

Transfer of the functions of the Valuation Appeals Committees, Council Tax Reduction Review Panel and valuation for rating appeal functions of the Lands Tribunal for Scotland to the Scottish Tribunals

Business and Regulatory Impact Assessment



Scottish Government
Riaghaltas na h-Alba
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Title of Proposal

Regulations transferring the functions of the Valuation Appeal Committees and the Council Tax Reduction Review Panel to the First-tier Tribunal for Scotland and the valuation for rating appeal functions of the Lands Tribunal for Scotland to the Upper Tribunal for Scotland

Purpose and intended effect

Background

Tribunals (Scotland) Act 2014

The Tribunals (Scotland) Act 2014 (“the 2014 Act”) created a new, two-tier structure for devolved tribunals in Scotland; the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. The 2014 Act is not thought to have any impact on Scottish business or the third sector, nor did it transfer costs, so no BRIA was undertaken during the passage of the Bill.

The rationale for the 2014 Act was to create a new structure for devolved tribunals in Scotland. Over the preceding years, tribunals were established in an ad hoc fashion, with no common system of leadership, appointments, practice and procedure for reviews and appeals. This can lead to a narrowness of outlook, and it allows for a variation of standards and performances across the tribunals landscape.

The new structure provides for greater independence for the new tribunals and gives users the confidence that tribunal hearings are being heard by people with no links to the body whose decision they are challenging. By establishing a more coherent framework for tribunals opportunities are created for improvement in the quality of services that cannot be achieved by tribunals operating separately.

Schedule 1 of the 2014 Act contains a list of devolved tribunals from which the functions and members may be transferred into the new structure, which Ministers may add to or amend by way of regulations.

The Scottish Tribunals are composed of members who are either transferred in or appointed. New procedural rules are required in order to allow the Scottish Tribunals to operate effectively, though these will take into account where appropriate the previously existing rules of procedure, modified as necessary to reflect the new structure.

Objective

In line with the aims of the 2014 Act, it is proposed that the Valuation Appeals Committees, the Council Tax Reduction Review Panel and the functions of the Lands Tribunal for Scotland in relation to hearing appeals against rating assessments for non-domestic premises should all be transferred to the Scottish

Tribunals structure; the first two to the First-tier Tribunal and the third to the Upper Tribunal.

Valuation Appeal Committees

Valuation Appeal Committees (“VACs”) deal with appeals regarding entries made by assessors to the valuation roll (non-domestic properties), the valuation list (domestic properties), and some other council tax appeals (such as on calculation of council tax liability). VACs are already listed in schedule 1 of the 2014 Act as a tribunal whose functions may be transferred to the Scottish Tribunals.

The proposed transfer to the Scottish Tribunal is scheduled to take place on 1 April 2023 to coincide with the next revaluation cycle for non-domestic rates. The transfer provides an opportunity for greater transparency and consistency of practice across Scotland.

Council Tax Reduction Review Panel

The Council Tax Reduction Review Panel (“CTRRP”) provides an independent review, over and above the internal review provided by the administering local authority, to safeguard an individual's rights to administrative justice in relation to the Council Tax Reduction scheme.

The CTRRP was added to the list of tribunals in Schedule 1 of the 2014 Act by the Scottish Tribunals (Listed Tribunals) Regulations 2022. With VACs due to move into the Scottish Tribunals, moving the work of the CTRRP at the same time will mean that all council tax appeals in Scotland will be heard within the First-tier Tribunal in the newly created Local Taxation Chamber. This will simplify the landscape in relation to council tax appeal functions.

Lands Tribunal for Scotland

The Lands Tribunal for Scotland (“LTS”) was established by the Lands Tribunal Act 1949 (“the 1949 Act”). The functions of the LTS are wide and varied, but for the purposes of transfer to the Scottish Tribunals the relevant functions are appeals against rating assessments for non-domestic premises as set out in section 1(3A)-(3BA) of the 1949 Act, which may be referred to the LTS by a VAC.

