

# **Tribunals (Scotland) Act 2014**

## **Consultation on draft Regulations**

**September 2021**

# **Tribunals (Scotland) Act 2014**

**Consultation on draft Regulations regarding:**

- (1) Adding the functions of the Council Tax Reduction Review Panel to Part 1 of Schedule 1 of the Tribunals (Scotland) Act 2014;**
- (2) Transfer in to the new Local Taxation Chamber in the First-tier Tribunal for Scotland the functions of the Valuation Appeals Committees;**
- (3) Transfer in to the new Local Taxation Chamber in the First-tier Tribunal for Scotland the functions of the Council Tax Reduction Review Panel;**
- (4) Transfer in the relevant functions and members of the Lands Tribunal for Scotland (in relation to valuation appeals) to the Upper Tribunal for Scotland;**
- (5) Composition of the First-Tier Tribunal and Upper Tribunal;**
- (6) Procedural rules for the Local Taxation Chamber in the First-tier Tribunal; and**
- (7) Procedural rules for the Upper Tribunal.**

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## Part 1

### Policy background

1. The Tribunals (Scotland) Act 2014 (“the 2014 Act”) created a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act created two tribunals, the First-tier Tribunal for Scotland (“First-tier Tribunal”) and the Upper Tribunal for Scotland (“Upper Tribunal”), known collectively as the Scottish Tribunals.
2. The 2014 Act also provides for the functions of existing tribunals and their membership to be transferred to the First-tier Tribunal and/or the Upper Tribunal. Alternatively, functions may be directly conferred on the First-tier Tribunal and/or the Upper Tribunal for newly created jurisdictions or extensions of jurisdiction.
3. The 2014 Act also provides for the First-tier Tribunal to be organised into a number of chambers, with regard to subject-matter and other relevant factors, to which the functions transferred to or conferred upon the First-Tier Tribunal can be allocated.
4. The 2014 Act also provides for the Upper Tribunal to be organised into a number of divisions, with regard to subject-matter and other relevant factors, to which the functions transferred to or conferred upon the Upper Tribunal can be allocated.
5. The rationale for the 2014 Act was to create a new structure for devolved tribunals in Scotland. Over the years, these tribunals were established in an ad hoc fashion, with no common system of leadership, appointments, practice and procedure or reviews and appeals. This can lead to a narrowness of outlook and allows for a variation of standards and performances across the tribunals landscape.
6. The 2014 Act seeks to address these issues by creating a structure that reduces overlap, eliminates duplication, ensures better deployment and allows for the wider sharing of available resources. The new structure also provides users with the reassurance that tribunal hearings are being heard by people with no links to the body whose decision they are challenging, by providing for greater independence for the new tribunals. 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.
7. The 2014 Act establishes a coherent structure within which to bring the functions and members of the devolved tribunals. It contains a list of devolved tribunals in Schedule 1 from which the functions and members may be transferred into the new structure.
8. The 2014 Act allows the list of tribunals set out in Schedule 1 to be added to or modified. Over time, the intention is that the new structure will acquire the functions of new or other jurisdictions which are not currently listed. The functions and members of a listed tribunal are transferred into the new structure by

regulations. Regulations may also modify the underlying legislation in relation to the tribunals listed in Schedule 1 of the 2014 Act.

9. The Scottish Tribunals are composed of members who are either transferred in or appointed. If appropriate, existing eligible members of the listed tribunals transfer in at the same time as the functions of their tribunal are transferred, along with their current caseloads. New procedural rules are required in order to allow the Scottish Tribunals to operate effectively in the exercise of the transferred functions, though these will take into account the previously existing rules of procedure, modified as necessary to reflect the new structure.

### **Background to Valuation Appeals Committees**

10. Valuation Appeals Committees (“VACs”) have their historic origins in the Lands Valuation (Scotland) Act 1854. Their jurisdiction and functions are set out in section 29(1)(a) of the Local Government etc. Scotland Act 1994:

“valuation appeal panels and valuation appeal committees shall be constituted for each valuation area, in accordance with the provisions of this section and with regulations made by the Secretary of State, for the purpose of hearing and determining appeals and complaints—

(i) under the Valuation Acts; and

(ii) under sections 81(1) and 87(6) of the Local Government Finance Act 1992 (Council Tax appeals)”.

11. The Local Government (Scotland) Act 1994 and regulations made thereunder establish 13 valuation appeal panels from which VACs members are drawn, aligned to local authorities or groups of local authorities. The rules of the functioning of VACs are set out in The Valuation Appeal Panels and Committees (Scotland) Regulations 1996 (constitution and membership); The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 (procedures for appeals in respect of the Valuation Acts) and in the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (procedure for Council Tax). Further rules in relation to the appeal of a VAC decision to the Lands Valuation Appeal Court are set out in the Act of Sederunt (Valuation Appeal Rules Amendment) 1982.

