

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

TRIBUNALS AND INQUIRIES

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

Made - - - - 2023

Coming into force - - 1st April 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28(2), (6) and (7), 54(1), 79(1) and paragraphs 1(1) and 2 of schedule 2 of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

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

Citation and commencement

1. These Regulations may be cited as the Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 and come into force on 1 April 2023.

Interpretation

2. In these Regulations—

“the 1949 Act” means the Lands Tribunal Act 1949⁽²⁾,

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

“the Lands Tribunal” means the Lands Tribunal for Scotland as established by section 1(1) of the 1949 Act,

“the valuation appeal functions of the Lands Tribunal” means the functions exercisable by the Lands Tribunal by virtue of section 1(3A) to (3BA) of the 1949 Act,

“the Upper Tribunal” means the Upper Tribunal for Scotland.

(1) 2014 asp 10.
(2) 1949 c. 42.

Transfer of the valuation appeal functions of the Lands Tribunal to the Upper Tribunal

3.—(1) The valuation appeal functions of the Lands Tribunal are transferred to the Upper Tribunal.

(2) The functions transferred to the Upper Tribunal under paragraph (1) cease to be exercisable by the Lands Tribunal.

(3) A decision made in the exercise of the functions specified in section 1(3BA) of the 1949 Act falls within section 54 of the 2014 Act and as such is an excluded decision for the purposes of an appeal under section 48 of the 2014 Act.

Transfer of members of the Lands Tribunal to the Upper Tribunal

4.—(1) In respect of the valuation appeal functions only of the Lands Tribunal, those members of the Lands Tribunal appointed in accordance with section 2(2A)(b) of the 1949 Act are transferred to and become members of the Upper Tribunal.

(2) Persons who are transferred under paragraph (1) do not, as a consequence of that transfer, cease to be members of the Lands Tribunal in respect of the remaining functions of that tribunal.

(3) Persons transferred to the Upper Tribunal under paragraph (1) are (subject to the provisions of the 2014 Act) to be members of the Upper Tribunal in accordance with terms and conditions offered by the Scottish Ministers immediately before transfer.

(4) The terms and conditions mentioned in paragraph (3) supersede any terms and conditions of appointment to the Lands Tribunal that exist immediately before the transfer and that relate to the functions transferred by regulation 3.

Transitional and saving provisions

5. Schedule 1 which contains transitional and saving provisions has effect.

Consequential amendments and revocations

6. Schedule 2 which contains consequential amendments has effect.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 5

Transitional and saving provisions

Appeals, complaints, and proceedings in progress before the Lands Tribunal immediately prior to 1 April 2023 to transfer to the Upper Tribunal

1. Any appeal or complaint to the Lands Tribunal to which these Regulations relate, including an appeal against a decision of a valuation appeal committee not to refer a case to the Lands Tribunal, in progress immediately before 1 April 2023 but not yet determined, and any proceedings of the Lands Tribunal in progress immediately before that date—

- (a) are transferred to and are to be completed by the Upper Tribunal as if they were appeals or complaints to the Upper Tribunal or proceedings in the Upper Tribunal, and
- (b) with, so far as possible, the same persons hearing and determining the case before the Upper Tribunal as members of that tribunal as were prior to 1 April 2023 hearing the case as members of the Lands Tribunal.

Decisions, directions and orders of the Lands Tribunal to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in, or in respect of appeals or complaints to, and proceedings before, the Lands Tribunal to which these Regulations relate which is given or made immediately prior to 1 April 2023 remains in force on and after that date as if it were a decision, direction or order of the Upper Tribunal.

Time limits in respect of appeals, complaints, referrals to, and proceedings before the Lands Tribunal to carry over to the Upper Tribunal

3. Any time limit which has started to run before 1 April 2023 in respect of appeals or complaints to, and proceedings before, the Lands Tribunal to which these Regulations relate and which has not expired continues to apply where the appeals, complaints, and proceedings are transferred to the Upper Tribunal.

Unexercised right of appeal to the Lands Valuation Appeal Court, if exercised, remains as an appeal to the Lands Valuation Appeal Court

4. Where, in respect of a decision of the Lands Tribunal to which these Regulations relate and that was made before 1 April 2023, there lies a right of appeal to the Lands Valuation Appeal Court which has not been exercised before that date but is still exercisable, any appeal in relation to that decision on or after 1 April 2023 continues to lie to the Lands Valuation Appeal Court but is to be treated as if the decision had been made by the Upper Tribunal.

Exercised right of appeal to the Lands Valuation Appeal Court

5. Where, in respect of a decision of the Lands Tribunal to which these Regulations relate and that was made before 1 April 2023, there lies a right of appeal to the Lands Valuation Appeal Court which has been exercised before that date, the appeal continues but is to be an appeal from the Upper Tribunal to the Lands Valuation Appeal Court.