The LTS may determine (as the appeal court of first instance) any appeal or complaint under the Valuation Acts referred to it by a VAC in circumstances where:

- the facts of the case are complex or highly technical;
- the evidence to be given by expert opinion is complex or highly technical;
- the law applicable to the case is uncertain or difficult to apply;
- the case raises a fundamental or general issue likely to be used as a precedent; or
- the properties to which the appeal relates are part of larger subjects situated in more than one valuation area, and the valuation of the subjects is appealed in more than one such area.

The LTS may also hear appeals from parties where a VAC has declined to refer a case when requested.

The LTS exercises these functions in accordance with procedures laid down in the Lands Tribunal for Scotland Rules 2003. These functions will be transferred to the Upper Tribunal for Scotland at the same time as the VACs transfer to the First-tier Tribunal, replicating the existing two tier system within the Scottish Tribunals. New procedural rules are introduced to enable the transferred functions to be exercised by the Upper Tribunal.

Rationale for Government intervention

The 2014 Act seeks to create a Scottish Tribunals structure that reduces overlap, eliminates duplication, ensures better deployment, and allows for the wider sharing of available resources. It also promotes uniform training and conformity of practice across Scotland, eliminating different practices in different locations.

Consultation

Within Government

Throughout policy development of the regulations, the Tribunals Policy team have worked closely with colleagues from Non-Domestic Rates Policy and Council Tax Reform Policy.

In terms of external stakeholders, the Tribunals Policy team have been in contact with representatives of the VACs, the CTRRP and the LTS, given their interest and expertise in the subject matter.

Tribunals policy has also consulted with SCTS, the Lord President of the Court of Session and the President of the Scottish Tribunals where appropriate. Tribunals Policy have consulted closely with the (Temporary) Chamber President of the newly created Local Taxation Chamber with regard to the regulations.

Public Consultation

A public consultation on a draft of the regulations transferring the Valuation Appeals Committees and the Council Tax Reduction Review Panel into the First-tier Tribunal and the valuation functions of the Lands Tribunal for Scotland into the Upper Tribunal of the Scottish Tribunals was carried out between 21 September 2021 and 28 November 2021 and 13 responses were received. Where approval was given, the responses have been published online. The consultation asked for views on the draft regulations and the proposed rules of procedure.

Two consultees responded with their view that the transfer of CTRRP functions should be to the First-tier Tribunal, Social Security Chamber rather than the Local Taxation Chamber, however it is a settled policy position that the transfer should be to the Local Taxation Chamber so that all council tax appeals are heard by the same tribunal.

Consultation responses related to timescales in the draft regulations, and the operation of the regulations in practice. These comments have been considered and the draft regulations amended accordingly.

Business

There has been regular engagement with the Scottish Assessors Association executive team. There has also been regular engagement, via the Local Taxation Chamber Stakeholder Reference Group, with assessors, ratings agents, representatives of the VACs and CTRRP.

Scottish Firms Impact Test

It is not considered that the proposal will have any impact on Scottish business. Businesses will still have the ability to appeal a non-domestic rates valuation, however the appeal will be to the First-tier Tribunal rather than the VACs.

The right of appeal remains, as does the right to request that certain cases be referred albeit any such referral will be to the Upper Tribunal rather than the LTS, following the transfer of the LTS ratings valuation appeal functions. Following the transfer there will still be a right of onward appeal to the Lands Valuation Appeal Court.

Competition Assessment

It is not considered that the proposal will have any impact on competition.

Consumer Assessment

It is not considered that the proposal will have any impact on consumers.

Test run of business forms

Appeals will still be submitted in writing and the same information will be required as previously. SCTS are running detailed tests to ensure the case management system to be used by the Local Taxation Chamber is fully operational prior to transfer.

Digital Impact Test

SCTS are running detailed tests on the case management system to be used by the Local Taxation Chamber to ensure it is fully operational prior to transfer.

Legal Aid Impact Test

It is not considered that the proposal will have any impact on the Scottish Legal Aid Fund.

Legal aid is not available for the kinds of cases dealt with by the VACs and the CTRRP and it is not intended that it would be available when these cases are heard by the First-tier Tribunal.