12. VACs consider appeals relating to Non-Domestic Rates (NDR) and Council Tax matters. In relation to NDR, Scottish assessors are responsible for maintaining the non-domestic valuation roll under section 1 of the Local Government (Scotland) Act 1975, and provide rateable values to the relevant local authority under section 3 of that Act. For council tax, assessors are responsible for maintaining the council tax valuation list, which contains information relating to each domestic property in a local authority area, and for the issue of council tax completion notices for new domestic dwellings. Local authorities administer and collect NDR and council tax for their area.

13. 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).

## Non-Domestic Rates

14. NDR liability on a property is the rateable value (what is expected to be paid by way of rent for the property, year on year), multiplied by the 'poundage' (the number of pence per pound payable as tax), minus any reliefs for which the property is eligible. Appeals against the entry in respect of a property in the valuation roll can be made to the assessor by the owner, proprietor or tenant within prescribed timescales.

15. VACs hear, and assessors are called to provide evidence on, appeals against an entry in the valuation roll. Certain cases, such as factually complex cases, may be referred to the Lands Tribunal for Scotland (LTS) on application by the assessor or the appellant in accordance with the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, as amended.

16. A party to an appeal heard either by a VAC or the LTS may further appeal their decision to the Lands Valuation Appeal Court. The Lands Valuation Appeal Court will only consider questions as to value, and on such matters its decision is final.

17. By virtue of section 34 of the Non-Domestic Rates (Scotland) Act 2020, VACs will also hear appeals against the amount of a civil penalty imposed for failure to comply with assessor information notices, failure to comply with local authority information notices and failure to notify changes in circumstances to the local authority.

## Council Tax

18. The relevant rules for council tax matters considered by VACs are set out in the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993. VACs hear:

- List appeals (e.g. whether the band is right, whether a property should be on the list, whether it needs to be deleted, etc.).
- Non-list appeals i.e. appeals on whether a domestic dwelling should be exempt from council tax liability, whether a domestic dwelling should be subject to a council tax discount (e.g. the Single Person Discount) and appeals against council tax exemption notices.
- Civil penalties appeals in relation to council tax e.g. non-provision of information in relation to council tax.
- Appeal of an assessor decision to refuse to hear a list appeal on the grounds of time or title or lack of information.

19. Under section 82(4) of the Local Government Finance Act 1992, any party to an appeal may appeal against a decision of the VAC on a point of law to the Court of Session.

## Membership

20. Members are appointed to the valuation appeal panel (see para 11 above) by the relevant Sheriff Principal. The chairman of each panel appoints members of the panel to one or more VACs to hear appeals.

21. The VACs are unpaid and consist of between three and six members in addition to the chair. Paid secretaries assist VACs but do not take part in the decision-making.

22. There are currently 13 VAC secretaries covering the valuation areas, along with their assistant secretaries, also appointed by the relevant Sheriff Principal. Secretaries are almost always solicitors and are paid by the relevant authority. Secretaries and assistant secretaries are not currently considered to form part of the panels or VACs.

## Background to Council Tax Reduction Review Panel

23. The United Kingdom *Welfare Reform Act 2012* abolished the GB-wide Council Tax Benefit from April 2013. In Scotland, the Scottish Government responded by putting in place the Council Tax Reduction scheme. This is not a benefit, but a reduction in council tax liability, calculated by assessing the income, capital, composition and characteristics of a household. Local authorities have administered the means tested Council Tax Reduction scheme since April 2013.

24. The Council Tax Reduction (Scotland) Amendment (No.2) Regulations 2013 amended the Council Tax Reduction (Scotland) Regulations 2012 ("2012 Regulations") to make provision for a panel, now known as the Council Tax Reduction Review Panel ("CTRRP"), to review determinations made by a local authority in respect of applications for Council Tax Reduction. The CTRRP provides an additional review, beyond that provided by the administering local authority, to safeguard an individual's rights in relation to the Council Tax Reduction scheme. The 2012 Regulations are due to be replaced by updated regulations from April 2022.

25. A decision of the CTRRP is final subject to appeal to the Court of Session on a point of law.

## Membership

26. The panel members must be legally qualified, in accordance with the 2012 Regulations, and the CTRRP's work is currently supported by the Scottish Courts and Tribunals Service.

## Background to the Lands Tribunal for Scotland

27. The 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. The LTS



exercises these functions in accordance with procedures laid down in the appropriate rating and valuation regulations.

