

Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018

Made - - - - 2018

Coming into force - - 12th January 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2) and 79(1)(b) of, and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

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.

In accordance with section 79(2)(a) and (b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 and come into force on 12th January 2018.

(2) In these Regulations—

“the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005⁽²⁾;

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

“Chair” means a member of the Scottish Charity Appeals Panel appointed under paragraph 1(1) and (4) of schedule 2 of the 2005 Act to chair that panel;

“functions of the Scottish Charity Appeals Panel” means the functions exercised by the Scottish Charity Appeals Panel by virtue of section 76 of the 2005 Act;

“other member” means a member of the Scottish Charity Appeals Panel other than the Chair appointed under paragraph 1(1) and (4) of schedule 2 of the 2005 Act; and

(1) 2014 asp 10.

(2) 2005 asp 10.

the “Scottish Charity Appeals Panel” means any panel constituted in accordance with section 75(1) of the 2005 Act.

Transfer of functions of the Scottish Charity Appeals Panel to the First-tier Tribunal and abolition of the Scottish Charity Appeals Panel

2.—(1) The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal General Regulatory Chamber.

(2) The Scottish Charity Appeals Panel is abolished.

Transfer of members of the Scottish Charity Appeals Panel to the First-tier Tribunal

3.—(1) Subject to paragraphs (2) to (4), the members of the Scottish Charity Appeals Panel under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal, with—

- (a) the Chairs becoming legal members of the First-tier Tribunal; and
- (b) other members becoming ordinary members of the First-tier Tribunal.

(2) Members of the Scottish Charity Appeals Panel transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers immediately before transfer, which will supersede any existing terms and conditions of appointment.

(3) Paragraph (1) does not apply to any member of the Scottish Charity Appeals Panel if the member has already been transferred to and is a member of the First-tier Tribunal by virtue of regulations made under section 28(2) of the 2014 Act which were in force prior to these Regulations coming into force.

(4) A member of the Scottish Charity Appeals Panel who is aged 70 or over on coming into force of these Regulations shall transfer only if the Scottish Ministers in consultation with the President of Tribunals consider it desirable in the public interest that the member should transfer.

Transitional and savings provisions

4.—(1) Section 21(1) of the 2014 Act is not to apply to the First-tier Tribunal General Regulatory Chamber until two further sets of regulations have been made under sections 20(2) and 28(2) of that Act transferring functions to the First-tier Tribunal with allocation to the General Regulatory Chamber and those two further sets of regulations have come into force.

(2) Schedule 1 of these Regulations contains further transitional and savings provisions.

Consequential provisions

5. Schedule 2 of these Regulations contains consequential provisions.

Revocations

6. Schedule 3 of these Regulations contains revocations.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 4(2)

Transitional and savings provisions

Appeals and proceedings in progress before the Scottish Charity Appeals Panel immediately before 12th January 2018 to transfer to the First-tier Tribunal

1. Any appeal to the Scottish Charity Appeals Panel in progress immediately before 12th January 2018 but not yet determined and any proceedings of the Scottish Charity Appeals Panel in progress immediately before that date shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 12th January 2018 hearing the case as members of the Scottish Charity Appeals Panel.

Decisions, directions and orders of the Scottish Charity Appeals Panel to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in or in respect of a reference or claim to, and proceedings before, the Scottish Charity Appeals Panel which is in force immediately before 12th January 2018 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

Time limits in respect of appeals to, and proceedings before, the Scottish Charity Appeals Panel to carry over to the First-tier Tribunal

3. Any time limit which has started to run before 12th January 2018 in respect of appeals to, and proceedings before, the Scottish Charity Appeals Panel (and which has not expired) shall continue to apply where appeals and proceedings are transferred to the First-tier Tribunal.

Unexercised right of appeal to Court of Session, if exercised, is an appeal to the Upper Tribunal

4. Where in respect of a decision of the Scottish Charity Appeals Panel before 12th January 2018, there lies a right of appeal to the Court of Session, which has not been exercised before that date but is still exercisable, any appeal on or after 12th January 2018 shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

Exercised right of appeal to the Court of Session shall be completed by the Court of Session

5. Where in respect of a decision of the Scottish Charity Appeals Panel before 12th January 2018, there lies a right of appeal to the Court of Session which has been exercised before that date, the appeal shall not be affected by these Regulations and be completed by the Court of Session.

SCHEDULE 2

Regulation 5

Consequential amendments

Tribunals and Inquiries Act 1992

1.—(1) The Tribunals and Inquiries Act 1992(3) is amended as follows.

(3) 1992 c.53.

(2) In Part II of schedule 1 (Scottish tribunals), paragraph 47A is repealed.

Charities and Trustee Investment (Scotland) Act 2005

2.—(1) The Charities and Trustee Investment (Scotland) Act 2005⁽⁴⁾ is amended as follows.

(2) In section 73 (effect of decisions)—

(a) in subsection (2)(b)(i) for “Panel” substitute “First-tier Tribunal”; and

(b) in subsection (2)(b)(ii)—

(i) for “Panel” substitute “First-tier Tribunal”; and

(ii) for “Court of Session” substitute “Upper Tribunal”.

(3) Section 75 (Scottish Charity Appeals Panel) and schedule 2 (Scottish Charity Appeals Panel) are repealed.

(4) In section 76 (appeals to Scottish Charity Appeals Panel)—

(a) in subsection (1) for “Panel” substitute “First-tier Tribunal”;

(b) in subsection (2) for “Panel” substitute “First-tier Tribunal”;

(c) in subsection (5)—

(i) in the opening words, for “Panel” substitute “First-tier Tribunal”;

(ii) in paragraph (b), for “Panel” substitute “First-tier Tribunal”;

(iii) in paragraph (c), for “Panel’s” substitute “First-tier Tribunal’s”; and

(d) the title of section 76 becomes “Appeals to the First-tier Tribunal”.

(5) In sub-section (1)(c) of section 77 (reconsideration of decision remitted to OSCR), for “Panel” substitute “First-tier Tribunal”.

(6) In section 78 (appeals to Court of Session) paragraph (1) is repealed.

(7) In section 106 (general interpretation)—

(a) after the definition of “equal opportunities” insert ““the First-tier Tribunal” means the First-tier Tribunal for Scotland General Regulatory Chamber”; and

(b) the definition of “the Panel” is repealed.

Public Services Reform (Scotland) Act 2010

3.—(1) The Public Services Reform (Scotland) Act 2010⁽⁵⁾ is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), the entry for “Scottish Charity Appeals Panel” is repealed.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), the entry for “Scottish Charity Appeals Panel” is repealed.

Public Records(Scotland) Act 2011

4.—(1) The Public Records (Scotland) Act 2011⁽⁶⁾ is amended as follows.

(2) In schedule 1 (authorities to which Part 1 applies) the entry for “Scottish Charity Appeals Panel” is repealed.

(4) 2005 asp 10.

(5) 2010 asp 8.

(6) 2011 asp 12.

SCHEDULE 3

Regulation 6

Revocation of subordinate legislation

1. The Scottish Charity Appeals Panel Rules 2006(7) are revoked.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Scottish Charity Appeals Panel was set up in accordance with section 75 of the Charities and Trustee Investment (Scotland) Act 2005 to deal with appeals against decisions of the Office of the Scottish Charity Regulator.

These Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions and members of the Scottish Charity Appeals Panel. The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal for Scotland with allocation to the General Regulatory Chamber.

(7) [S.S.I. 2006/571](#).