The LTS is empowered by section 1(3A-3BA) of the Lands Tribunal Act 1949 to deal with appeals against rating assessments for non-domestic premises referred to it by a VAC. Since the cases before the LTS relate to non-domestic premises, it seems unlikely that legal aid would be an issue as the appellant is likely to be a company or trading entity rather than a private individual.

Enforcement, sanctions and monitoring

The proposal does not create any new enforcement mechanisms.

How will the proposal be implemented and in what timescale?

The proposals will be implemented by a suite of regulations. Three instruments are already in force:

The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2021 came into force in 2021 and amend the Scottish Tribunals (Eligibility for Appointment Regulations 2015) to set eligibility criteria for the 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;

The First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2021 came into force in December 2021, amending the 2014 Act and creating the Local Taxation Chamber of the First-tier Tribunal;

The Scottish Tribunals (Listed Tribunals) Regulations 2022 came into force in September 2022 and add the CTRRP to the tribunals listed in Schedule 1 of the 2014 Act, which can be transferred to the Scottish Tribunals.

The proposals will be implemented by a further six regulations. Four of these will be subject to affirmative resolution of the Scottish Parliament:

- The First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeals Committees) Regulations 2022;
- The First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2022;
- The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition) Regulations 2022; and
- The Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2022.

The remaining two regulations will be subject to negative procedure in the Scottish Parliament:

- 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.

It is intended that the bodies which will be transferred will begin to operate as part of the Scottish Tribunals on 1 April 2023.

Post-implementation review

No review will be required.

Summary and recommendation

Summary costs and benefits table

Option 1: Do nothing

Benefits

The only benefit of maintaining the status quo would be to retain a well-known system which has operated for some years.

Costs

There would be no immediate change to the costs of the existing bodies, but the lack of co-ordination and standardisation of procedure may increasingly lead to unnecessary inefficiency and cost over time.

Option 2: Transfer the functions of the VACs and the CTRRP to the First-tier Tribunal and the valuation functions of the LTS to the Upper Tribunal

Benefits

The transfer to the Scottish Tribunals is intended to facilitate a new simplified, coherent framework for these tribunals.

There are currently 13 Valuation Appeal Panels, aligned to local authorities or groups of local authorities. Members are appointed by the relevant Sheriff Principal. Some members are self-nominating, some are approached and nominated by panel Chairs for consideration by the Sheriff Principal. Following the transfer recruitment and training will be centralised and standardised, and carried out by the Judicial Appointments Board for Scotland.

By establishing a more coherent framework for tribunals, opportunities are created for better quality and more standardised training and in the quality of services that cannot be achieved by tribunals operating separately.

A policy decision was taken that VACs members should not be automatically transferred to the First-tier Tribunal, Local Taxation Chamber. The Judicial Appointments Board for Scotland ran an open recruitment process in two stages, the first for legal and surveyor members and the second for ordinary members (with

valuation rating experience). Members of the Local Taxation Chamber have been appointed using an open and transparent recruitment process.

Costs

At present, members of the VACs are not paid. The secretaries and assistant secretaries of the VACs are mostly solicitors, who receive a fee. Conveners of the CTRRP receive a daily fee. Members of the First-tier Tribunal allocated to the Local Taxation Chamber will receive a daily fee in common with all other members of the First-tier Tribunal, with daily fee rates set for legal, surveyor and ordinary (valuation experience) members.

Members of the LTS who transfer to the Scottish Tribunals will receive a daily fee for hearing cases in the Upper Tribunal. LTS members are salaried, however there are at present no salaried members of the Scottish Tribunals. LTS members will sit in the Upper Tribunal as an additional jurisdiction for which they will receive a separate fee. There will therefore be an increase in cost for cases which are heard by the Upper Tribunal however we expect the increase to be modest.

There will therefore be an increase in costs in respect of member fees. It is hoped that this will be balanced by increased efficiency from being part of the Scottish Tribunals.

Costs will initially be met by Local Government and Housing, until baselined.

Declaration and publication

Signed: Elena Whitham

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**Elena Whitham
Minister for Community Safety**

Scottish Government contact point:

Lisa Davidson, Tribunals Policy
Ryan McRobert, Head of Courts and Tribunals