28. As noted in para 15 above in relation to VACs, NDR cases can be referred to the LTS under the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, as amended. The assessor or the appellant may make application to the VAC seeking referral of the appeal to the LTS and where an application has been made, and it appears to the VAC that—

- (a) the facts of the case are complex or highly technical;
- (b) the evidence to be given by expert opinion is complex or highly technical;
- (c) the law applicable to the case is uncertain or difficult to apply;
- (d) the case raises a fundamental or general issue likely to be used as a precedent in other cases; or
- (e) the lands and heritages to which the appeal relates are part of larger subjects situated in more than one valuation area and the valuation of those subjects is appealed in more than one such area,

the VAC shall refer the appeal to the LTS for determination.

29. Under section 1(3A), the LTS may determine any appeal or complaint under the Valuation Acts referred to it by a VAC. Under section 1(3BA), the LTS may also determine any appeal against the decision of a VAC not to refer an appeal on. Where the LTS upholds such an appeal, it shall regard the matter as having been referred to the LTS for determination under subsection (3A).

#### Fees

30. The LTS currently charges fees for appeals under the Valuation Acts against rateable value of non-domestic premises. The relevant fees are those set out in the schedule of the Lands Tribunal for Scotland (Amendment) (Fees) Rules 1996:

<b>Application etc.</b>	
3. On an appeal under section 1(3A) of the Lands Tribunal Act 1949 (valuation for rating)—	
(i) where the net annual value does not exceed £10,000	£100
(ii) where the net annual value exceeds £10,000 but not £50,000	£150
(iii) where the net annual value exceeds £50,000 but not £100,000	£300
(iv) where the net annual value exceeds £100,000	£500
4. On an appeal under section 1(3BA) of the Lands Tribunal Act 1949 (non-referral of valuation appeal or complaint)	£ 78
<b>Miscellaneous fees</b>	
10. On certifying a copy of an order or determination of the Tribunal	£ 7.50
11. For each sheet of a copy of all or part of any document	£ 1.20

12. On a case for the decision of the Court of Session or the Lands Valuation Appeal Court (in respect of references under Part VC of these Rules <sup>1</sup> )—an application for appeal by way of stated case (to include drafting of case and any necessary copies)	£ 55
14. On an application for the cancellation of a hearing	£ 75
15. On an application during the course of proceedings which is not specifically referred to in the above table of fees (eg an application for (i) an extension to the period in which answers or adjustments are required to be lodged, or (ii) the continuation or sisting of an application)	£ 35

Please note, however, that the undue hardship provisions of the existing rules will be retained so that the Upper Tribunal may waive the whole or part of the fees payable by a party where it considers that the financial circumstances of the party are such that undue hardship would be caused by payment of the said fees.

#### Membership

31. The LTS has a President who has overall responsibility for the organisation of its work, and three Members who have recognised expertise in the fields of law and surveying. The current President of the LTS is also Chairman of the Scottish Land Court. The current LTS members are a QC and two Fellows of the Royal Institution of Chartered Surveyors (“RICS”).

32. As noted at para 16 above, parties may appeal decisions of the LTS to the Lands Valuation Appeal Court on matters of value.

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<sup>1</sup> NB this refers to the Lands Tribunals for Scotland Rules 1971, which previously applied to valuation appeals under the 1949 Act. Part VC was replaced by the 2003 Rules (see paragraph 81 below), which also provided at rule 29 that this fee table applies and this fee accordingly applies to appeals under Part IV of the 2003 Rules.

## Proposed new regulations

33. The draft regulations are attached at **Annexes A, B, C, D, E, F and G**. Please note that some minor consequential amendment details are still to be finalised in the various transfer of functions regulations. In addition, as the 2012 Regulations are to be replaced by equivalent 2021 regulations references in the draft regulations are to these new regulations.

34. We have already consulted with key stakeholders on draft regulations intended to amend the First-tier Tribunal for Scotland (Chambers) Regulations to provide for a Local Taxation Chamber. These are time-critical as the Judicial Appointments Board for Scotland (JABS) have been asked to recruit a new Chamber President in advance of the transfer, who cannot take up post until the new Chamber is created. We anticipate that these regulations will be laid for consideration by the Scottish Parliament in September 2021.

35. In addition, we have also previously consulted with key stakeholders on the draft regulations which set out eligibility criteria for ordinary members of the First-tier Tribunal and Upper Tribunal. These are time-critical as well as the JABS have also been asked to recruit both legal and ordinary members for the tribunal and so the eligibility requirements for ordinary members need to be set in law. The eligibility requirements for a Chamber President and legal members are already set out in the 2014 Act. We anticipate these regulations will also be laid in September 2021.

