

Equalities, Human Rights and Civil Justice Committee

3rd Meeting, 2023 (Session 6), Tuesday 31 January 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 \(Transfer of Functions of the Council Tax Reduction Review Panel\) Regulations 2023 \(SSI 2022/Draft\)](#)

2022/Draft: The First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023

2. These Regulations make provision for the transfer to the Local Taxation Chamber of the First-tier Tribunal for Scotland (“the First-tier Tribunal”) of the functions of the council tax reduction review panel (“CTRRP”).
3. The First-tier Tribunal was established by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to their subject-matter. The Local Taxation Chamber of the First-tier Tribunal will hear cases previously dealt with by valuation appeals committees and the council tax reduction review panel.
4. Transitional provisions are made to manage the transfer of on-going casework. These Regulations also make consequential amendments to existing legislation.
5. A copy of the Scottish Government Policy Note and links to relevant impact assessments are included at [Annexe A](#).

Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on [10 January 2023](#) and agreed to draw the instrument to the attention of the Parliament on general reporting grounds in respect of a cross-referencing error. Correspondence with the Scottish Government can be found at [Annexe B](#).

Equalities, Human Rights and Civil Justice Committee Consideration

Procedure for Affirmative instruments

7. The draft instrument was laid on 13 December 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6) and 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 instrument should be approved.
8. The Minister for Community Safety has, by motion [S6M-07224](#), proposed that the Committee recommends the approval of the instrument.
9. The Minister for Community Safety is due to attend the Committee meeting on 31 January to answer any questions on the instrument and to move the motion for approval.
10. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 6 February 2023. Thereafter, the Parliament will be invited to approve the instrument.**
11. **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
January 2023

Annexe A

Scottish Government Policy Note

First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 (SSI 2022/Draft)

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

In accordance with sections 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

The purpose of the instrument is to make provision for the transfer to the Local Taxation Chamber of the First-tier Tribunal for Scotland (“the First-tier Tribunal”) of the functions of the council tax reduction review panel.

The First-tier Tribunal was established by section 1 of the 2014 Act. It is divided into chambers, with the chambers hearing cases according to their subject-matter. The Local Taxation Chamber of the First-tier Tribunal will hear cases previously dealt with by valuation appeals committees and the council tax reduction review panel.

The instrument sets out transitional provisions to manage the transfer of on-going casework. The instrument also makes consequential amendments to existing legislation.

Policy Objectives

The 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.

These regulations make provision for the transfer into the Scottish Tribunals of the existing functions of the council tax reduction review panel (“CTRRP”). Upon transfer, the CTRRP will be abolished and appeals will be heard in the Local Taxation Chamber of the First-tier Tribunal, with onward appeals available to the Upper Tribunal, subject to the requirements of the 2014 Act.

These regulations also set out transitional provisions to manage the transfer of ongoing casework and make necessary consequential amendments to legislation. Cases being dealt with by the CTRRP 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. Decisions made by the CTRRP before transfer remain in force.

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

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

An Equality Impact Assessment (“EQIA”) was completed for the Tribunals (Scotland) Bill – see link below:

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

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.

As the CTRRP was not included in Schedule 1 at the time the Tribunals (Scotland) Bill was laid in Parliament, and was added to Schedule 1 of the 2014 Act in September 2022, further consideration was given as to whether an Equality Impact Assessment was required. The transfer of functions of the CTRRP applies to everyone equally. It is an administrative change which does not impact on underlying council tax policy. It was considered that no further EQIA is required.

A Business and Regulatory Impact Assessment has been completed and is linked below:

[Transfer of the functions of the Valuation Appeals Committees, Council Tax Reduction Review Panel and valuation for rating appeal functions of the Lands](#)

The impact on the Scottish Government is minimal. The impact of this policy on the Scottish Legal Aid Board is minimal.

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 that point in time.

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

Annexe B

Correspondence with the Scottish Government on the First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 (SSI 2022/Draft)

On 15 December 2022, the Committee asked the Scottish Government:

Paragraph 2(5) of schedule 2 of the instrument substitutes regulation 94 of the 2021 Regulations. In regulation 94(3), as substituted, is the reference to regulation 70A(2) an error? Should the reference be to regulation 93(2) or to regulation 93(4)(c)?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 20 December 2022, the Scottish Government responded:

The reference in paragraph 2(5) of schedule 2 of the instrument to regulation 70A(2) is a drafting error, with apologies. The correct reference should be to regulation 93(4)(c).

As the reference to this regulation is self-evidently an error – there is no regulation 70A in the 2021 Regulations, and regulation 94(3) makes clear it relates to preventing a “relevant authority” from notifying the applicant as under regulation 93(4)(c), as opposed to notice under regulation 93(2) where the notice is served on the relevant authority – it is proposed that the error be rectified in the instrument when made as an error that could be corrected by correction slip.