in the measures, including members and secretaries of the Valuation Appeals Panels and the senior convenor of the Council Tax Reduction Review Panel. Seven responses were received.

As a result of the responses received the regulations were revised to–

- (i) ensure that the eligibility criteria were wide enough to ensure that membership and past membership of the Institute of Revenues Rating and Valuation with experience of non-domestic rating and council tax administration were included, and
- (ii) amend the qualifying criteria for fellows and members of The Royal Institution of Chartered Surveyors (“RICS”) to ensure an appropriate level of experience for members.

Impact Assessments

An equality impact assessment has already been completed on the Tribunals (Scotland) Bill – see link below.

<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.