36. Please note, there will also shortly be a public consultation on reforms to the non-domestic rates system, including procedures in proposals. The draft regulations on reforming the non-domestic rates appeals system are the subject of a separate consultation which can be accessed at: <https://consult.gov.scot/local-government-and-communities/non-domestic-rates-processes>

37. The draft regulations in **Annex A** provide for the addition of the Council Tax Reduction Review Panel to Part 1 of Schedule 1 of the Tribunals (Scotland) Act 2014, which lists the tribunals that may transfer into the Scottish Tribunals.

38. The draft regulations in **Annex B** transfer in to the new Local Taxation Chamber of the First-tier Tribunal the functions of the Valuation Appeals Committees.

39. The draft regulations in **Annex C** transfer in to the new Local Taxation Chamber of the First-tier Tribunal the functions of the Council Tax Reduction Review Panel.

40. The draft regulations in **Annex D** transfer in the relevant functions and members of the Lands Tribunal for Scotland to the Upper Tribunal.

41. The draft regulations in **Annex E** provide for the composition of the First-Tier Tribunal and Upper Tribunal.

42. The draft regulations in **Annex F** set out procedural rules for the Local Taxation Chamber of the First-Tier Tribunal post-transfer.

43. The draft regulations in **Annex G** provide procedural rules for the Upper Tribunal post-transfer.

## Part 2

### **Draft regulations adding the Council Tax Reduction Review Panel to Part 1 of Schedule 1 of the Tribunals (Scotland) Act 2014**

#### **Background**

43. The Council Tax Reduction (Scotland) Amendment (No.2) Regulations 2013 amended the 2012 Regulations to establish a panel to review determinations made by a local authority in respect of applications for Council Tax Reduction (CTR). The panel provides an additional review to safeguard an individual's rights to administrative justice. The CTR scheme reduces liability for council tax, where applicable, based on an assessment of a household's income, capital, composition, and characteristics. CTR, while a reduction in tax liability and not a benefit, is very similar to means-tested benefits and is closely aligned with Housing Benefit.

44. With VACs due to move into the Scottish Tribunals structure, moving the work of the CTRRP will mean all council tax appeals in Scotland will be heard within the First-tier Tribunal in the new Local Taxation Chamber. By adding the CTRRP to the list of bodies in Part 1 of Schedule 1 of the 2014 Act, the two bodies may be transferred into the Scottish Tribunals at the same time on 1 January 2023.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q1: Do you have any comments on the draft regulations which propose to add the CTRRP to the list of tribunals in Schedule 1 of the Tribunal (Scotland) Act 2014?

## Part 3

### **Draft regulations transferring in the functions of the Valuation Appeals Committees to the new Local Taxation Chamber of the First-tier Tribunal for Scotland**

45. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-Tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.

#### Valuation Appeals Committees (VACs)

46. A VAC is already listed as a Tribunal in Schedule 1 of the Tribunals (Scotland) Act 2014 whose functions may be transferred to the First-tier Tribunal.

47. The transfer is seen as an opportunity for greater transparency and consistency of practice. It would have been operationally challenging to deliver the original transfer date of April 2022 due to, for instance, the decision to set up a standalone chamber. It is therefore proposed that the functions of the VACs should be transferred to the First-tier Tribunal for Scotland on 1 January 2023 and that those functions should be allocated to a new Local Taxation Chamber.

48. Upon transfer the existing VACs in their current form will be abolished and thereafter matters under their jurisdiction will be heard by the First-tier Tribunal.

49. The JABS will be asked to recruit members with legal and surveyor rating experience, as well as members with valuation experience. It is considered preferable that members of the same chamber are recruited using the same criteria, and accordingly existing members and secretaries of the VACs will not automatically transfer to the Scottish Tribunals, though they will be able to apply for appointment through the JABS. A consultation on the regulations setting out the eligibility criteria for members with valuation experience and surveyor rating experience was undertaken with key stakeholders in July 2021.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q2: Do you have any comments on the draft regulations relating to the proposed transfer of functions of the VACs to the First-tier Tribunal in Annex B?

## Part 4

### **Draft regulations transferring in the functions of the CTRRP to the new Local Taxation Chamber of the First-tier Tribunal for Scotland**

50. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-Tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.

#### Council Tax Reduction Review Panel

51. It is proposed that the functions of the CTRRP will transfer to the First-tier Tribunal for Scotland and will be allocated to the new Local Taxation Chamber.