SCHEDULE 2

Regulation 6

Consequential amendments of primary legislation

Valuation of Lands (Scotland) Amendment Act 1879

1. In section 7 (where assessors not officers of Inland Revenue, case may be demanded for opinion of two judges of court of session) of the Valuation of Lands (Scotland) Amendment Act 1879(3) for “Lands Tribunal” where it first occurs substitute “Upper Tribunal”.

Lands Tribunal Act 1949

2.—(1) The Lands Tribunal Act 1949(4) is amended in accordance with sub-paragraphs (2) and (3).

(2) In section 1 (establishment of the Lands Tribunal for Scotland and jurisdiction)—

(a) in the section title for “and jurisdiction” substitute “, jurisdiction and appeals to the Scottish Tribunals”,

(b) in sub-section (3A) for “The Lands Tribunal for Scotland may also” substitute “The Upper Tribunal for Scotland may”,

(c) in sub-section (3BA)—

(i) for “Lands” substitute “Upper”,

(ii) in all places where “the Tribunal” appears substitute “the Upper Tribunal for Scotland”,

(d) in sub-section (3C) for “Lands” substitute “Upper”.

(3) In section 8(1) (interpretation) after the definition of “arbitrator” insert—

““Upper Tribunal for Scotland” means the Upper Tribunal for Scotland, established by section 1 of the Tribunals (Scotland) Act 2014.”.

Local Government (Financial Provisions) (Scotland) Act 1963

3.—(1) The Local Government (Financial Provisions) (Scotland) Act 1963(5) is amended in accordance with sub-paragraphs (2) and (3).

(2) In section 15 (proceedings in appeals), in sub-sections (1), (1A)(b) and (1C) for “Lands Tribunal for Scotland” substitute “Upper Tribunal for Scotland”.

(3) In section 26(2) (interpretation) after the definition of “rateable valuation” insert—

““Upper Tribunal for Scotland” means the Upper Tribunal for Scotland, established by section 1 of the Tribunals (Scotland) Act 2014.”.

Local Government (Scotland) Act 1975

4.—(1) The Local Government (Scotland) Act 1975(6) is amended in accordance with sub-paragraphs (2) and (3).

(3) 1879 c. 42 (42 and 43 Vict.). Section 7 relevantly amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31), section 13(1), substituting words.

(4) 1949 c. 42 (12 & 13 Geo. 6). Title in section 1 substituted by S.I. 2009/1307, schedule 1, paragraph 11(a). Sections 1(3A) to (3E) inserted by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31), section 12(1). Section 1(3BA) inserted by the Local Government and Housing Act 1989 (c. 42), schedule 6, paragraph 1.

(5) 1963 c. 12. Section 15(1) relevantly amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31), section 21, schedule 2, paragraph 9 and sub-sections (1A) and (1C) inserted by section 19 of that Act.

(6) 1975 c. 30. Section 2(1)(a) amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31) (“the 1984 Act”), section 21, schedule 2, paragraph 13(1). Section 2(1A) inserted by the Local Government and Rating Act 1997 (c. 29),

- (2) In section 2(3) (alterations to valuation roll which is in force) for “Lands” substitute “Upper”.
- (3) In section 37(1) (general interpretation)—
- (a) in the definition of “material change of circumstances”, in paragraph (a) after “Lands Tribunal for Scotland” insert “or the Upper Tribunal for Scotland”,
- (b) after the definition of “prescribed” insert—
- ““Upper Tribunal for Scotland” means the Upper Tribunal for Scotland, established by section 1 of the Tribunals (Scotland) Act 2014.”.

Tribunals and Inquiries Act 1992

5. In section 11 (appeals from certain tribunals) of the Tribunals and Inquiries Act 1992(7) omit sub-section (7)(c)(i).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations 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 Lands Tribunal”).

Regulation 3 provides that the functions of the Lands Tribunal 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 Lands Tribunal by section 1(3A) to (3BA) of the Lands Tribunal Act 1949 (“the 1949 Act”); the Land Tribunal’s remaining functions are unaffected.

Regulation 4 provides that the members of the Lands Tribunal 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.

The Upper Tribunal was established by section 1 of the Tribunals (Scotland) Act 2014, along with the First-tier Tribunal for Scotland (“the First-tier Tribunal”). The Upper Tribunal hears appeals from the First-tier Tribunal 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.

Transitional provisions are made to manage the transfer of on-going casework. These Regulations also make consequential amendments to legislation.

schedule 3, paragraph 12(b). Section 2(3) amended by the 1984 Act, section 21, schedule 2, paragraph 15. Sections 3ZA and 3ZB inserted by the Non-Domestic Rates (Scotland) Act 2020 (asp 4) (“the 2020 Act”), section 10(4). Section 37(1) was relevantly amended by the 1984 Act, schedule 2, paragraph 7, the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47), schedule 6 and the 2020 Act, section 13.

(7) 1992 c. 53. Words in section 11(7)(c) renumbered by the schedule, paragraph 2(a) of the Long Leases (Scotland) Act 2012 (asp 9).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 No. 48*

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrew's House, Edinburgh EH1 3DG, and online at www.legislation.gov.uk.