POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE HOMEOWNER HOUSING PANEL) REGULATIONS 2016

SSI 2016/xxx

1. The above instrument was made in exercise of the powers conferred by sections 20(2) and 28(2) and 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014 (the 2014 Act).

Policy Objectives

2. The 2014 Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 to the Scottish Tribunals.

3. These regulations transfer into the Scottish Tribunals the existing functions of the homeowner housing panel (hohp), in so far as practicable. Upon transfer the hohp will be abolished and cases will be heard first in the First-tier Tribunal for Scotland with allocation to Housing and Property Chamber (First-tier Tribunal). The appeals which are currently heard in the Sheriff Court will transfer to the Upper Tribunal for Scotland (Upper Tribunal).

4. These regulations also set out transitional arrangements for the handling of cases during transfer. Cases in progress on the day of transfer will be continued in the First-tier Tribunal with the same members hearing the case, wherever possible. Unexercised rights of appeal will be to the Upper Tribunal as opposed to the Sheriff Court. If a party has already exercised its right of appeal prior to the transfer day then the appeal will continue to be heard in the Sheriff Court.

5. Existing members of the hohp will transfer to the First-tier Tribunal with allocation to the Housing and Property Chamber as long as they meet the relevant eligibility criteria as set out in regulations (SSI 2015/381). Legal members of the hohp will become legal members of the First-tier Tribunal and other members of the hohp including the vice president will become ordinary members of the First-tier Tribunal.

6. Upon reaching the age of 70, legal and ordinary members will only be eligible to remain in office by virtue of section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993. This allows members to continue in office on an annual rolling basis up until reaching the age of 75 if the Scottish Ministers, following consultation with the President of Tribunals, consider it is in the public interest.

7. 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

8. A consultation with interested parties took place between September and December 2015. There were 24 responses to this consultation. The responses are available on the Scottish Government website:
https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/second-consulatation-tribunals-scotland-act-2014/consultation/published_select_respondent

Impact Assessments

9. An Equality Impact Assessment was completed for these regulations and showed that the regulations are intended to apply equally and appear to have no differential effect on the basis of the protected characteristics.

10. The Equality Impact Assessment is available at the link below: http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSearch

11. An Equality Impact Assessment was also completed for the Tribunals (Scotland) Bill – see link below:
http://www.scotland.gov.uk/Resource/0042/00421637.pdf

12. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Learning and Justice Directorate
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