52. The existing CTRRP will be abolished and thereafter decisions will be heard in the First-tier Tribunal.

53. A number of existing members of the CTRRP are already members of the First-tier Tribunal and will be eligible to be assigned to the Local Taxation Chamber with the agreement of the Chamber President and the President of the Scottish Tribunals, if they so wish. The remaining members of the CTRRP will not automatically transfer to the Scottish Tribunals as it is considered preferable that members of the same chamber are recruited using the same criteria. They will, however, be able to apply for appointment through the JABS.

54. With VACs due to move into the tribunal structure as well, transferring the CTRRP on 1 January 2023 will mean all council tax appeals in Scotland will be heard within the First-tier Tribunal.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q3: Do you have any comments on the draft regulations relating to the transfer of functions of the CTRRP to the First-tier Tribunal in Annex C?

## Part 5

### **Draft regulations transferring in the relevant functions and members of the Lands Tribunal for Scotland (in relation to valuation appeals) to the Upper Tribunal for Scotland**

55. It is proposed that the functions of the LTS in section 1(3A-3BA) of the Lands Tribunal Act 1949, in relation to hearing appeals against rating assessments for non-domestic premises, are transferred to the Upper Tribunal for Scotland. Under section 1(3A), the Tribunal “may determine any appeal or complaint under the Valuation Acts (within the meaning of section 37(1) of the Local Government (Scotland) Act 1975) referred to it by a valuation appeal committee”.

56. It is intended that the Upper Tribunal for Scotland will hear first instance applications against rating assessments for non-domestic premises which hitherto have been heard by the LTS. The Upper Tribunal (comprising current LTS members and functions) will therefore sit as an initial appellate tribunal, though it will also hear appeals against decisions by the First-tier Tribunal not to remit cases.

57. The existing jurisdiction of the LTS in relation to hearing appeals against rating assessments for non-domestic premises will be removed.

58. The President of the Lands Tribunal for Scotland is also Chairman of the Scottish Land Court. The LTS members are a Queen’s Counsel and two Fellows of the RICS. The functions of the LTS under section 1(3A-3BA) of the Lands Tribunal Act 1949, in relation to hearing appeals against rating assessments for non-domestic premises, are to be transferred to the Upper Tribunal; as with the other transferring bodies, the Scottish Ministers may by regulations provide for some or all of the members of the LTS to transfer, if they are eligible to do so.

59. Taking into account the qualifications and experience that Upper Tribunal members will require to hear appeals that are currently heard by the LTS, a consultation on draft regulations setting out the eligibility criteria for members of the Upper Tribunal with surveyor experience was undertaken with key stakeholders in July 2021; the regulations are expected to be laid before Parliament in September 2021. Ministers consider it appropriate for the existing members to transfer.

60. Regulation 5(2) and (3) of the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 permits legal members of the LTS to become legal members of the Upper Tribunal. It is anticipated that the President of the LTS will be assigned by the President of the Scottish Tribunals to sit in the Upper Tribunal.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q4: Do you have any comments on the draft regulations relating to the proposed transfer of the LTS functions (in relation to valuation appeals) to the Upper Tribunal for Scotland in Annex D?



Q5: Are you content that the members of the LTS who deal with such rating appeals should transfer and become members of the Upper Tribunal for these purposes?

## Part 6

### Draft regulations providing for the composition of the First-tier Tribunal and Upper Tribunal

61. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers to make provision in regulations to determine the composition of the First-tier and Upper Tribunals.

#### Valuation Appeal Committees (VACs)

62. Each VAC consists of a committee chairman and not less than three, or more than six, other members (regulation 10(2) of the Valuation Appeals Panels and Committees (Scotland) Regulations 1996 states that the quorum of a VAC will be three).

63. It is now proposed that, in dealing with cases which would have been dealt with by VACs, the First-tier Tribunal should usually sit as a panel of three members, which, depending on the nature of the case, would be comprised of either two ordinary members with valuation experience or one ordinary member with valuation experience and a second ordinary member with surveyor rating experience. In both instances they would be joined by a legally qualified member who will act as chair.

64. In council tax non-list appeals however, where the decision to be taken relates more to the circumstances of the individual applicant(s) rather than the circumstances of the building, it is proposed that the Tribunal may be composed of a single legal member.

#### Council Tax Reduction Review Panel (CTRRP)

65. At present a single legally qualified member of the CTRRP hears cases. This is provided for in regulation 90C(1) of the Council Tax Reduction (Scotland) Regulations 2012. Regulation 90D(8) provides that “in the circumstances of a particular case the Scottish Ministers may consider it appropriate for three members of the panel appointed under regulation 90C(1) to undertake the further review”. So far as we are aware, however, this provision has never been used and cases are always heard by one member.

66. The policy intention is for the First-tier Tribunal to mirror current arrangements whereby a single legally qualified member will hear the appeal in cases which would have previously been dealt with by the CTRRP.

#### Lands Tribunal for Scotland (LTS)

67. At present, the LTS would generally comprise a legal and a surveyor member when considering valuation for rating cases, though any one member of the LTS can sit as ‘the Tribunal’. Single (legal) members occasionally sit on their own for legal debates, though this is very rare.

68. We see no reason for any amendment to the composition criteria for this purpose when it becomes part of the Upper Tribunal and accordingly it is proposed that this will be replicated on transfer.

#### The Upper Tribunal

69. All NDR, VACs and LTS appeals which currently go to the Lands Valuation Appeal Court will continue to do so after transfer. However, under section 82(4) of the Local Government Finance Act 1992, any party to an appeal in relation to council tax may appeal against a decision of the VACs on a point of law to the Court of Session. Post transfer it is intended that these appeals and those from the CTRRP will go to the Upper Tribunal instead, sitting as an appeal tribunal from decisions of the First-tier Tribunal. In such circumstances it is intended that judiciary of a similar standing will hear these appeals and provision is made for this in the regulations.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q6: Do you have any comments on the draft regulations in Annex E regarding the proposed composition of the Local Taxation Chamber of the First-tier Tribunal?

Q7: Do you have any comments on the draft regulations in Annex E regarding the proposed composition of the Upper Tribunal when hearing Local Taxation Chamber referrals or appeals of referral decisions?

Q8: Do you have any comments on the draft regulations in Annex E regarding the proposed composition of the Upper Tribunal when hearing Local Taxation Chamber appeals?

## Part 7

### Draft regulations providing procedural rules for the Local Taxation Chamber of the First-tier Tribunal post transfer

#### Background

70. Schedule 9, paragraph 4(1) and (2) of the 2014 Act confers on the Scottish Ministers, for the time being, the function of making rules regulating the practice and procedure to be followed in proceedings at the Scottish Tribunals.

#### Draft Regulations

##### Joint rules

71. The transfer in to the First-tier Tribunal of the functions of the VACs and the CTRRP provides an opportunity to bring together, so far as appropriate, the rules of procedure of the VACs and the CTRRP. The intention is that there should be one set of rules for the new Local Taxation Chamber which will cover all cases which would have gone to the VACs or the CTRRP, though it is proposed that there will be bespoke rules, as well as general rules, which will relate to the specific functions of the former VACs and the CTRRP.

72. The current appeal procedure of the VACs in relation to council tax appeals is set out in Part IV of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993. These are largely replicated in the new regulations. However, in the draft regulations we have provided the opportunity for appellants to submit an appeal in the event that an assessor does not convey an appeal to the First-tier Tribunal. One alternative is to replicate the approach being taken in NDR cases whereby appellants alone will be responsible for submitting appeals to the First-tier Tribunal. We would welcome views on this.

73. The current appeal procedure of the VACs in relation to NDR is set out in the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995. The appeals process in relation to NDR is set to be altered as a result of changes made to the Local Government (Scotland) Act 1975 by section 10 of the Non-Domestic Rates (Scotland) Act 2020. Some rules on timing associated with the revised system are to be set out by amendment to the Valuation Timetable (Scotland) Order 1995 (“the 1995 Order”), rather than in the rules of procedure, though the draft rules of procedure specify where the timings in the 1995 Order apply. Amendments to the 1995 Order are to be the subject of a separate consultation which can be accessed at: <https://consult.gov.scot/local-government-and-communities/non-domestic-rates-processes> (see paragraph 36 above).

74. The Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020, which came into force on 19 November 2020, make provision for appeals to a VAC in relation to assessor penalty notices and local authority penalty notices under the Non-Domestic Rates (Scotland) Act 2020 (“the 2020 Regulations”). These are penalty notices issued where a requirement to

provide information is not complied with. On appeal, a VAC can mitigate or remit any penalty.

75. New rules covering civil penalty appeals will also be required when this function of the VACs is transferred to the new Local Taxation Chamber of the First-tier Tribunal and these have been included in the draft regulations in Annex F. The 2020 Regulations will be revoked.

#### Replacement of current CTRRP rules of procedure

76. The rules of procedure for the CTRRPs are set out in regulation 90D of the 2012 Regulations (though as noted at paragraph 33, these are due to be replaced by the 2021 Regulations), regulation 70C of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 and in two Practice Notes<sup>2</sup> made by the senior reviewer in 2015 and 2020.

77. New rules in relation to CTRRP appeals will also be required when this function is transferred to the new Local Taxation Chamber of the First-tier Tribunal and these have been included in the draft regulations in Annex F.

#### Further Appeals

78. Appeals of VACs (or LTS) decisions which are currently heard by the Lands Valuation Appeal Court will continue to be heard by that court after transfer. However, under section 82(4) of the Local Government Finance Act 1992, any party to an appeal in relation to council tax may appeal against a decision of the VAC on a point of law to the Court of Session. Post transfer it is intended that these appeals and those from the CTRRP will go to the Upper Tribunal instead and these regulations make provision for that new route of appeal.

See supporting documents for associated regulations.

#### Questions on Draft Regulations

Q9: Do you have any specific comments on the draft regulations in Annex F setting out the proposed Rules of Procedure for the Local Taxation Chamber within the First-tier Tribunal?

Q10: The draft Regulations provide an additional right for appellants to submit an appeal in the event that an assessor does not do so within a certain time period. In relation to council tax appeals, should the right to submit appeals become the sole responsibility of the appellants?

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<sup>2</sup> <https://www.counciltaxreductionreview.scot/documents/CTRRP%20Practice%20Note%201-2015%20-%20Procedural%20Guidance.pdf>

[https://www.counciltaxreductionreview.scot/documents/CTRRP%20Practice%20Note%202-2020%20-%20Procedural%20Guidance%20\(Temporary\).pdf](https://www.counciltaxreductionreview.scot/documents/CTRRP%20Practice%20Note%202-2020%20-%20Procedural%20Guidance%20(Temporary).pdf)

## Part 8

### **Draft regulations providing procedural rules in the Upper Tribunal post-transfer.**

Lands Tribunal for Scotland (LTS)

79. It is intended that the Upper Tribunal for Scotland will hear first instance appeals against rating assessments for non-domestic premises which are currently heard by the LTS.

80. The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (“2016 Regulations”) provide rules of procedure for the Upper Tribunal, but these relate to appeals from the First-tier Tribunal only and so it is necessary to constitute new rules for the Upper Tribunal when it sits as an initial appellate tribunal.

81. Procedural rules for the LTS are set out in the Lands Tribunal for Scotland Rules 2003 (“the 2003 Rules”). Part IV of those Rules deals with the referral of valuation for rating appeals from a VAC under section 1(3A) of the Lands Tribunal Act 1949 and Part V provides general rules of procedure for cases before the Lands Tribunal.

82. It seems sensible that the rules of procedure for the Upper Tribunal when considering appeals against rating assessments referred from the First-tier Tribunal should be based on Parts IV and V of the 2003 Rules. The Upper Tribunal procedural rules as set out in the 2016 Regulations relate only to appeals against decisions of the First-tier Tribunal. In its new role as an initial appellate tribunal it does not appear to be necessary or appropriate to replace or significantly alter rules of procedure which are considered to be suitable, simply because those cases will now be heard by the Upper Tribunal. There is also thought to be good reason to mainly retain rules with which the members of the LTS are familiar, given that when sitting in relation to valuation matters the Upper Tribunal will initially be composed of those same members.

83. The rules of procedure set out in Parts IV and V of the 2003 Rules have therefore been largely replicated for the Upper Tribunal for cases which will now be heard by the Upper Tribunal rather than the LTS, though some changes are considered necessary or appropriate to ensure consistency with procedures for other matters in the Upper Tribunal.<sup>3</sup>

84. The VACs and CTRRP do not currently charge fees to lodge an appeal. The LTS does, however, currently charge fees for appeals under the Valuation Acts against rateable value of non-domestic premises. The applicable fees are those set out in the schedule of the Lands Tribunal for Scotland (Amendment) (Fees) Rules 1996.

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<sup>3</sup> It should be noted that, where decisions of the Local Taxation Chamber of the First-tier Tribunal are appealable to the Upper Tribunal – in respect of the council tax matters for example – the applicable procedural rules will be those set out in the 2016 Regulations.

85. Consideration was given to the introduction of new fees to transfer some of the cost of running the Local Taxation Chamber and Upper Tribunal from the taxpayer to those using the system who can afford to pay. It is thought that such a change may help to reduce frivolous or weak appeals, although it may be suggested that charging fees will disproportionately affect those who cannot afford to bring an appeal, regardless of the strength of their case.

86. As the introduction of fees is not intended to deter parties from bringing an appeal, new fees will not be introduced, but will be retained in relation to NDR cases which are referred to the Upper Tribunal, in line with existing fees charged in respect of an appeal to the LTS. This will maintain the status quo. No fees will be payable for an appeal of a decision of the First-tier Tribunal to the Upper Tribunal.

See supporting documents for associated regulations.

#### Questions on Draft Regulation

Q11: Do you have any comments on the proposed rules of procedure in Annex G for the Upper Tribunal when it deals with appeals against rating assessments which are referred to it by the Local Taxation Chamber?

Q12: Do you agree that fees should be charged for appeals against rating assessments which are referred to the Upper Tribunal?

Q13: Do you agree that any such fees should be charged in the Upper Tribunal on a sliding scale depending on the rateable value of the property concerned as is the case with cases referred/appealed to the LTS at the moment?

Q14: Do you think that fees should be charged for non-domestic rates appeals in the Local Taxation Chamber of the First-tier Tribunal?

Q15: Do think that fees are appropriate for other cases to be heard in the Local Taxation Chamber of the First-tier Tribunal?

## **Part 9**

### **Responding to this consultation**

We are inviting responses to this consultation by 28 November 2021.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at: <https://consult.gov.scot/justice/local-taxation-vac-etc-transfer-of-functions>

You can save and return to your responses while the consultation is still open.

Please ensure that consultation responses are submitted before the closing date of 28 November 2021.

If you are unable to respond online, please complete the Respondent Information Form (see Annex H) and return it to:

Lisa Davidson  
Tribunals and Administrative Justice Policy  
GW15 St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### **Handling your response**

If you respond using Citizen Space (<https://consult.gov.scot/>), you will be directed to the About You page. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the 14 provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <https://consult.gov.scot/>

If you use Citizen Space to respond, you will receive a copy of your response via email.



Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to [Tribunals.consultations@gov.scot](mailto:Tribunals.consultations@gov.scot).

### **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all of our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## Questionnaire

### Question 1

**Do you have any comments on the draft regulations which propose to add the Council Tax Reduction Review Panel to the list of tribunals in Schedule 1 of the Tribunal (Scotland) Act 2014?**

Please provide your comments.

### Question 2

**Do you have any comments on the draft regulations relating to the proposed transfer of functions of the Valuation Appeals Committees to the First-tier Tribunal?**

Please provide your comments.

**Question 3**

**Do you have any comments on the draft regulations relating to the transfer of the functions of the Council Tax Reduction Review Panel to the First-tier Tribunal?**

Please provide your comments.

**Question 4**

**Do you have any comments on the draft regulations relating to the proposed transfer of the functions of the Lands Tribunal for Scotland (in relation to valuation appeals) to the Upper Tribunal for Scotland?**

Please provide your comments.

**Question 5**

**Are you content that the members of the Lands Tribunal for Scotland who deal with ratings appeals should transfer and become members of the Upper Tribunal for the purposes of hearing ratings appeals?**

Yes

No

**Question 6**

**Do you have any comments on the draft regulations regarding the proposed composition of the Local Taxation Chamber of the First-tier Tribunal?**

Please provide your comments.

**Question 7**

**Do you have any comments on the draft regulations regarding the proposed composition of the Upper Tribunal when hearing Local Taxation Chamber referrals or appeals of referral decisions?**

Please provide your comments.

**Question 8**

**Do you have any comments on the draft regulations regarding the proposed composition of the Upper Tribunal when hearing Local Taxation Chamber appeals?**

Please provide your comments.

**Question 9**

**Do you have any specific comments on the draft regulations setting out the proposed Rules of Procedure for the Local Taxation Chamber within the First-tier Tribunal?**

Please provide your comments.

**Question 10**

**The draft Regulations provide an additional right for appellants to submit an appeal in the event that an assessor does not do so within a certain time period. In relation to council tax appeals, should the right to submit appeals become the sole responsibility of the appellants?**

- Yes
- No

**Question 11**

**Do you have any comments on the proposed rules of procedure for the Upper Tribunal when it deals with appeals against rating assessments which are referred to it by the Local Taxation Chamber?**

Please provide your comments.

**Question 12**

**Do you agree that fees should be charged for appeals against rating assessments which are referred to the Upper Tribunal?**

Yes

No



**Question 13**

Do you agree that any such fees should be charged in the Upper Tribunal on a sliding scale depending on the rateable value of the property concerned as is the case with cases referred/appealed to the Lands Tribunal for Scotland at the moment?

Yes

No

**Question 14**

**Do you think that fees should be charged for non-domestic rates appeals in the Local Taxation Chamber of the First-tier Tribunal?**

Yes

No

**Question 15**

**Do think that fees are appropriate for other cases to be heard in the Local Taxation Chamber of the First-tier Tribunal?**

Yes

No



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